



## 2015 CHAPTER 9

### PART 7

#### LIVE LINKS IN CRIMINAL PROCEEDINGS

##### **Live links: accused at committal proceedings**

**49.—**(1) This section applies in relation to committal proceedings in a magistrates' court.

(2) Where it appears to the court before which the committal proceedings are to take place that the accused ("A") is likely to be held in custody or detained in hospital during the proceedings, the court may give a live link direction under this section in relation to the attendance of A at the committal proceedings.

(3) A live link direction under this section is a direction requiring A, if A is being held in custody or detained in a hospital during the committal proceedings, to attend those proceedings through a live link from the place at which A is being held or detained.

(4) A is to be treated as present in court when, by virtue of a live link direction under this section, A attends committal proceedings through a live link.

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

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

(6) The court may 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 accused is, or is to be, held or detained; and

(b) the notice has not been withdrawn.

(7) The court may rescind a live link direction under this section at any time before or during the committal proceedings 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 A).

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

(9) 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 attending the hearing to do so through a live link.

(10) The court must—

(a) state in open court its reasons for refusing to make or rescinding a live link direction under this section; and

(b) cause those reasons to be entered in the Order Book.

(11) If where A is attending committal proceedings through a live link it appears to the court—

(a) that A 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 must adjourn the proceedings.

(12) A may not give oral evidence while attending committal proceedings through a live link by virtue of this section unless—

(a) A consents to give evidence in that way; and

(b) the court is satisfied that it is not contrary to the interests of justice for A to give evidence in that way.

(13) In this section—

(a) references to A being held in custody are references to A's being held in custody in a prison, young offenders centre, juvenile justice centre or other institution;

(b) references to A being detained in hospital are references to A's being detained in a hospital under Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986;

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

(d) "the Order Book" means the Order Book required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984.

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

**50.—**(1) This section applies in relation to hearings which are—

- (a) held in a magistrates' court in relation to a person ("A")—
  - (i) where A is in custody, is charged with an offence and is appearing before the court for the first time in connection with that charge;
  - (ii) where A has been arrested in pursuance of a warrant issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 and is brought before the court for the first time after A's arrest;
  - (iii) where A has been arrested under Article 6 of the Criminal Justice (Northern Ireland) Order 2003, or in pursuance of a warrant issued under that Article, and is brought before the court for the first time after A's arrest; or
  - (iv) where A has been arrested in pursuance of a warrant issued under Article 25 of the Magistrates' Courts (Northern Ireland) Order 1981 or section 51(3) of the Judicature (Northern Ireland) Act 1978 and is brought before the court for the first time after A's arrest; and
- (b) held on—
  - (i) a Saturday;
  - (ii) a Sunday, or
  - (iii) a public holiday.

(2) Where it appears to the court before which the hearing is to take place that A is likely to be present in another courtroom during the hearing, the court may give a live link direction under this section in relation to the attendance of A at the hearing.

(3) A live link direction under this section is a direction requiring A, if A is present in another courtroom during the hearing, to attend the hearing through a live link from that courtroom.

(4) A is to be treated as present in court when, by virtue of a live link direction under this section, A attends a hearing through a live link.

(5) A court may not give a live link direction under this section unless the court is satisfied that it is not contrary to the interests of justice to give the direction.

(6) A court may 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 courtroom in which the accused is to be present; and
- (b) the notice has not been withdrawn.

(7) The court may rescind a live link direction under this section at any time before or during the hearing to which it relates.

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

(9) If where A is attending a hearing through a live link it appears to the court—

(a) that A 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 must adjourn the hearing.

(10) In this section “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).

(11) The Department may by order—

(a) amend subsection (1) by adding any description of hearing to the list in paragraph (a) of that subsection;

(b) amend subsection (1) by adding any day of the week to the list in paragraph (b) of that subsection or removing any day for the time being in that list;

(c) repeal subsection (1)(b) (and the word “and” immediately before it).

(12) Nothing in this section affects the operation of the Sunday Observance Act (Ireland) 1695 or section 13 of the Criminal Justice Act (Northern Ireland) 2013.

### **Live links: proceedings for failure to comply with certain orders or licence conditions**

**51.—**(1) This section applies to the following proceedings in a magistrates’ court or the Crown Court in relation to a person (“the offender”)—

(a) proceedings under Article 27 of the Criminal Justice (Northern Ireland) Order 1996 (failure of the offender to comply with any of the conditions specified in a licence under Article 26 of that Order);

(b) proceedings under paragraph 3 or 4 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996 (failure of the offender to comply with any of the requirements of a probation order, community service order, combination order or custody probation order);

(c) proceedings under Article 38(3) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (failure of the offender to comply with requirements of attendance centre order);

- (d) proceedings under Article 41 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (failure of the offender to comply with supervision requirements under Article 40(2) or (3) of that Order);
- (e) proceedings under paragraphs 3 or 4 of Schedule 1A to the Criminal Justice (Children) (Northern Ireland) Order 1998 (failure of the offender to comply with any requirement of a reparation order, community responsibility order or youth conference order).

(2) If it appears to the court that it is likely that the offender will be held in custody or detained in hospital during any proceedings to which this section applies, the court may give a live link direction under this section in relation to the attendance of the offender at those proceedings.

(3) A live link direction under this section is a direction requiring the offender, if the offender is being held in custody or detained in hospital during the proceedings, to attend them through a live link from the place at which the offender is being held or detained.

(4) The offender is to be treated as present in court when, by virtue of a live link direction under this section, the offender attends proceedings through a live link.

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

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

(6) The court may rescind a live link direction given under this section at any time before or during the proceedings 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 offender).

(7) The court may give or rescind a live link direction under this section of its own motion or on an application by a party.

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

- (a) the offender 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 offender to give evidence in that way.

(9) The court must—

- (a) state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this section; and
- (b) if it is a magistrates' court, cause those reasons to be entered in the Order Book.

(10) If where the offender is attending proceedings through a live link it appears to the court—

- (a) that the offender 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 must adjourn the proceedings.

(11) 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 accused is, or is to be, held in custody or detained; and
- (b) the notice has not been withdrawn.

(12) The Department may by order amend subsection (1) by adding—

- (a) proceedings for failure to comply with an order of a court made on conviction of a person;
- (b) proceedings for breach of the conditions of a licence granted on release from a custodial sentence.

(13) 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;
- (b) references to a person being detained in hospital are references to the person's being detained in a hospital under Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986;
- (c) "live link" means an arrangement by which a person (when not in the place where the proceedings are being held) is able to see and hear, and to be seen and heard by, the court during the proceedings (and for this purpose any impairment of eyesight or hearing is to be disregarded);
- (d) "the Order Book" means the Order Book required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984.

### **Live links: expert witnesses**

**52.—**(1) Part 3 of the Criminal Justice (Northern Ireland) Order 2004 (live links for witnesses in certain criminal proceedings) is amended as follows.

(2) In Article 10 (witness other than defendant may give evidence through live link if court so directs) after "other than the defendant" insert "or an expert witness to whom Article 11A applies".

(3) After Article 11 insert—

**“Expert witnesses**

**11A.—**(1) An expert witness to whom this Article applies shall, unless the court otherwise directs, give evidence through a live link in the criminal proceedings mentioned in Article 10(2).

(2) The court shall not give a direction under paragraph (1) unless the court is satisfied that it is in the interests of justice, and of the efficient administration of justice, for the person concerned to give evidence in the proceedings in person.

(3) The court may rescind a direction under paragraph (1) if it appears to the court that the condition in paragraph (2) is no longer satisfied.

(4) Where it does so, the person concerned shall give evidence through a live link, but this does not prevent the court from giving a further direction under paragraph (1) in relation to that person.

(5) The court shall not give or rescind a direction under paragraph (1) unless the parties to the proceedings have been given the opportunity to make representations.

(6) This Article applies to expert witnesses of such class or description as the Department may prescribe in regulations.

(7) Regulations shall not be made under paragraph (6) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”.

(4) In Article 12(1) (magistrates’ court permitted to sit at other locations) for sub-paragraph (a) substitute—

“(a) evidence is to be given through a live link under this Part in proceedings before a magistrates’ court; and”.

(5) In Article 13 (warning to jury in Crown Court) for paragraph (1) substitute—

“(1) This Article applies where evidence has been given through a live link under this Part in proceedings before the Crown Court.”.

(6) In Article 14 (rules of court) after paragraph (2)(a) insert—

“(aa) as to the procedure to be followed in connection with the making of representations under Article 11A; and”.

**Live links: witnesses outside the United Kingdom**

**53.—**(1) Part 3 of the Criminal Justice (Northern Ireland) Order 2004 (live links for witnesses in certain criminal proceedings) is amended in accordance with subsections (2) and (3).

(2) After Article 11A (inserted by section 52) insert—

**“Witnesses outside the United Kingdom**

**11B.**—(1) This Part applies whether the witness is in the United Kingdom or elsewhere.

(2) A statement made on oath by a person outside the United Kingdom and given in evidence through a link under this Part shall be treated for the purposes of Article 3 of the Perjury (Northern Ireland) Order 1979 as having been made in the proceedings in which it is given in evidence.”.

(3) In Article 15 (interpretation)—

(a) in paragraph (2) for “at a place in the United Kingdom which is outside the building” substitute “absent from the place”;

(b) after paragraph (4) insert—

“(4A) Where two or more legal representatives are acting for a party to the proceedings, paragraph (3)(c) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.”.

(4) In section 29(3) of the Crime (International Co-operation) Act 2003 (hearing witnesses abroad through live television links) for “Article 80A(4) of the Police and Criminal Evidence (Northern Ireland) Order 1989” substitute “Article 10(2) of the Criminal Justice (Northern Ireland) Order 2004” and after “to apply” insert “in relation to witnesses who are outside the United Kingdom”.

**Live links: patients detained in hospital under Mental Health Order**

**54.**—(1) In each of the following provisions (which enable a live link direction to be given in relation to a person expected to be in custody) after “in custody” insert “or detained in hospital”—

(a) Articles 79(4)(a), 80(2), (3) and (8) and 81(2) and (3) of the Criminal Justice (Northern Ireland) Order 2008 (live link for accused in preliminary hearings and sentencing hearings);

(b) sections 16(2), (3), (8) and (10)(a) and 17(2), (3) and (10)(a) of the Justice Act (Northern Ireland) 2011 (live link for appellant in preliminary hearing or sentencing hearing on appeal to the county court).

(2) In each of the following at the end add “or detained”—

(a) Articles 80(3) and 81(3) of the Criminal Justice (Northern Ireland) Order 2008;

(b) sections 16(3) and 17(3) of the Justice Act (Northern Ireland) 2011.

(3) In Article 79(3) of the Criminal Justice (Northern Ireland) Order 2008 after sub-paragraph (a) insert—



“(aa) references to a person being detained in hospital are references to the person’s being detained in a hospital under Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986;”.

(4) In section 16(11) of the Justice Act (Northern Ireland) 2011 after subparagraph (a) insert—

“(aa) references to a person being detained in hospital are references to the person’s being detained in a hospital under Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986;”.

(5) In section 17(11) of the Justice Act (Northern Ireland) 2011 after subparagraph (a) insert—

“(aa) references to a person being detained in hospital are references to the person’s being detained in a hospital under Part 2 or 3 of the Mental Health (Northern Ireland) Order 1986;”.