



Northern Ireland  
Assembly

# Research and Information Service Briefing Paper

Paper 38/12

6 December 2011

NIAR 759-11

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## Broadcasting in Courts

### 1 Introduction

The paper provides a summary of the current position with regards to filming in court in Northern Ireland. This information was requested by the Justice Committee who are considering the issue of filming in court proceedings, particularly the judge's summing up and remarks. The paper provides information on the following:

- Background information on the current position in Northern Ireland and whether the position is underpinned by statute or custom and practice;
- The policy proposals in England and Wales and the current position in relation to the implementation of the proposals;
- The position regarding filming court proceedings in Scotland and the Republic of Ireland.

### 2 The position in Northern Ireland on filming in Courts

There have been calls on the Justice Minister in Northern Ireland to take steps to adopt similar measures to the proposals in England and Wales.<sup>1</sup> The Attorney General for Northern Ireland indicated in an interview in March 2011 that there is no real reason why proceedings, for example in the Court of Appeal, that do not involve the calling or

<sup>1</sup> The Belfast Telegraph "Call to lift court filming ban in Northern Ireland" 7 September 2011

hearing of witnesses, could not be televised as long as there are appropriate safeguards.<sup>2</sup> The Northern Ireland Justice Minister, David Ford, was asked in Assembly Questions what actions he would take in relation to lifting the ban on filming in courts in Northern Ireland.<sup>3</sup> The Justice Minister responded that he has asked his Department to monitor the development of the plans recently announced in England and Wales and whether there are any lessons to be learned.<sup>4</sup> The Minister emphasised that a number of factors would need to be taken into account when assessing the merit of lifting the ban in Northern Ireland. The factors outlined by the Minister included: the potential impact of lifting the ban on victims and witnesses; the appetite of the public for the presence of cameras in courts; the views of the judiciary and legal profession; the cost to the public purse and the risk that filming could lead to sensationalism of proceedings.<sup>5</sup>

Filming in Courts in Northern Ireland is prohibited by two pieces of legislation: The Criminal Justice (Northern Ireland) Act 1945 and The Contempt of Court Act 1981.<sup>6</sup> Section 29 of the Criminal Justice (Northern Ireland) Act 1945 is similar to the Criminal Justice Act 1925 as it prohibits the taking of or attempt to take photographs in court with a view to publication of any person, including a judge, juror or witness in or party to the proceedings before the court, whether civil or criminal.<sup>7</sup> Section 9 of the Contempt of Court Act 1981 (discussed in the next section) also extends to Northern Ireland. If it was decided to lift the ban on filming in courts in Northern Ireland, presumably legislation would be required to amend these pieces of legislation as is the case in England and Wales.

### 3 Ministry of Justice's proposals

On the 6<sup>th</sup> September 2011 The Justice Secretary Kenneth Clarke announced policy proposals on lifting the ban on filming in courts in England and Wales.<sup>8</sup> The aim of this proposal is to improve transparency and public understanding of the courts by allowing broadcasting of proceedings.

Filming and broadcasting in courts in England and Wales is prohibited by two Acts of Parliament: the Criminal Justice Act 1925 and the Contempt of Court Act 1981. Section 41 subsections (1) and (2) of the Criminal Justice Act 1925 contain a provision which bans taking or attempting to take photographs in court with a view to publication of any person, including a judge, juror or witness in or party to the proceedings before the court, whether civil or criminal.<sup>9</sup> Section 9 of the Contempt of Court Act 1981 provides

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<sup>2</sup> The Detail "Larkin Backs Open PPS and Courts" <http://www.thedetail.tv/issues/13/barry-attorney-general-story/larkin-backs-open-pps-and-courts>

<sup>3</sup> Ms Sandra Overend AQO 365-11-15, Lord Morrow AQW 1891/11-15

<sup>4</sup> Ms Sandra Overend AQO 365-11-15, Lord Morrow AQW 1891/11-15

<sup>5</sup> Ms Sandra Overend AQO 365-11-15, Lord Morrow AQW 1891/11-15

<sup>6</sup> Ms Sandra Overend AQO 365-11-15

<sup>7</sup> <http://www.legislation.gov.uk/apni/1945/15/section/29#reference-c1723749>

<sup>8</sup> <http://www.justice.gov.uk/news/press-releases/moj/moj-newsrelease060911a.htm>

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/Geo5/15-16/86>

that it is a contempt of court to use any tape recording or other instrument for recording sound without leave of the court. This legislative provision sets out that it is a contempt of court to publish a recording of legal proceedings made by the means of such an instrument by playing it in the hearing of the public or any section of the public. Section 9 also states that leave to use or bring any tape recorder into court may be granted or refused at the discretion of the court.<sup>10</sup> There are exceptions as the provision does not apply to the making or use of sound recordings for the purposes of official transcripts of proceedings.<sup>11</sup>

There is an important exception to the ban on taking photographs or other images: the Supreme Court televises its hearings.<sup>12</sup> Section 47 of the Constitutional Reform Act 2005 provides that section 41 of the Criminal Justice Act 1925 does not apply to the Supreme Court.

The Ministry of Justice has signalled it will introduce primary legislation to amend these Acts.<sup>13</sup> The Justice Secretary indicated in September that he would work closely with the Lord Chief Justice and the judiciary on how the proposals could be achieved and will consult further on the detailed approach.<sup>14</sup> To date, legislation has not been introduced nor has a consultation paper been published.

Broadcasting will be allowed initially from the Court of Appeal and, at some point in the future the Crown Court. At a Judicial Studies Board Annual Lecture in March 2011, the Master of Rolls, Lord Neuberger of Abbotsbury stated that in promoting transparency and public confidence in the justice system “there is something to be said for televising some hearings.”<sup>15</sup> However he emphasised the need for proper safeguards to ensure that increased access does not undermine the administration of justice. Lord Neuberger highlighted that if televised proceedings were to go ahead, firstly, the judge or judges hearing the case would have to have full rights of veto over what could be broadcast and secondly he would have concerns about the notion of witness actions or criminal trials being broadcast “for obvious reasons.”<sup>16</sup> The Justice Minister has suggested that the filming of proceedings will cover judges’ summary remarks only, ensuring a safeguard as victims, witnesses, offenders and jurors will not be filmed.<sup>17</sup>

The Justice Secretary has announced that in addition to filming in courts, other initiatives will be undertaken to inform the public on the working of the courts. These initiatives include:<sup>18</sup>

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<sup>10</sup> <http://www.legislation.gov.uk/ukpga/1981/49>

<sup>11</sup> Section 9 (4) of the Contempt of Court Act 1981

<sup>12</sup> Master of the Rolls Judicial Studies Board Annual Lecture 16 March 2011, “Open Justice Unbound? ”

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/mr-speech-jsb-lecture-march-2011.pdf>.

<sup>13</sup> <http://www.justice.gov.uk/news/press-releases/moj/moj-newsrelease060911a.htm>

MOJ Written Ministerial Statement “Transparency in the Justice System”

[https://judiciary.sut1.co.uk/docs/news/dca\\_releases/wms-commons-transparency.pdf](https://judiciary.sut1.co.uk/docs/news/dca_releases/wms-commons-transparency.pdf)

<sup>15</sup> <http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/mr-speech-jsb-lecture-march-2011.pdf>

<sup>16</sup> <http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/mr-speech-jsb-lecture-march-2011.pdf>

<sup>17</sup> <http://www.justice.gov.uk/news/press-releases/moj/moj-newsrelease060911a.htm>

<sup>18</sup> <http://www.justice.gov.uk/news/press-releases/moj/moj-newsrelease060911a.htm>

- Court by court statistics for the time taken for cases to be processed, from offence to conviction, allowing people to compare the performance of their local courts;
- Details on how many trials were ineffective and why they were ineffective;
- Anonymised data on each case heard at local courts and the sentences given;
- Details of how many people have been convicted or released from prisons in each area and how often they reoffended afterwards;
- From next May, justice outcomes will be placed alongside crime data on [police.uk](http://police.uk) so people can see what happens next after crimes are committed in their areas;
- More information on how the civil and family justice , including how long it takes to process small claims hearings, larger cases and care proceedings.

## 4 Filming in courts in Scotland

Section 41 of the Criminal Justice Act 1925 does not apply to Scotland. Historically, filming in courts was not permitted in Scotland, however this position changed in 1992 when Lord President and Lord Justice General, Lord Hope, issued directions which provided that there were circumstances in which filming may be permitted.<sup>19</sup> The 1992 Directions which are called “Television in Courts” provided the future criterion for the allowing televising proceedings would be whether the presence of television cameras in the court would be without risk to the administration of justice. The directions provide that the televising of proceedings is not permitted in criminal cases at first instance. Furthermore, filming may only be done with consent of all parties involved in the proceedings and it is subject to approval by the presiding judge of the final product before it is televised.<sup>20</sup>

There have been cases in which filming in courts has been authorised in Scottish court proceedings. Examples include the proceedings against Abdelbaset al- Megrahi who was convicted of the Lockerbie bombing,<sup>21</sup> filming of a documentary in the special domestic violence court in Glasgow by the BBC<sup>22</sup> and a documentary for Channel 4 filming proceedings at the High Court in Glasgow.<sup>23</sup> Other types of media have also been used in courts in Scotland, for example journalists were allowed to use twitter for the first time in the perjury trial of the former MSP Tommy Sheridan.<sup>24</sup>

<sup>19</sup> See the opinion of MG Thompson QC (sitting as a temporary judge) in the cause of X v British Broadcasting Corporation and Lion Television Limited [2005] CSOH 80, para 4 <http://www.scotcourts.gov.uk/opinions/2005csoh80.html>

<sup>20</sup> Information on the 1992 Directions can be found in the cause of X v British Broadcasting Corporation and Lion Television Limited [2005] CSOH 80, para 4

<sup>21</sup> <http://www.bbc.co.uk/news/uk-14798203>

<sup>22</sup> BBC News “Inside Scotland’s only Domestic Abuse Court” 11 May 2010, <http://news.bbc.co.uk/1/hi/scotland/8672758.stm>

<sup>23</sup> STV news “TV Documentary filmed in Scots high court for the first time” 22 August 2011, <http://news.stv.tv/scotland/west-central/267215-cameras-to-film-murder-trial-inside-courtroom-for-first-time/>

<sup>24</sup> STV news “TV Documentary filmed in Scots high court for the first time” 22 August 2011, <http://news.stv.tv/scotland/west-central/267215-cameras-to-film-murder-trial-inside-courtroom-for-first-time/>

## 5 Filming in Courts in the Republic of Ireland

In the Republic of Ireland, there are no statutory provisions dealing with the taking of photographs, sounds recording such as tape recorders, television or video recordings.<sup>25</sup> The matter falls within the inherent jurisdiction of the court to regulate its own procedures.<sup>26</sup> It is generally accepted that photographs may not be taken or proceedings recorded or televised without permission of the court.<sup>27</sup> The issue of broadcasting in courts was raised by the Law Reform Commission in 1994. The Law Reform Commission at that time argued that allowing the televising of court proceedings would be beneficial in “exposing the detailed workings of the administration of justice.”<sup>28</sup> The Law Reform Commission also recognised the dangers that could emerge in the televising of proceedings, particularly the possible detriment to the interests of justice on victims and witnesses who may be deterred from attending court due to fear or anxiety.<sup>29</sup> The Law Reform Commission highlighted that evidence on reaction to cases in the United States suggested that unless televising of trials was limited, there could be prejudice to pending trials, invasions of privacy and the televising of material that many people could find offensive.<sup>30</sup> Despite these concerns, the Law Reform Commission concluded it was in favour of televising proceedings and recommended that consideration should be at least given to a pilot scheme in the first instance.<sup>31</sup> Another recommendation was the establishment of an advisory committee to review the arrangements and legal provisions relating to the broadcasting of proceedings by the media.<sup>32</sup>

Despite these recommendations it would appear that there have been no changes to the position on broadcasting in courts.<sup>33</sup> However, in light of developments in England and Wales on this issue, there have been calls on the Minister for Justice in the Republic of Ireland to consider a similar approach.<sup>34</sup> Fine Gael TD, Mr O’Donovan has called not for the entire broadcasting of proceedings but rather for limited camera access in courts such as the approach currently under consideration by the Ministry of

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<sup>25</sup> The Law Reform Commission “Report on Contempt of Court” LRC 46-1994, para 4.41 and 4.43 <http://www.lawreform.ie/fileupload/Reports/rContempt.htm>

<sup>26</sup> The Law Reform Commission “Report on Contempt of Court” LRC 46-1994, para 4.41 and 4.43 <http://www.lawreform.ie/fileupload/Reports/rContempt.htm>

<sup>27</sup> The Law Reform Commission “Report on Contempt of Court” LRC 46-1994, para 4.43 <http://www.lawreform.ie/fileupload/Reports/rContempt.htm>

<sup>28</sup> The Law Reform Commission “Report on Contempt of Court” LRC 46-1994, para 4.46 <http://www.lawreform.ie/fileupload/Reports/rContempt.htm>

<sup>29</sup> The Law Reform Commission “Report on Contempt of Court” LRC 46-1994, para 4.47 <http://www.lawreform.ie/fileupload/Reports/rContempt.htm>

<sup>30</sup> The Law Reform Commission “Report on Contempt of Court” LRC 46-1994, para 4.47 <http://www.lawreform.ie/fileupload/Reports/rContempt.htm>

<sup>31</sup> The Law Reform Commission “Report on Contempt of Court” LRC 46-1994, para 4.48 <http://www.lawreform.ie/fileupload/Reports/rContempt.htm>

<sup>32</sup> The Law Reform Commission “Report on Contempt of Court” LRC 46-1994, para 4.49 <http://www.lawreform.ie/fileupload/Reports/rContempt.htm>

<sup>33</sup> The Journal.ie “TD calls for cameras to be allowed in Irish Courts” 13/09/11

<sup>34</sup> The Journal.ie “TD calls for cameras to be allowed in Irish Courts” 13/09/11. See also Fine Gael Press release “O’Donovan asks Justice Minister to allow limited camera access in court” 12 September 2011.

Justice in England and Wales, where certain aspects of the broadcast could be televised.<sup>35</sup> The Minister for Justice has not publicly responded to this issue.

## 6 Conclusions

In England and Wales and Northern Ireland, filming in courts is currently prohibited by statute. There is an absolute ban on taking or attempting to take photographs, portraits or sketches in the Criminal Justice Act 1925 and the Criminal Justice (NI) Act 1945; the Contempt of Court Act 1981 prohibits recording of sound without the permission of the court.

The Ministry of Justice has announced plans to allow filming in the Court of Appeal initially and at some point in the future the Crown Courts. The Minister of Justice plans to allow filming in limited circumstances, covering judges' summary remarks only. In order to give effect to this proposal primary legislation will be introduced to amend existing legislation.

In Scotland, filming in courts has been allowed since 1992, when Lord Hope issued the 1992 Directions to allow filming in courts. However the directions require the consent of all the parties in the proceedings to filming. In the Republic of Ireland, the issue of filming in courts is a matter that falls within the jurisdiction of the court, however it is accepted that filming and recording of proceedings will not take place. The Law Reform Commission reported in 1994 that it was in favour of televising proceedings and recommended consideration of a pilot scheme and the establishment of an advisory body to consider the issue. However the current position in relation to filming in proceedings remains unchanged as a Fine Gael TD has called on the Minister of Justice in the Republic to allow similar measures as those currently being considered in England and Wales.

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<sup>35</sup> Fine Gael Press release "O'Donovan asks Justice Minister to allow limited camera access in court" 12 September 2011