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DRAFT STATUTORY INSTRUMENTS

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**2023 No. XXXX**

**SENIOR COURTS OF ENGLAND AND WALES**

**COUNTY COURT, ENGLAND AND WALES**

**MAGISTRATES' COURTS, ENGLAND AND WALES**

**FAMILY COURT, ENGLAND AND WALES**

**TRIBUNALS AND INQUIRIES**

**The Courts (Prescribed Recordings) Order 2023**

*Made* - - - -

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*Coming into force in accordance with article 1*

The Lord Chancellor makes the following Order, with the concurrence of the Lord Chief Justice, in exercise of the powers conferred by section 32(1) of the Crime and Courts Act 2013(a).

In accordance with section 58(4) of that Act, a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. This Order may be cited as the Courts (Prescribed Recordings) Order 2023 and comes into force on the day after the day on which it is made.

**Interpretation**

2. In this Order—

“court” includes a tribunal;

“Custody Officers” means prison officers escorting prisoners to and from the court;

“recording” means a visual or sound recording on any medium from which a single image, a moving image or any sound may be produced or reproduced, or the making of any such recording; and “recorded” is to be construed accordingly;

“security alert” means an unexpected incident which is—

- (a) identified as a security alert in an announcement or communication directed to the person operating the bodyworn camera by that person's superior or a person responsible for the security of the building;
- (b) an incident which the person operating the bodyworn camera considers likely to interfere with the operation of any court and other activities in the building and its precincts or threaten the safety and security of the building or any person in the building and its precincts; or
- (c) an incident where the police are called, or the police officer operating the bodyworn camera, or that officer's superior, considers a police response to be necessary.

### **Prescribed recordings**

3. This Order, except for article 12, applies to recordings made by CCTV or bodyworn cameras in court buildings or their precincts, and to recordings made in court buildings at ceremonies to mark the making of an adoption order.

### **Disapplication of section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981**

4. Section 41 of the Criminal Justice Act 1925(a) and section 9 of the Contempt of Court Act 1981(b) do not apply where recordings are made or used in accordance with—

- (a) for recordings made by CCTV, the conditions in articles 5, 6 and 10;
- (b) for recordings made by bodyworn cameras, the conditions in articles 7 to 10; or
- (c) for recordings at a ceremony to mark the making of an adoption order, the conditions in article 11.

### **Recording – CCTV**

5. Recording is—

- (a) with the agreement of the Lord Chief Justice;
- (b) by cameras located in accordance with that agreement in areas, other than courtrooms, to which the public have access;
- (c) for the purposes of maintaining public order and the protection and safety of the judiciary, court staff, parties, legal representatives and others involved in proceedings and the public; and
- (d) undertaken consistently with any current Code of Practice or replacement Code issued under section 30 or 31 of the Protection of Freedoms Act 2012(c).

### **Recording – CCTV: authorisation**

6. Recording is by a person who—

- (a) is permitted in writing by the Lord Chancellor to record via CCTV in that building and its precincts for the purposes of maintaining public order and the protection and safety of the judiciary, court staff, parties, legal representatives and others involved in proceedings and the public; and
- (b) agrees to make any such recording available for the purposes of any criminal investigation or court proceedings to which it may be relevant.

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(a) 1925 c. 86. Relevant amendments were made by Schedule 11 to the Courts Act 1971 (c. 23), sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48) and by section 47(1) of the Constitutional Reform Act 2005 (c. 4).

(b) 1981 c. 49.

(c) 2012 c. 9.

## **Recording – bodyworn cameras**

### **7. Recording is—**

- (a) in accordance with permission granted by the Lord Chief Justice;
- (b) overt and by a visible bodyworn camera;
- (c) for the purposes of maintaining public order and the protection and safety of the judiciary, court staff, parties, legal representatives and others involved in proceedings and the public;
- (d) undertaken consistently with any Code of Practice or replacement Code issued under section 30 or 31 of the Protection of Freedoms Act 2012; and
- (e) not prohibited in the court building concerned, at the time the recording is made, by a direction given by the leadership judge for that centre.

## **Recording – bodyworn cameras: authorisation**

### **8. Recording is by a person who—**

- (a) is permitted in writing by the Lord Chancellor to record via bodyworn camera in that building and its precincts for the purposes of maintaining public order and the protection and safety of the judiciary, court staff, parties, legal representatives and others involved in proceedings and the public; and
- (b) agrees to make any such recording available for the purposes of any criminal investigation or court proceedings to which it may be relevant.

## **Recording – bodyworn cameras: further conditions**

**9.—**(1) Recording is by a person to whom paragraph (2) or (3) applies, and subject to the restrictions applicable to recording by such a person by virtue of paragraphs (4) and (5).

### **(2) This paragraph applies to—**

- (a) Custody Officers;
- (b) uniformed police officers.

### **(3) This paragraph applies to court and tribunal security staff.**

### **(4) Recording by a person to whom paragraph (2) applies is—**

- (a) in one of the following areas of the building or its precincts—
  - (i) holding cells;
  - (ii) custody suites;
  - (iii) vehicle dock areas;
  - (iv) courtrooms (including dock areas);
  - (v) any area outside the building but within its precincts; and
- (b) either—
  - (i) by a bodyworn camera which is switched on in response to a security alert, and only for as long as the security alert continues; or
  - (ii) by a bodyworn camera which is switched on in response to the escape, or report of the escape, of a prisoner, and only while in search or pursuit of that prisoner.

### **(5) Recording by a person to whom paragraph (3) applies is—**

- (a) in one of the following areas of the building or its precincts—
  - (i) courtrooms (including dock areas);
  - (ii) areas within the building, other than courtrooms, to which the public have access;
  - (iii) areas within the building to which the public do not have access but to which court staff or members of the judiciary have access;

- (iv) any area outside the building but within its precincts; and
- (b) by a bodyworn camera which is switched on in response to a security alert, and only for as long as the security alert continues.

**Recordings – CCTV and bodyworn cameras: conditions of use**

**10.** Any recording is—

- (a) used only—
  - (i) for the purposes of maintaining public order and the protection and safety of the judiciary, court staff, parties, legal representatives and others involved in proceedings and the public;
  - (ii) for investigating whether there has been any criminal offence or breach of statutory duty; or
  - (iii) in any court proceedings to which it may be relevant;
- (b) used and stored consistently with any Code of Practice or replacement Code issued under section 30 or 31 of the Protection of Freedoms Act 2012.

**Recordings at a ceremony to mark the making of an adoption order**

**11.** Recording is—

- (a) by way of still photography;
- (b) of a ceremony held by a court which has made an adoption order, to mark the making of the order;
- (c) undertaken after the conclusion of the proceedings in which the adoption order is made; and
- (d) authorised by the court and undertaken in accordance with the court’s instructions.

**Amendment of the Crown Court (Recording and Broadcasting) Order 2020**

**12.** In article 2 of the Crown Court (Recording and Broadcasting) Order 2020(a), in the definition of “judge”, after paragraph (a) insert—

“(aa) an ex-officio or ordinary judge of the Court of Appeal within the meaning of section 2 of the Senior Courts Act 1981(b), or a Lord Justice of Appeal (England and Wales) (sitting in retirement)(c);”.

Date *Name*  
Parliamentary Under Secretary of State  
Ministry of Justice

I concur

Date *Name*  
Lord Chief Justice

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(a) S.I. 2020/637.  
(b) 1981 c. 54. Relevant amendments were made by the Constitutional Reform Act 2005 (c. 4), sections 15, 145 and 146 and Schedule 4 paragraph 115, Schedule 17 paragraph 22 and Schedule 18 Part 2.  
(c) See section 123 of and Schedule 3 to the Public Services Pensions and Judicial Offices Act 2022 (c. 7).

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order prescribes the conditions to be satisfied for section 41 of the Criminal Justice Act 1925 (which makes it an offence to film in court) and section 9 of the Contempt of Court Act 1981 (which provides that it is a contempt of court to record sound in court except with the permission of the court) not to apply to recordings undertaken by CCTV or bodyworn cameras, or to certain photographs taken to mark the making of an adoption order. Section 41 and section 9 are referred to below as “the statutory prohibitions”.

Articles 1 to 4 set out when the Order comes into force, the definitions of terms used in the Order, that the Order applies to recordings made by CCTV or bodyworn cameras in court and tribunal buildings or their precincts; and that the statutory prohibitions do not apply where the relevant conditions in the Order have been satisfied.

Articles 5 to 9 set out what can be recorded and who may record it such that the statutory prohibitions do not apply (articles 5 and 6 do this for recordings made by CCTV and articles 7 to 9 for recordings made by bodyworn cameras), and article 10 sets out requirements in relation to the use of recordings made by either method).

Article 11 sets out the conditions which must be satisfied for the statutory prohibitions not to apply to the taking of a photograph in court to mark the making of an adoption order.

Article 12 amends the Crown Court (Recording and Broadcasting) Order 2020 to add judges of the Court of Appeal (including judges sitting in retirement) to the definition of “judge” (for the purpose of enabling sentencing remarks delivered by such a judge to be recorded and broadcast in the same way as those delivered by judges already within that definition).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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