



2011 CHAPTER 24

PART 2

LIVE LINKS

Live links for patients detained in hospital

14.—(1) Article 79 of the [Criminal Justice \(Northern Ireland\) Order 2008 \(NI 1\)](#) (live links: introductory) is amended as follows.

(2) In paragraph (3)(a) at the end add “or detained in a hospital under Part 3 of the Mental Health (Northern Ireland) Order 1986”.

Live links at preliminary hearings in the High Court

15.—(1) Article 80 of the [Criminal Justice \(Northern Ireland\) Order 2008](#) (live links at preliminary hearings) is amended as follows.

(2) In paragraph (1) for “or the Crown Court” substitute “, the Crown Court or the High Court”.

Live links at preliminary hearing on appeals to the county court

16.—(1) This section applies in relation to a preliminary hearing in connection with an appeal to the county court under Article 140 of the [Magistrates’ Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#).

(2) Where it appears to the county court before which the preliminary hearing is to take place that the appellant is likely to be held in custody during the hearing, the court may give a live link direction under this section in relation to the attendance of the appellant at the hearing.

(3) A live link direction under this section is a direction requiring the appellant, if being held in custody during the hearing, to attend it through a live link from the place at which the appellant is being held.

(4) The appellant is to be treated as present in court when, by virtue of a live link direction, the appellant attends a hearing through a live link.

(5) If a hearing takes place in relation to the giving or rescinding of such a direction, the court may require or permit a person attending the hearing to do so through a live link.

(6) The court shall not give or rescind a live link direction under this section (whether at a hearing or otherwise) unless the parties to the proceedings have been given the opportunity to make representations.

(7) Subject to subsection (8), if where the appellant is attending a preliminary hearing through a live link it appears to the court—

(a) that the appellant is not able to see and hear the court and to be seen and heard by it, and

(b) that this cannot be immediately corrected,

the court shall adjourn the hearing.

(8) The court may proceed with the hearing if it is satisfied that it is not reasonably practicable to bring the appellant to court before the appellant ceases to be held in custody.

(9) If the court proceeds with the hearing under subsection (8) it shall not remand the appellant in custody for a period exceeding 8 days commencing on the day following that on which it remands him.

(10) A court shall not give a live link direction under this section unless—

(a) it has been notified by the Department that a live link is available between the court and the institution in which the appellant is or is to be held in custody; and

(b) the notice has not been withdrawn.

(11) In this section—

(a) references to a person being held in custody are references to the person's being held in custody in a prison, young offenders centre, juvenile justice centre or other institution or detained in a hospital under Part 3 of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#);

(b) “live link” means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during the hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);

(c) “preliminary hearing” means a hearing in connection with an appeal, held before the court starts to hear the appeal.

Live link in sentencing hearing on appeals to the county court

17.—(1) This section applies in relation to a sentencing hearing in connection with an appeal to the county court under Article 140 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#).

(2) Where it appears to the county court before which the sentencing hearing is to take place that the appellant is likely to be held in custody during the hearing, the court may give a live link direction under this section in relation to the attendance of the appellant at the hearing.

(3) A live link direction under this section is a direction requiring the appellant, if being held in custody during the hearing, to attend it through a live link from the place at which the appellant is being held.

(4) The appellant is to be treated as present in court when, by virtue of a live link direction, the appellant attends a hearing through a live link.

(5) A live link direction under this section—

- (a) may be given by the court of its own motion or on an application by a party; and
- (b) may be given in relation to all subsequent sentencing hearings before the court or to such sentencing hearing or hearings as may be specified or described in the direction.

(6) The court may not give a live link direction under this section unless—

- (a) the appellant has consented to the direction; and
- (b) the court is satisfied that it is not contrary to the interests of justice to give the direction.

(7) The court may rescind a live link direction given under this section at any time before or during a sentencing hearing to which it relates if it appears to the court to be in the interests of justice to do so (but this does not affect the court's power to give a further live link direction under this section in relation to the appellant).

The court may exercise this power of its own motion or on an application by a party.

(8) The appellant may not give oral evidence while attending a sentencing hearing through a live link by virtue of this section unless—

- (a) the appellant consents to give evidence in that way; and
- (b) the court is satisfied that it is not contrary to the interests of justice for the appellant to give it in that way.

(9) The court must state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this section.

(10) A court shall not give a live link direction under this section unless—

- (a) it has been notified by the Department that a live link is available between the court and the institution in which the appellant is or is to be held in custody; and
 - (b) the notice has not been withdrawn.
- (11) In this section—
- (a) references to a person being held in custody are references to the person's being held in custody in a prison, young offenders centre, juvenile justice centre or other institution or detained in a hospital under Part 3 of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#);
 - (b) “live link” means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during the hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);
 - (c) “sentencing hearing”, in connection with an appeal, means any hearing following the determination of the appeal which is held for the purpose of—
 - (i) proceedings relating to the giving or rescinding of a live link direction;
 - (ii) sentencing the offender or determining how the court should deal with the offender in respect of the offence.

Live links in the Court of Appeal

18.—(1) The Court of Appeal may at any time give a live link direction in relation to any proceedings to which this section applies if a party to the proceedings (“P”) is expected to be in custody.

- (2) This section applies to proceedings in the Court of Appeal—
- (a) on an appeal under Part 4 of the [Criminal Justice \(Northern Ireland\) Order 2004 \(NI 9\)](#);
 - (b) on an appeal under section 74(8) of the Serious Organised Crime and Police Act [2005 \(c. 15\)](#);
 - (c) on an appeal under section 24 of the Serious Crime Act [2007 \(c. 27\)](#);
 - (d) on a reference under section 36 of the Criminal Justice Act [1988 \(c. 33\)](#);
 - (e) on an application for bail under section 17 of the Criminal Appeal (Northern Ireland) Act [1980 \(c. 47\)](#).
- (3) For the purposes of this section—
- (a) a “live link direction” is a direction that P (if P is being held in custody at the time of the proceedings) is to attend the proceedings through a live link from the place at which P is held;

- (b) “live link” means an arrangement by which P is able to see and hear, and to be seen and heard by, the Court of Appeal (and for this purpose any impairment of eyesight or hearing is to be disregarded); and
- (c) P is a party to any proceedings—
 - (i) in the case of an appeal, if P is the appellant or respondent or if the appeal relates to an order or ruling made in respect of P or made in respect of proceedings in which P is the accused;
 - (ii) in the case of a reference or application, if P’s sentencing or admission to bail is the subject of the reference or application.
- (4) The Court of Appeal—
 - (a) shall not give a live link direction unless—
 - (i) P has consented to the direction; and
 - (ii) any other party to the proceedings has had the opportunity to make representations about the giving of such a direction; and
 - (b) may rescind a live link direction at any time before or during any proceedings to which it applies (whether of its own motion or on the application of a party).
- (5) The Court of Appeal must not give a live link direction unless—
 - (a) it has been notified by the Department that a live link is available between the Court and the institution at which P is expected to be in custody; and
 - (b) the notice has not been withdrawn.
- (6) A live link direction does not apply to the giving of oral evidence by P at any hearing unless that direction, or any subsequent direction of the Court, provides expressly for the giving of such evidence through a live link.
- (7) In section 45(2) of the Criminal Appeal (Northern Ireland) Act 1980 (powers exercisable by single judge) at the end of paragraph (fa) add “or under section 18 of the Justice Act (Northern Ireland) 2011”.

Live link direction for vulnerable accused or appellant

19. For Article 21A of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) (live link directions for certain vulnerable accused) substitute—

“Live link directions

21A.—(1) This Article applies—

- (a) to any proceedings in a magistrates’ court or before the Crown Court against a person for an offence; and

- (b) to any proceedings in the county court on an appeal by a person under Article 140 of the Magistrates' Courts (Northern Ireland) Order 1981;

and in this Article references to "A" are to the person concerned.

(2) The court may, on the application of A, give a live link direction if it is satisfied—

- (a) that the conditions in paragraph (4) or paragraph (5) are met in relation to A when the application is made; and
- (b) that it is in the interests of justice for A to give evidence through a live link.

(3) A live link direction is a direction that any oral evidence to be given before the court by A is to be given through a live link.

(4) The conditions in this paragraph are that—

- (a) A has a physical disability or suffers from a physical disorder; and
- (b) A's ability to participate effectively in the proceedings as a witness giving oral evidence in court is for that reason compromised.

(5) The conditions in this paragraph are—

- (a) if A is aged under 18, that—
 - (i) A's ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by A's level of intellectual ability or social functioning; and
 - (ii) use of a live link would enable A to participate more effectively in the proceedings as a witness (whether by improving the quality of A's evidence or otherwise);

(b) if A is aged 18 or over, that—

- (i) A suffers from a mental disorder (within the meaning of the Mental Health (Northern Ireland) Order 1986) or otherwise has a significant impairment of intelligence and social function;
- (ii) A is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court; and
- (iii) use of a live link would enable A to participate more effectively in the proceedings as a witness (whether by improving the quality of A's evidence or otherwise).

(6) While a live link direction has effect A may not give oral evidence before the court in the proceedings otherwise than through a live link.

(7) The court may discharge a live link direction at any time before or during any hearing to which it applies if it appears to the court to be in the

interests of justice to do so (but this does not affect the power to give a further live link direction in relation to A).

The court may exercise this power of its own motion or on an application by a party.

- (8) The court must state in open court its reasons for—
 - (a) giving or discharging a live link direction, or
 - (b) refusing an application for or for the discharge of a live link direction,

and, if it is a magistrates' court, it must cause those reasons to be entered in the Order Book.”.