

## **EXPLANATORY MEMORANDUM TO**

### **The Coronavirus Act 2020 (Extension of Provisions Relating to Live Links for Courts and Tribunals) Order (Northern Ireland) 2022**

**2022 No. 227**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by section 90(2) of the Coronavirus Act 2020 ("the 2020 Act") and is subject to the confirmatory resolution procedure.

#### **2. Purpose**

- 2.1. The Statutory Rule will further extend the provisions in the 2020 Act, which allow courts and statutory tribunals in Northern Ireland to receive evidence, wholly or in part, through the medium of audio or video live links.

#### **3. Background**

- 3.1. The 2020 Act introduced a number of provisions to enable the justice system to continue to operate the throughput of cases in courts, tribunals and the Coroner's court while maintaining compliance with Covid regulations and guidance to minimise the risk of exposure to ill health for all users.
- 3.2. While these provisions are directly linked to the public health emergency, the 2020 Act included a specific order making power that allows the original provisions to be extended beyond the initial proposed two-year period provided within that Act. The Act anticipated that Devolved Authorities may have differing requirements or needs as they work to recover from the impact of the pandemic. Part 2 of the Act allows each of the Devolved Authorities to make secondary legislation to extend as well as suspend or expire early provisions, which fell within their remit, which did not require the consent of the relevant Secretary of State.
- 3.3. Part 1 of Schedule 27 of the 2020 Act includes provision enabling any court or tribunal in this jurisdiction to allow any hearing it deems fit or necessary to proceed by way of live link so long as it is satisfied that it is in the interests of justice to do so.
- 3.4. Parts 1 and 2 of Schedule 27 include a number of additional safeguards to maintain compliance with domestic and international obligations including the European Convention of Human Rights. These include allowing the parties to make representations on whether the use of live links is in the interests of justice before the relevant judge makes any decision. There is equally a power for the court or tribunal to rescind the order allowing the use of live links should any concern arise following the order that the continued use of the live link is not in the interests of justice. The court or

tribunal also have an obligation to ensure, in accordance with section 6 of the Human Rights Act 1998, the parties have a fair hearing within the requirements of Articles 5, 6 and 7 of the European Convention of Human Rights.

- 3.5. The provisions in Part 2 of Schedule 27 permit a court or tribunal to make arrangements for all or any part of a hearing, being conducted wholly by video or audio live link, to be broadcast or for a recording of the proceedings to be made. The court or tribunal can issue a direction for the proceedings either to be broadcast to enable members of the public to hear the proceedings (as a route to preserving the principle of open justice). Alternatively, the direction can provide for the court or tribunal to keep an audio record of the proceedings. Within Part 2, provision is also made to create the offence and to punish any unlawful recording or transmission of any part of proceedings being conducted through the medium of live links.
- 3.6. These powers would have automatically expired on 24 September 2022 save for the fact they were extended in accordance with section 90 of the 2020 Act, in particular sub-sections (2), (7), (13) and (15). An earlier Statutory Rule, 2022 No.24 extended these provisions from 25 March 2022 which was the date of expiry provided by section 89 (1) of the Coronavirus Act 2020. The Northern Ireland Assembly approved the earlier statutory rule on 1 March 2022.
- 3.7. This Statutory Rule will make an additional extension of these provisions for a period of six months, the maximum period allowed, under the 2020 Act. It will permit the arrangements introduced under the Act to continue to be used until 24 March 2023. The extension of these powers is critical to facilitating the wider participation in courts or statutory tribunal proceedings from locations outside the courtroom or tribunal room. This facilitation of wider participation is essential if the positive progression of the Northern Ireland Courts and Tribunal Service current Covid recovery planning is to be maintained. The indicative timeframe predicted for recovery depends on the continuing ability to utilise remote hearings.

#### **4. Consultation**

- 4.1. While no public consultation occurred in advance of the Coronavirus Bill given it was legislation created to address a public health emergency, the Department undertook an engagement exercise with the main users of live links in November 2021. This followed upon the decision made by the Executive, in October 2021, to support extending these provisions beyond 24 March 2022. A copy of the report upon the responses received to the November 2021 engagement exercise was provided to the Justice Committee of the 2017 to 2022 Assembly. No objections were received from the Committee on the proposed earlier Statutory Rule - SR 2022 No.24.
- 4.2. The engagement letter alerted justice stakeholders not only to the decision to extend these provisions for one six month period but to alert consultees that feedback from operational colleagues indicated that the recovery of the justice system from the pandemic could require at least 3 six months extensions.

- 4.3. The letter also flagged the intention to conduct a wider consultation and engagement exercise in 2022 regarding measures for legislative provisions within an Assembly Bill. The indication of any primary legislation in connection with live links provisions was, at the earliest, to occur in 2023.
- 4.4. On 29 July 2022, a public consultation was commenced by the Department of Justice titled 'Audio and Video Links (Live Links) for Northern Ireland Court and Tribunal Hearings: A Public Consultation'. This consultation is due to close on the 26 September 2022. The consultation is available on the department's website as well as accessible via NI Direct.
- 4.5. The aim of the consultation is to facilitate digital working, not prescribe it, as part of a wider solution to improve and enhance access to justice in a way that meets the needs of the Northern Ireland population. The overall objective is to optimise the benefits identified from the significant investment and use made of an enhanced digital court environment while meeting the needs of court users beyond the recovery of the justice system.
- 4.6. While there has not been a specific consultation exercise solely on this September 2022 Statutory Rule, the need for this further extension order is identified within the introduction to the July 2022 consultation. The public consultation highlights the intention to make further use of the 2020 Act live link provisions for Northern Ireland beyond 24 September 2022. The screening assessments conducted for the purposes of the wider July 2022 public consultation also incorporated and made reference to this September 2022 Statutory Rule.

## **5. Equality Impact**

- 5.1. The provisions of the Statutory Rule are technical in their nature and are not identified as requiring the conduct of an equality impact assessment. No new policy is being implemented given the endorsement by the Executive in October 2021 of the approach proposed in Executive paper EXP\21\568.
- 5.2. The relevant legislative provision includes inbuilt mitigations including the requirement the judiciary must be satisfied in any case that receiving evidence by live link is "in the interests of justice". This facilitates the court or tribunal making any adjustment identified as relevant to the circumstances or needs of an individual participant or a party to proceedings when the use of live links is proposed. The relevant judge will require to be satisfied a 'fair' hearing can be provided and that the use of a remote hearing or receipt of evidence by live links is in the interests of justice.
- 5.3. The underlying policy was screened before the making of the primary legislation and has since been reviewed by the Department. No adverse impacts for any of the nine categories in section 75 of the Northern Ireland Act 1998 were identified through the various methods utilised by the Northern Ireland Courts and Tribunal Service (NICTS) for data collection or assessments undertaken on the use and impact of audio and visual links in the courts.
- 5.4. However, some equality concerns were expressed or suggested from surveys conducted outside Northern Ireland. For example, the potential

that live links may not be appropriate for individuals who require an interpreter. The Department has considered these concerns and believes that the safeguard which is already provided, wherein adjustments can be made 'in the interests of justice', addresses the concern appropriately. The Department through operational colleagues within NICTS will monitor these areas of concern.

## **6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment is not considered necessary. There will be no impact on businesses, charities or voluntary bodies.

## **7. Financial Implications**

- 7.1. None.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998 and is satisfied that the Statutory Rule is not incompatible with the Convention rights, is not incompatible with European Union law, does not discriminate against a person or class of person on the grounds of religious belief or political opinion; and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

## **9. EU Implications**

- 9.1. None.

## **10. Parity or Replicatory Measure**

- 10.1. The live links provisions of section 57 and Schedule 27 of the 2020 Act and the Statutory Rule are not necessary for parity elsewhere but are modelled upon similar arrangements in existence across England, Wales and Scotland created within the 2020 Act for those jurisdictions. All those jurisdictions have either recently made replacement provisions through alternative primary legislation or further extended the arrangements for the use of live links within Coronavirus related legislation for a further maximum period of two years.

## **11. Additional Information**

- 11.1. The Police, Crime, Sentencing and Courts Act 2022 includes provisions for the criminal courts in England and Wales to allow remote working of courts when the relevant judicial post-holder is satisfied it is required in the interests of justice. This 2022 Act sets out 'matters to have regard to' when determining whether the use of live links is 'in the interests of justice', which reflects pre-pandemic existing provisions for remote hearings in the civil and family courts within that jurisdiction. An extension of the 2020 Act provisions has occurred for a limited period until the 2022 provisions are commenced.
- 11.2. The Scottish Government considers that there is a case for a longer extension of the temporary justice system measures provided for in the Coronavirus (Extension and Expiry) (Scotland) Act 2021. On 28 June 2022 the Scottish Parliament passed the Coronavirus (Recovery and

Reform) (Scotland) Act 2022 which will continue certain temporary justice system provisions, including the equivalent live link provisions for that jurisdiction, to deal with backlogs within the justice system that have unavoidably built up during the pandemic.