

PITCAIRN, HENDERSON

DUCIE & OENO ISLANDS

No

of 2010



Victoria Trendell

27 September 2010

Enacted by the Governor of the Islands

of Pitcairn, Henderson, Ducie and Oeno

JUDICATURE (COURTS) (AMENDMENT) ORDINANCE 2010

DATE MADE:

An Ordinance to provide for the sitting of the Supreme Court outside the Islands and to consolidate provisions relating to participation in Supreme Court and Magistrate's Court proceedings by way of live television link

Title and
commencement

1. This Ordinance may be cited as the Judicature (Courts) (Amendment) Ordinance 2010 and shall come into force on the day after it is published.

Section 2 amended

2. Section 2 of the Judicature (Courts) Ordinance is amended by inserting the following definitions in the appropriate alphabetical order:

“Proceeding” includes any application to a Pitcairn court or Registrar for the exercise of civil or criminal jurisdiction.

“Step in a proceeding”–

(a) in relation to any criminal matter, includes–

- (i) investigative steps involving a Pitcairn Court or a Pitcairn Magistrate or Registrar (for example the issuing of a search warrant)
- (ii) the institution of a criminal proceeding by the signing of a formal charge;
- (iii) any preliminary or interlocutory hearings (for example committal proceedings, remand hearings, callovers, inquiries into fitness to stand trial, or other procedural hearings);
- (iv) the entering of any plea;
- (v) the taking of evidence;
- (vi) conducting or continuing a proceeding to determine guilt;
- (vii) giving judgment in a proceeding;
- (viii) sentencing or otherwise dealing with a person;
- (ix) any appeal or review;
- (x) any other associated matters; and

(b) in relation to any civil matter, includes any interlocutory or procedural step of any sort as well as any substantive hearing, and any appeal or related matter.

New section 9A inserted

3. A new section 9A is hereby inserted in Part II of the Judicature (Courts) Ordinance as follows:

Sittings of Supreme Court outside of the Islands

9A. The Supreme Court may sit outside of Pitcairn—

- (a) when making an order under section 15E of this Ordinance; or
- (b) in accordance with an order that has been made under section 15E of this Ordinance; or
- (c) in any other circumstances prescribed by law.

Sections 15A and 15B repealed

4. Sections 15A and 15B of the Judicature (Courts) Ordinance are hereby repealed.

New section 15E inserted

5. A new section 15E is hereby inserted under Part IV of the Judicature (Courts) Ordinance as follows:

Place of sitting of
Supreme Court and
Magistrate's Court

15E. (1) A judge of the Supreme Court or a magistrate may make an order that any proceeding, or any step in any proceeding, be held—

- (a) in the Islands, or
- (b) in the United Kingdom; or
- (c) in New Zealand.

(2) An order under this section may be made—

- (a) on the application of any party or intended party to the proceeding, or
 - (b) of the Court's own motion;
- and may be made either before or after the commencement of a proceeding.

(3) In determining whether to make an order under this section, the Court must take into account:

- (a) the nature of the proposed step or hearing; and
- (b) the interests of justice; and
- (c) the interest in the efficient disposal of Court business.

New section 15F
inserted

6. A new section 15F is inserted under Part IV of the Judicature (Courts) Ordinance as follows:

15F. (1) A judge of the Supreme Court or magistrate may, in respect of a proceeding over which that judge or magistrate has jurisdiction, order that any person involved in the proceeding or any step in the proceeding may participate in that proceeding by way of live-link television where—

- (a) the Court is sitting within the Islands and the person concerned is outside the Islands, or
- (b) the Court is sitting outside the Islands and the person concerned is in the Islands or is in any other place;

and he or she is satisfied that it is in the interests of justice to make such an order.

(2) For the purposes of subsection (1), the Court shall be deemed to be sitting in the place from which the judge or magistrate is to preside over the proceeding or step in the proceeding.

(3) The persons who may participate by way of live-link television under subsection (1) may include, but are not limited to—

- (a) a party to the proceedings, including a defendant or accused;
- (b) counsel for any party to the proceedings;
- (c) a witness;
- (d) any officer of the Court;
- (e) any person whose name is on the list of assessors created in accordance with section 9 of the Justice Ordinance;
- (f) any assessor selected under section 29 of the Justice Ordinance;
- (g) any other person requested or authorised by the presiding judge or magistrate to be present or to participate.

(4) An order under subsection (1) in relation to a witness may—

- (a) specify the person or persons who may be present with the witness while the witness gives evidence by way of live television link; and
- (b) specify that the evidence be given in the presence of a particular named person who is able and willing to answer under

<hr/>	Matters to be considered under s 15F in all cases	<p>15G. A judge or magistrate, in determining whether to make an order under s15F for the appearance of a person by way of live-link television, must consider the potential impact of the use of live-link television on the effective maintenance of the rights of all parties to the proceeding, including–</p> <ul style="list-style-type: none"> (a) the ability to assess the credibility of witnesses and the reliability of evidence presented to the court; and (b) the level of contact with other participants.
<hr/>	Matters to be considered under s 15F in criminal cases	<p>15H. A judge or magistrate, in determining whether to make an order under s15F for the appearance of a person by way of live-link television in a criminal proceeding, must consider the potential impact of the use of live-link television on the effective maintenance of the right of the defendant to a fair trial, and in particular–</p> <ul style="list-style-type: none"> (a) the ability of the defendant– <ul style="list-style-type: none"> (i) to comprehend the proceedings; and (ii) to participate effectively in the conduct of his or her defence; and (iii) to consult and instruct counsel privately; and (iv) to access relevant evidence; and (v) to examine the witnesses for the prosecution; and (b) the level of contact the defendant has with other participants.
<hr/> Justice Ordinance amended		<p>7. Sections 70CA, 70CB and 70CC in Part VIIA of the Justice Ordinance are hereby repealed.</p>