

## **EXPLANATORY MEMORANDUM TO**

### **The Coronavirus Act 2020 (Extension of Provisions Related to Courts, Tribunals and Inquests) Order (Northern Ireland) 2022**

#### **S.R. 2022 No. 24**

#### **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 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 extend the provisions in the 2020 Act which allow a coroner to hold an inquest into a death in prison caused by natural illness without a jury. Article 3 of the Statutory Rule extends the provisions for courts and statutory tribunals in Northern Ireland to receive evidence, wholly or in part, through the use 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 while providing access to justice and maintaining a system of operation which is Covid compliant for all users whether in the courts, tribunals or Coroner's jurisdiction.
- 3.2. To achieve this, the Act made 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 (section 57 and Parts 1 and 2 of Schedule 27), so long as it is satisfied that it is in the interests of justice to do. The provisions were directly linked to the public health emergency and included a number of additional safeguards as well as the interests of justice threshold. There is provision to allow parties to make representations and a power to rescind if the court has any concerns.
- 3.3. Where normally a coroner would be required (under section 18(1) of the Coroners Act (Northern Ireland) 1959) to conduct an inquest into a death in prison with a jury, section 32 of the 2020 Act enables a coroner to conduct an inquest into a death in prison from natural illness without a jury, although the inquest can still be heard with a jury if the coroner considers this desirable.
- 3.4. To accommodate an extended pandemic situation beyond the initial proposed two year period provided within the 2020 Act an order making power was provided that allows the initial provisions to be extended. The extension of these powers will continue to facilitate greater participation in inquests, courts or statutory tribunal proceedings from other locations outside the courtroom or tribunal room.

- 3.5. The provisions that enable a coroner to conduct an inquest into a death in prison from natural illness (section 32 of the 2020 Act) or which enables any court or tribunal in this jurisdiction to allow any hearing it deems fit to proceed by way of live link (section 57 and Parts 1 and 2 of Schedule 27) will automatically expire on 24 March 2022, unless they are extended in accordance with section 90, in particular sub-sections (2), (7), (13) and (15).
- 3.6. The proposed extension of these provisions will be for a period just short of the six month maximum period allowed under the 2020 Act and will permit the arrangements introduced under the Act to continue to be used until 24 September 2022.

#### **4. Consultation**

- 4.1. There was no public consultation in advance of the Coronavirus Bill given that it was legislation created to address what the United Kingdom government viewed as a public health emergency. There was broad cross party support for the proposed provisions which included those the subject of this Statutory Rule.
- 4.2. The Department ran an engagement exercise in regard to the live links provisions between 1 to 26 November 2021 as the decision had been made by the Executive to support extending these provisions beyond 24 March 2022. A letter was issued to alert those justice stakeholders, identified as the main users of the provisions, to the decision taken as well as seeking feedback on their experience of the provisions. The letter also sought their view on the possible introduction, sometime in the future, of legislative provision for similar facilities to be available permanently for use in the courts and tribunals. The letter was sent to a targeted consultee list (about 81) reflecting the main users of these live link facilities.
- 4.3. The Justice Committee has been provided with a copy of a report upon the responses received to the engagement exercise as well as the proposal to make the Statutory Rule. No objections were received.
- 4.4. No other external consultation on the Statutory Rule was considered necessary as it is simply extending provisions which are already in existence to permit the continuation of court and tribunal business, while protecting the right of access to justice for the public at a time when the pandemic continues to challenge the operation of the justice system, in a way that minimises or reduces the risk of harm to court users or the public.

#### **5. Equality Impact**

- 5.1. The provisions of the Statutory Rule are technical in their nature and do not give rise to any equality concerns. No new policy is being implemented.
- 5.2. The underlying policy was screened before the making of the primary legislation and has been reviewed. No adverse impacts for any of the nine categories in section 75 of the Northern Ireland Act 1998 were identified. A further screening exercise completed in relation to the Statutory Rule revealed no adverse impacted.

- 5.3. The section 32 measure was considered to not have any negative equality impact as its only purpose is to allow an inquest to be held without a jury. Its use is also subject to judicial oversight which will be governed by the requirements of the Human Rights Act 1998.

## **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.

## **11. Additional Information**

- 11.1. The Police, Crime, Sentencing and Courts Bill, which is currently before Parliament, includes proposed provisions on courts which will allow, on a permanent basis, the remote working of courts when the relevant judicial post-holder is satisfied it is required in the interests of justice. In England and Wales, the relevant department may seek to extend for a limited period the live link provisions within the Coronavirus Act 2020 while permanent alternative legislative provision is progressed and obtains Royal Assent.
- 11.2. The Scottish Government consider that there is a case for longer extension of some temporary justice system measures than has been provided for in the Coronavirus (Extension and Expiry) (Scotland) Act 2021, to deal with backlogs that have unavoidably built up during the pandemic. A consultation was conducted between August to November 2021 in regard to the proposed extension of various measures, including the use of live video and audio links which facilitate the hearing of evidence remotely or from outside the specific courtroom or building where the Judge is situated, as part of a wider ranging Covid Recovery Strategy for Scotland.