

*These notes refer to the Justice Act (Northern Ireland)  
2015 (c.9) which received Royal Assent on 24 July 2015*

# Justice Act (Northern Ireland) 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 7: Live Links in Criminal Proceedings**

This part expands provision for the use of live video link ('live link') facilities in courts to include committal proceedings, certain hearings at weekends and public holidays, and proceedings relating to failure to comply with certain order or licence conditions. Live links will also be available for witnesses before magistrates' courts from outside the United Kingdom and for patients detained in hospital under mental health legislation, and they will be the norm for evidence given by certain expert witnesses.

#### ***Section 49: Live Links: accused at committal proceedings***

This section allows for the accused ('A') to appear and give evidence by live link in committal proceedings in magistrates' courts, if A is likely to be held in custody or detained in hospital during the proceedings. The section includes several safeguards, such as requiring A's consent to a live link direction; the parties must have been given the opportunity to make representations; and the court must be satisfied that it is not contrary to the interests of justice for A to appear or give evidence by live link. Courts are required to adjourn proceedings under this section where A, attending by live link, cannot see or hear the court and be seen or heard by it, and this cannot be corrected immediately. The section also includes the procedure for giving or rescinding a direction, as well as the requirement that the court state and record its reasons for refusing or for rescinding a direction.

#### ***Section 50: Live links from another courtroom: first remands, etc.***

This section provides for certain persons to attend court hearings by live link at weekends and public holidays. This will allow, for example, for a small number of courts to hear certain cases, with defendants or offenders attending by live link from other courthouses. Subsection (1) sets out the sorts of hearing covered – these all involve the person's first appearance at court following arrest or charge in specified circumstances.

The section contains safeguards including that the court must be satisfied that it is not contrary to the interests of justice for the person to appear by live link.

Courts are required to adjourn proceedings under this section where the accused person, attending by live link, cannot see or hear the court and be seen or heard by it, and this cannot be corrected immediately. It also lays down the procedure for giving or rescinding a live link direction.

The section provides that the Department may, by order, amend the type of hearings that may be covered and the days of the week that live links can be used for these purposes. Such an order would be subject to the affirmative resolution procedure.

***Section 51: Live Links: proceedings for failure to comply with certain orders or licence conditions***

This section allows for live links to be used in proceedings where a person, already being held in custody, has to be brought before the court for failing to comply with a specified court order or with conditions under which a sexual offender is released on licence.

The section includes several safeguards, such as requiring the offender's consent before the court can direct that a live link be used, and the court must be satisfied that it is not contrary to the interests of justice for the offender to appear in this manner.

A further safeguard is the requirement on courts to adjourn proceedings for failure to comply with certain orders or licence conditions where the offender attending by live link cannot see or hear the court and be seen or heard by it, and this cannot be corrected immediately. The section also includes the procedure for giving or rescinding a live link direction. For example, in the case of a magistrates' court it must state and record its reasons for refusing or rescinding a direction.

The orders covered by these provisions are various community-related sanctions (eg probation) and sanctions for young persons (eg attendance centre orders, supervision orders). The section also enables the Department, by subordinate legislation, to add breaching other court orders made upon conviction and breaching conditions of other release licences. This would be by the affirmative resolution procedure.

***Section 52: Live Links: expert witnesses***

This section provides that, where certain expert witnesses are to give evidence, the court's starting assumption should be that the expert's evidence will be given by live link.

The sorts of expert witness to whom these provisions apply are to be set out in Regulations made by the Department (and subject to affirmative resolution). For instance, this might be the prosecution's forensics or telecommunications experts.

The relevant experts would be expected to appear at certain hearings by live link from their place of work, thus saving them from travelling to court and therefore saving the costs, time and work associated with that travel. The hearings affected are preliminary hearings, trials and appeals.

As a consequence, the current application process of having to actively apply for a live link direction will be reversed to one of application for personal appearance. A 'personal appearance' direction would only be given if it were in the interests of justice and the efficient administration of justice.

***Section 53: Live Links: witnesses outside the United Kingdom***

This section enables witnesses to give evidence from outside the United Kingdom to a magistrates' court in Northern Ireland in certain proceedings. Currently evidence may only be taken in a magistrates' court by live from witnesses outside Northern Ireland if they are situated elsewhere within the UK. This will help to reduce delays caused by scheduling the appearance of overseas witnesses in person during proceedings.

***Section 54: Live Links: patients detained in hospital under Mental Health Order***

This Section extends the use of live links in certain court proceedings to include patients detained in hospital under Part 2 of the Mental Health (NI) Order 1986 – patients compulsorily admitted to hospital for psychiatric assessment or treatment. Under existing legislation, only Part 3 psychiatric patients – those compulsorily admitted to hospital via the criminal justice system – are able to appear by live link. (The proceedings affected are for accused persons in preliminary hearings, sentencing hearings and related appeals.)