

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice

An Roinn Dlí agus Cirt

Mánnystrie O tha Laa

www.justice-ni.gov.uk

Minister's Office
Castle Buildings Block B
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG

Kathy O'Hanlon
Clerk to the Justice Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast BT4 3XX

16 January 2025

Dear Kathy,

JUSTICE BILL: SHARING TEXT OF DRAFT LIVE LINKS AMENDMENTS

Ahead of officials' upcoming appearance at the Committee on Thursday 23 January 2025, to discuss the remaining planned Departmental amendments to the Justice Bill, I am pleased to share the most up to date version of the live links amendments with Committee members.

These provisions are at an advanced state of preparedness, but they are still being actively worked on, so the attachment is a working draft to inform next week's discussions, rather than the final article.

The provisions will continue to be refined and a draft for publication purposes will be provided to the Committee by Friday 31 January 2025 to facilitate the launch of the Call for Evidence in February.

I trust that this is helpful.


DAVID GRAHAM
DALO

Enc: Appendix A – Live Links Amendments

Directions for participation by live link [j901]

1.—(1) Where there are any proceedings before a court or statutory tribunal, the court or tribunal may give a live link direction for any person’s participation in the proceedings.

5 (2) A live link direction is a direction that permits or (where the court or tribunal has power to compel the person’s participation) requires the person to participate in the proceedings through a live link.

(3) For the purposes of this Chapter, “participation” in proceedings includes in particular participation—

- 10 (a) as a party to the proceedings,
- (b) as a witness,
- (c) as a judge or other member of the court or tribunal,
- (d) as a legal representative acting in the proceedings,
- 15 (e) as an interpreter or other person appointed by the court or tribunal to assist in the proceedings,
- (f) as the clerk to the court or tribunal, or
- (g) as a representative of the press.

(4) But a live link direction may not be given for a person’s participation in proceedings as a member of a jury.

20 (5) See—

- (a) section {j901a} for further provision about the effect of a live link direction;
- (b) sections {j902}, {j902a} and {j904} for provision about the giving of live link directions, and about varying or rescinding them.

Enabling the public to see and hear proceedings: limited transmission [j905]

1.—(1) Where—

(a) there are proceedings before a court or statutory tribunal, and

5 (b) the court or tribunal considers it appropriate to do so in order to enable persons who are not taking part in the proceedings to see and hear, or to hear, those proceedings,

the court or tribunal may make a limited transmission direction.

(2) A limited transmission direction is a direction that images and sounds of the proceedings, or sounds of them, are to be—

10 (a) transmitted to specified live-streaming premises, or

(b) broadcast by a transmission to which individuals are given access only having first identified themselves to the court (or to a person acting on behalf of the court).

15 (3) In subsection (2)(a), “specified live-streaming premises” means any premises, suitable for the purpose of enabling members of the public to watch or listen to the proceedings, that are specified in the direction.

(4) A limited transmission direction may include further provision about—

(a) the manner of transmission, or

20 (b) the persons who are to be able to watch or listen to the transmission (including provision making that ability subject to conditions, or aimed at preventing persons whom the court or tribunal intends should not watch or listen from being able to do so).

(5) A limited transmission direction may relate to the whole, or to part, of the proceedings concerned.

25 (6) See sections {j902} and {j904} for provision about the giving of limited transmission directions, and about varying or rescinding them.

Enabling the public to see and hear proceedings: broadcast [j906]

1. —(1) A court or statutory tribunal may give a direction under subsection (2) or (3) (a “broadcast direction”) if—

- 5 (a) proceedings before the court or tribunal are to be conducted wholly as video proceedings, or wholly as audio proceedings, and
- (b) the court or tribunal considers that (whether because the public gallery in the courtroom is closed or otherwise unavailable, or for any other reason) [the giving of the direction is necessary to ensure that there is a public hearing].

10 (2) If the proceedings are to be conducted wholly as video proceedings, the court or tribunal may direct that the proceedings are to be broadcast (in the manner specified in the direction) for the purpose of enabling members of the public to see and hear the proceedings.

15 (3) If the proceedings are to be conducted wholly as audio proceedings, the court or tribunal may direct that the proceedings are to be broadcast (in the manner specified in the direction) for the purpose of enabling members of the public to hear the proceedings.

(4) For the purposes of this section, proceedings are conducted wholly as video proceedings, or wholly as audio proceedings, if—

- 20 (a) directions have been given, under this Chapter or any other provision, for all the persons taking part in the proceedings to do so through a live video link or a live audio link (as the case may be), and
- (b) all those persons take part in the proceedings in accordance with those directions.

25 (5) But the fact that any of the following persons are present at same location does not prevent the proceedings from being conducted “wholly” as video or audio proceedings—

- (a) the judge and any other member of the court or tribunal;
- (b) the clerk to, and any other member of staff of, the court or tribunal.

30 (6) A broadcast direction may relate to the whole, or to part, of the proceedings concerned.

(7) See sections {j902} and {j904} for provision about the giving of broadcast directions, and about varying or rescinding them.

Effect of live link direction [j901A]

1.—(1) Where a court is sitting with a jury and a person gives evidence in accordance with a live link direction, the judge or coroner may give the jury such direction as the judge or coroner thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given in person.

(2) Where a person who is outside Northern Ireland—

(a) gives evidence in pursuance of a live link direction, and

(b) in that evidence, makes a statement on oath,

the statement is to be treated as having been made in Northern Ireland (and Article 3 of the Perjury (Northern Ireland) Order 1979 applies accordingly).

(3) Subsections (4) and (5) apply where a person who is being held in custody or detained in hospital (“P”) is participating in proceedings before a court or tribunal in accordance with a live link direction and—

[(a) the hearing is in order to determine...]

(b) it appears to the court or tribunal that P is not able to see and hear the court or tribunal or that P cannot be seen and heard by it, and

(c) it appears to the court or tribunal that this cannot be immediately corrected.

(4) If the court or tribunal is satisfied that it is not reasonably practicable to bring P to the court or tribunal before P ceases to be held in custody or detained in hospital—

(a) the court or tribunal may proceed with the hearing, and

(b) if it does so, it may not remand P in custody, or order that P be detained in hospital, for a period exceeding 8 days commencing on the day following the remand or order for detention.

(5) In any other case, the court or tribunal must adjourn the hearing.

(6) In this section—

(a) references to a person being held in custody are references to the person's being held in custody in a prison, young offenders centre, <juvenile justice centre> or other institution;

(b) references to a person being detained in hospital are references to the person's being detained in a hospital under Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986.

Giving a direction under this Chapter [j902]

- 1.—(1) This section applies to—
- (a) a live link direction for the participation of a person (“P”);
 - (b) a limited transmission direction;
 - 5 (c) a broadcast direction.
- (2) A court or tribunal may make a direction—
- (a) of its own motion,
 - (b) on the application of a party to the proceedings, or
 - (c) in the case of a live link direction, on the application of P.
- 10 (3) Before giving a direction, the court or tribunal must consider—
- (a) the views of the parties to the proceedings, and
 - (b) in the case of a live link direction, the views of P.
- (4) In deciding whether to give a direction, the court or tribunal must have regard to all the circumstances of the case, including in particular—
- 15 (a) in the case of a court, any guidance issued by the Lady Chief Justice or by the Presiding Coroner (as the case may be);
- (b) any matters set out for this purpose in regulations made by the Department of Justice.
- (5) A court or tribunal must not give a direction unless it is satisfied that it is in
- 20 the interests of justice to do so (but, in the case of a live link direction, see also section {j902a}).
- (6) If the court or tribunal gives a direction, it may also direct that a recording of the proceedings (or of any transmission or broadcast of the proceedings) is to be made, in the manner specified in the direction, for the purpose of enabling the
- 25 court to keep a record of the proceedings.
- (7) Where a court or tribunal refuses an application for a direction, it must—
- (a) state openly its reasons for doing so, and
 - (b) if it is a magistrates’ court, cause the reasons to be entered in the Order Book.
- 30 (8) The Department may not make regulations under subsection (4)(b) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (9) The power of a court or tribunal to give a direction is additional to, and does not limit, any other power of the court or tribunal.

Presumption of giving evidence by live link in certain cases [j902A]

1.—(1) A court or tribunal must give a live link direction, unless it is satisfied that it would be contrary to the interests of justice to do so, where—

- 5 (a) the participant is a public authority and the proceedings are single-participant proceedings (see subsection (2)), or
- (b) the participant is an expert witness of a class or description specified for the purposes of this paragraph (see subsection (3)).

(2) In subsection (1)(a)—

10 “public authority” means any person listed in regulations made for this purpose by the Department of Justice;

“single-participant proceedings” means—

- (a) proceedings to which there is no respondent, or
- (b) proceedings on an application made without notice to the respondent (or respondents).

15 (3) The Department of Justice may by regulations specify classes or descriptions of expert witnesses for the purposes of subsection (1)(b).

(4) The Department may not make regulations under subsection (2) or (3) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Varying or rescinding a direction under this Chapter [j904]

1.—(1) This section applies to—

- (a) a live link direction for the participation of a person (“P”);
- (b) a limited transmission direction;
- 5 (c) a broadcast direction.

(2) A court or tribunal may vary or rescind a direction if it appears to the court or tribunal to be in the interests of justice to do so.

(3) The court or tribunal may do so—

- (a) of its own motion,
- 10 (b) on the application of a party to the proceedings, or
- (c) in the case of a live link direction, on the application of P.

(4) An application may not be made under subsection (3)(b) or (c) unless there has been a material change of circumstances since the direction was given.

15 (5) Before varying or rescinding a direction, the court or tribunal must consider—

- (a) the views of the parties to the proceedings, and
- (b) in the case of a live link direction, the views of P.

(6) Where a court or tribunal varies or rescinds a direction, or refuses an application to do so, it must—

- 20 (a) state openly its reasons for varying or rescinding the direction or refusing to do so, and
- (b) if it is a magistrates’ court, cause the reasons to be entered in the Order Book.

Offences in relation to participation through live link [j908]

1.—(1) It is an offence for a person to make—

- (a) an unauthorised recording, or
- (b) an unauthorised transmission,

5 of an image or sound which is being transmitted through a live link.

(2) Where a person (“A”) is participating in court or tribunal proceedings through a live link, it is an offence for any person (whether A or another) to make—

- (a) an unauthorised recording, or
- 10 (b) an unauthorised transmission,

of an image of, or sound made by, A.

(3) A recording or transmission is “unauthorised” unless it is authorised (generally or specifically) by the court or tribunal in which the proceedings are conducted.

15 (4) It does not matter whether the person making a recording or transmission intends the recording or transmission, or anything comprised in it, to be seen or heard by any other person.

(5) It is a defence for a person charged with an offence under this section to prove that, at the time of the recording or transmission, the person did not know, 20 and could not reasonably have known—

- (a) in case of an image or sound within subsection (1), that the image or sound was being transmitted through a live link, or
- (b) in case of an image or sound within subsection (2), that the image was of, or the sound was made by, a person while participating in court or tribunal 25 proceedings through a live link.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences in relation to limited transmission or broadcasting [j907]

1.—(1) It is an offence for a person to make—

- (a) an unauthorised recording, or
- (b) an unauthorised transmission,

5 of an image or sound which is being transmitted or broadcast in accordance with a limited transmission direction or a broadcast direction.

(2) Where a person (“A”) is viewing or listening to a transmission or broadcast made in accordance with a limited transmission direction or a broadcast direction, it is an offence for any person (whether A or another) to make—

- 10 (a) an unauthorised recording, or
(b) an unauthorised transmission,

of an image of, or sound made by, A.

(3) A recording or transmission is “unauthorised” unless it is—

- 15 (a) authorised by a limited transmission direction or a broadcast direction, or
(b) otherwise authorised (generally or specifically) by the court or tribunal in which the proceedings concerned are conducted.

(4) It does not matter whether the person making a recording or transmission intends the recording or transmission, or anything comprised in it, to be seen or heard by any other person.

20 (5) It is a defence for a person charged with an offence under this section to prove that, at the time of the recording or transmission of the image or sound concerned, the person—

- (a) was not in specified live-streaming premises, and
- (b) did not know, and could not reasonably have known—

25 (i) in case of an image or sound within subsection (1), that the image or sound was being broadcast in accordance with a limited transmission direction or a broadcast direction, or

30 (ii) in case of an image or sound within subsection (2), that the image was of, or the sound was made by, a person while viewing or listening to a transmission or broadcast made in accordance with a limited transmission direction or a broadcast direction.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

35 (7) In this section, “specified live-streaming premises” has the same meaning as in section {j905}.

Meaning of “live link” for the purposes of this Chapter [j903]

1.—(1) In this Chapter “live link” means a live video link or a live audio link.

(2) A “live video link”, in relation to a person (“P”) participating in proceedings, is a live television link or other arrangement which—

- 5 (a) enables P to see and hear all other persons taking part in the proceedings who are not in the same location as P, and
- (b) enables all other persons who are taking part in the proceedings but are not in the same location as P, or who are attending the proceedings, to see and hear P.

10 (3) A “live audio link”, in relation to a person (“P”) participating in proceedings, is a live telephone link or other arrangement which—

- (a) enables P to hear all other persons taking part in the proceedings who are not in the same location as P, and
- 15 (b) enables all other persons who are taking part in the proceedings but are not in the same location as P, or who are attending the proceedings, to hear P.

(4) The references in subsections (2) and (3) to persons taking part in proceedings are to—

- (a) any person mentioned in section {j901}(3)(a) to (f), and
- (b) where the court is sitting with a jury, any member of the jury.

20 (5) The references in subsections (2)(b) and (3)(b) to persons attending the proceedings are to—

- (a) any other person participating in the proceedings by virtue of a live link, and
- 25 (b) any person present in the courtroom or other room (if any) in which a hearing of the proceedings is being held.

(6) Where a court or tribunal—

- (a) gives a live link direction, and
- (b) has power to order or direct that measures be taken that prevent a participant in the proceedings from seeing and hearing, or from being seen and heard by, any other person,

30 the references in subsections (2) and (3) to enabling a person to see and hear, or to be seen and heard by, other persons are to be read as being subject to that power.

(7) The extent (if any) to which a person is unable to hear or see by reason of any impairment of hearing or eyesight is to be disregarded for the purposes of
35 subsections (2) and (3).

Other definitions [j909]

1.—(1) This section has effect for the purposes of this Chapter.

(2) “Court” means—

- (a) the Court of Appeal,
- 5 (b) the High Court,
- (c) the Crown Court,
- (d) a county court,
- (e) a magistrates’ court, and
- (f) a coroner holding an inquest.

10 (3) “Statutory tribunal” means a tribunal (however named or described) established by or under a transferred provision, but does not include—

- (a) a court, or
- (b) an industrial tribunal or the Fair Employment Tribunal.

15 (4) For the purposes of subsection (3), a transferred provision is any statutory provision which—

- (a) would, if included in an Act of the Assembly, be within the competence of the Assembly, and
- (b) would not, if included in a Bill for an Act of the Assembly, result in the Bill requiring the consent of the Secretary of State.

20 (5) “Recording” means a recording on any medium—

- (a) of a single image, a moving image or any sound, or
- (b) from which a single image, a moving image or any sound maybe produced or reproduced.

25 (6) “Transmission” means any transmission by electronic means of a single image, a moving image or any sound.

(7) An image or sound—

- (a) is transmitted through a live video link if it is transmitted as part of a person’s participation in court or tribunal proceedings through a live video link;
- 30 (b) is transmitted through a live audio link if it is transmitted as part of a person’s participation in court or tribunal proceedings through a live audio link.