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*Changes to legislation: There are currently no known outstanding effects for the Coronavirus Act 2020, PART 1. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 23 **E+W**

#### LIVE LINKS IN CRIMINAL PROCEEDINGS

#### **PART 1** **E+W**

#### EXPANSION OF POWERS UNDER THE CRIMINAL JUSTICE ACT 2003

##### *Introduction*

- 1 The Criminal Justice Act 2003 has effect as if amended in accordance with this Part of this Schedule.

##### *Live links in criminal proceedings*

- 2 (1) Section 51 has effect as if amended in accordance with sub-paragraphs (2) to (8).
- (2) For subsection (1) there were substituted—
- “(1) A person may, if the court so directs, take part in eligible criminal proceedings through—
- (a) a live audio link, or
- (b) a live video link.
- (1A) A direction under this section may be given for a judge or justice to take part in eligible criminal proceedings through a live audio link or a live video link.
- (1B) But no direction under this section may be given for any member of a jury to take part in eligible criminal proceedings through a live audio link or a live video link.”
- (3) In subsection (2)—
- (a) for the words before paragraph (a) there were substituted—
- “(2) In this Part “eligible criminal proceedings” means—”;
- (b) for paragraph (b) there were substituted—
- “(b) a criminal appeal to the Crown Court and any proceedings that are preliminary or incidental to such an appeal,”;
- (c) in paragraph (c) after “indictment” there were inserted “or any other trial in the Crown Court for an offence”;
- (d) after paragraph (c) there were inserted—
- “(ca) proceedings under section 4A or 5 of the Criminal Procedure (Insanity) Act 1964,
- (cb) proceedings under Part 3 of the Mental Health Act 1983,
- (cc) proceedings under—

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- (i) section 11 of the Powers of the Criminal Courts (Sentencing) Act 2000, or
- (ii) section 81(1)(g) of the Senior Courts Act 1981 or section 16 of this Act in respect of a person who has been remanded by a magistrates' court on adjourning a case under that section of the 2000 Act,";
- (e) in paragraph (d), after "Court of Appeal" there were inserted " and any proceedings that are preliminary or incidental to such an appeal ";
- (f) after paragraph (d) there were inserted—
  - “(da) a reference to the Court of Appeal by the Attorney General under Part 4 of the Criminal Justice Act 1988 and any proceedings that are preliminary or incidental to such a reference,”;
- (g) in paragraph (e), after "Criminal Appeal Act 1995 (c.35)" there were inserted " and any proceedings that are preliminary or incidental to such a hearing ";
- (h) in paragraph (f), "and" were omitted;
- (i) after paragraph (f) there were inserted—
  - “(fa) a hearing under section 142(1) or (2) of the Magistrates' Courts Act 1980 or under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000 [F1 or section 385 of the Sentencing Code],”;
- (j) in paragraph (g), for "Act." there were substituted " Act and any proceedings that are preliminary or incidental to such a hearing, and ";
- (k) after paragraph (g) there were inserted—
  - “(h) any hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted;

but hearings to which Part 3A of the Crime and Disorder Act 1998 applies (see section 57A(1) of that Act) are not eligible criminal proceedings. ”

(4) For subsection (4) there were substituted—

- “(4) But the court may not give a direction for a person to take part in eligible criminal proceedings through a live audio link or a live video link unless—
- (a) the court is satisfied that it is in the interests of justice for the person concerned to take part in the proceedings in accordance with the direction through the live audio link or through the live video link,
  - (b) the parties to the proceedings have been given the opportunity to make representations, and
  - (c) the relevant youth offending team has been given the opportunity to make representations, if it is a case where the defendant is a party to the proceedings and either—
    - (i) the defendant has not attained the age of 18 years, or
    - (ii) the defendant has attained the age of 18 years since proceedings for the offence were begun, and the court has decided to continue to deal with the case as if he or she had not attained that age.”

(5) After subsection (4) there were inserted—

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- “(4A) The power conferred by this section includes power to give—
- (a) a direction that is applicable to several, or all, of the persons taking part in particular eligible criminal proceedings;
  - (b) a direction that is applicable to a particular person in respect of only some aspects of particular eligible criminal proceedings (such as giving evidence or attending the proceedings when not giving evidence);
  - (c) a direction for a person who is outside England and Wales (whether in the United Kingdom or elsewhere) to take part in eligible criminal proceedings through a live audio link or a live video link.
- (4B) The power of the court to give a direction under this section is subject to Schedule 3A (prohibitions and limitations on use of live links).
- (4C) The court may vary a live link direction under this section; and the provisions of this Part that apply to the giving of such a direction also apply to the variation of such a direction.
- (4D) If a court gives a live link direction under this section for a person to take part in particular proceedings by giving evidence through a live audio link or a live video link, the person may not give evidence except in accordance with the direction.
- (4E) The court may rescind a live link direction under this section at any time before or during the eligible criminal proceedings to which it relates (but this does not affect the court's power to give a further live link direction in relation to the proceedings).
- (4F) A live link direction under this section may not be rescinded unless—
- (a) the court is satisfied that it is in the interests of justice for the direction to be rescinded,
  - (b) the parties to the proceedings have been given the opportunity to make representations,
  - (c) the relevant youth offending team has been given the opportunity to make representations, if it is a case where the defendant is a party to the proceedings and either—
    - (i) the defendant has not attained the age of 18 years, or
    - (ii) the defendant has attained the age of 18 years since proceedings for the offence were begun, and the court has decided to continue to deal with the case as if he or she had not attained that age.
- (4G) A live link direction under this section may be varied or rescinded by the court of its own motion or on an application by a party; but such an application may not be made unless there has been a material change of circumstances since the direction was given.
- (4H) If a hearing takes place in relation to the giving or rescinding of a live link direction under this section, the court may require or permit a person to take part in that hearing through—
- (a) a live audio link, or
  - (b) a live video link.”

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- (6) Subsection (5) were omitted.
- (7) In subsection (6), after “give” there were inserted “ or rescind ”.
- (8) For subsection (7) there were substituted—
- “(7) Those circumstances include in particular—
- (a) in the case of a direction relating to a witness—
- (i) the importance of the witness's evidence to the proceedings;
- (ii) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence;
- (b) in the case of a direction relating to any participant in the proceedings—
- (i) the availability of the person;
- (ii) the need for the person to attend in person;
- (iii) the views of the person;
- (iv) the suitability of the facilities at the place where the person would take part in the proceedings in accordance with the direction;
- (v) whether the person will be able to take part in the proceedings effectively if he or she takes part in accordance with the direction.”
- (9) After subsection (8) there were inserted—
- “(9) The following functions of a magistrates' court under this section may be discharged by a single justice—
- (a) giving a live link direction under this section;
- (b) rescinding a live link direction before the eligible criminal proceedings concerned begin; and
- (c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b).
- (10) A court may not refuse or revoke bail for a person (P) at eligible criminal proceedings if—
- (a) any person takes part in the proceedings— other than for the purpose of giving evidence — through a live audio link, and
- (b) P objects to the refusal or revocation.
- (11) But subsection (10) does not apply if section 4 of the Bail Act 1976 does not apply to P.
- (12) A court may not deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at eligible criminal proceedings in which any person takes part — other than for the purpose of giving evidence — through a live audio link.”
- (10) Section 52 were omitted.

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### Textual Amendments

- F1** Words in [Sch. 23 para. 2\(3\)\(i\)](#) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 301\(2\)](#) (with [Sch. 27](#)); S.I. 2020/1236, reg. 2

#### *Magistrates' courts permitted to sit at other locations*

- 3 (1) Section 53 has effect as if amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “evidence to be given through a live link in proceedings before the court” there were substituted “ a person to take part in proceedings before the court through a live audio link or a live video link ”;
- (b) in paragraph (b), for “receiving such evidence” there were substituted “ such participation ”.

#### *Requirement to attend at court, holding proceedings in court etc*

- 4 After section 53 there were inserted—

#### **“53A Requirement to attend court, perjury**

- (1) A person who takes part in eligible criminal proceedings in accordance with a direction under section 51 is to be treated as complying with any requirement (however imposed or expressed) for that person to attend or appear before court, or to surrender to the custody of the court, for the purposes of that participation in those proceedings.
- (2) A person who takes part in eligible criminal proceedings in accordance with a direction under section 51 is to be treated as present in court for the purposes of those proceedings.
- (3) Eligible criminal proceedings that are conducted—
- (a) wholly as audio proceedings, or
- (b) wholly as video proceedings,
- are to be regarded as taking place at the location where the member or members of the court take part in the proceedings.
- (4) A statement made on oath by a witness outside the United Kingdom and given in evidence through a live audio link or a live video link in accordance with a direction under section 51 is to be treated for the purposes of section 1 of the Perjury Act 1911 as having been made in the proceedings in which it is given in evidence.”

#### *Warning to jury*

- 5 In section 54(1), for “a live link” there were inserted “ a live audio link or a live video link by a witness (including the defendant) ”.

#### *Rules of court*

- 6 (1) Section 55 has effect as if amended as follows.

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- (2) In subsection (2)—
  - (a) in paragraph (a), “or 52” were omitted;
  - (b) in paragraph (b), for “live links” there were substituted “live audio links and live video links”.
- (3) In subsection (3)—
  - (a) in paragraph (a), “uncontested” were omitted;
  - (b) in paragraph (c), “or 52” were omitted.

### *Interpretation*

- 7 (1) Section 56 has effect as if amended as follows.
- (2) In subsection (1)—
  - (a) before the definition of “legal representative” there were inserted—
    - ““bail” includes remand to local authority accommodation in accordance with Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,
    - “eligible criminal proceedings” has the meaning given in section 51(2),”;
  - (b) after the definition of “local justice area” there were inserted—
    - ““relevant youth offending team” means the youth offending team (established under section 39 of the Crime and Disorder Act 1998) whose functions are exercisable in relation to the defendant concerned,”.
- (3) For subsection (2) there were substituted—
  - “(2A) A reference to a person taking part in eligible criminal proceedings includes—
    - (a) giving evidence in the proceedings, and
    - (b) attending the proceedings when not giving evidence.
  - (2B) A “live audio link”, in relation to a person (P) taking part in eligible criminal 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
    - (b) enables all other persons taking part in the proceedings who are not in the same location as P to hear P.
  - (2C) Eligible criminal proceedings are conducted wholly as audio proceedings if—
    - (a) directions have been given under section 51 for all of the persons taking part in the proceedings to do so through a live audio link, and
    - (b) all of those persons take part in the proceedings in accordance with those directions.
  - (2D) A “live video link”, in relation to a person (P) taking part in eligible criminal proceedings, is a live television link or other arrangement which—

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- (a) enables P to see and hear all other persons taking part in the proceedings who are not in same location as P, and
  - (b) enables all other persons taking part in the proceedings who are not in the same location as P to see and hear P.
- (2E) Eligible criminal proceedings are conducted wholly as video proceedings if—
- (a) directions have been given, whether under section 51 or any other power, for all of the persons taking part in the proceedings to do so through a live video link, and
  - (b) all of those persons take part in the proceedings in accordance with those directions.”
- (4) In subsection (3)—
- (a) for the words before paragraph (a) there were substituted—
    - “(3) A reference to the persons participating in eligible criminal proceedings includes—”;
  - (b) in paragraph (b), for “judge or justices (or both)” there were substituted “member or members of the court ”;
  - (c) after paragraph (b) there were inserted—
    - “(ba) witnesses in the proceedings,”;
  - (d) in paragraph (d), for “the witness” there were substituted “ in the proceedings ”.
- (5) After subsection (3) there were inserted—
- “(3A) Subsections (2A) to (3) apply for the purposes of this Part.”
- (6) For subsection (4) there were substituted—
- “(4) The following matters are to be disregarded for the purposes of subsections (2B) and (2D)—
- (a) the extent (if any) to which a person is unable to see or hear by reason of any impairment of eyesight or hearing;
  - (b) the effect of any direction or order which provides for one person taking part in proceedings to be prevented by means of a screen or other arrangement from seeing another person taking part in the proceedings.”

### *Safeguards*

- 8 After Schedule 3 to the Criminal Justice Act 2003 there were inserted—

“SCHEDULE  
3A **E+W**”

### PROHIBITIONS AND LIMITATIONS ON USE OF LIVE LINKS

#### *Conduct of proceedings wholly as audio proceedings*

- 1 (1) Eligible criminal proceedings may be conducted wholly as audio proceedings only if the proceedings meet one of the following conditions.

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- (2) *Condition A*: the proceedings are preliminary or incidental to a criminal appeal to the Crown Court.
- (3) *Condition B*: the proceedings are preliminary or incidental to an appeal to the criminal division of the Court of Appeal.
- (4) *Condition C*: the proceedings are preliminary or incidental to a reference to the Court of Appeal by the Attorney General under Part 4 of the Criminal Justice Act 1988.
- (5) *Condition D*: the proceedings are preliminary or incidental to the hearing of a reference under section 9 or 11 of the Criminal Appeal Act 1995.
- (6) *Condition E*: the proceedings are a hearing following conviction held for the purpose of making a decision about whether to impose or vary conditions of bail in respect of the person convicted.
- (7) *Condition F*:—
  - (a) the proceedings are a hearing following conviction held for the purpose of deciding whether to grant or continue bail in respect of the person convicted, and
  - (b) either—
    - (i) section 4 of the Bail Act 1976 does not apply to the person, or
    - (ii) the making of the decision is not disputed (including where the court is minded to refuse or revoke bail of its own motion).
- (8) But proceedings which meet any of those conditions may not be conducted wholly as audio proceedings if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at the proceedings.

*Conduct of proceedings wholly as video proceedings*

- 2 (1) Eligible criminal proceedings may be conducted wholly as video proceedings only if the proceedings meet one of the following conditions.
- (2) *Condition A*: the proceedings are—
  - (a) an appeal to the Crown Court which is an appeal only against sentence,
  - (b) an appeal to the Crown Court arising out of a summary trial—
    - (i) which is an appeal arising out of a summary trial which was itself conducted wholly as video proceedings, and
    - (ii) which the parties agree may be conducted wholly as video proceedings, or
  - (c) preliminary or incidental to any criminal appeal to the Crown Court.
- (3) *Condition B*: the proceedings are preliminary or incidental to an appeal to the criminal division of the Court of Appeal.
- (4) *Condition C*: the proceedings are preliminary or incidental to a reference to the Court of Appeal by the Attorney General under Part 4 of the Criminal Justice Act 1988.



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- (5) *Condition D*: the proceedings are preliminary or incidental to the hearing of a reference under section 9 or 11 of the Criminal Appeal Act 1995.
- (6) *Condition E*: the proceedings are preliminary or incidental to a hearing before the Court of Appeal under section 80 of this Act.
- (7) *Condition F*: the proceedings are a hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted.
- (8) *Condition G*:—
  - (a) the proceedings are a summary trial in a magistrates' court,
  - (b) a written procedure notice has been served on the defendant but the offence is not being tried in accordance with section 16A of the Magistrates' Courts Act 1980, and
  - (c) the parties agree to the proceedings being conducted wholly as video proceedings.
- (9) *Condition H*: the proceedings are a hearing under section 142(1) or (2) of the Magistrates' Courts Act 1980 or under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000 [<sup>F2</sup>or section 385 of the Sentencing Code].

*Other use of live audio links in preliminary and incidental proceedings etc*

- 3 (1) This paragraph applies to eligible criminal proceedings which meet any of the conditions in paragraph 1.
- (2) The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.
- (3) A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
  - (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
  - (b) the parties agree to that person giving evidence through a live audio link.
- (4) This paragraph does not apply to proceedings which meet any of the conditions in paragraph 1 if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at the proceedings (but see paragraph 4).

*Other use of live audio links in other eligible criminal proceedings*

- 4 (1) This paragraph applies to—
  - (a) eligible criminal proceedings which do not meet any of the conditions in paragraph 1, and
  - (b) eligible criminal proceedings which meet any of those conditions if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment).
- (2) The defendant may not take part in the proceedings through a live audio link.
- (3) A person (other than the defendant) may not take part in the proceedings through a live audio link unless—

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- (a) that person's participation through the live audio link is only for the purpose of giving evidence in the proceedings,
  - (b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
  - (c) the parties agree to that person giving evidence through a live audio link.
- (4) Where this paragraph applies by virtue of sub-paragraph (1)(b), references to the defendant include references to the person whom the court is minded to deal with for contempt of court.
- (5) Where this paragraph applies to proceedings under section 4A or 5 of the Criminal Procedure (Insanity) Act 1964, it is for the defendant's representative (if such a representative has been appointed), rather than the defendant, to give any agreement under sub-paragraph (3)(c).
- (6) In this paragraph “defendant's representative” means the person appointed by the court to put the case for the defence.

*Other limitations to apply also*

- 5 The limitations imposed under this Schedule are in addition to any others (such as those in section 51(4)) which apply to the exercise of the power to give a direction under section 51.”

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**Textual Amendments**

- F2** Words in [Sch. 23 para. 8](#) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 301\(3\)](#) (with [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

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