
DRAFT STATUTORY INSTRUMENTS

2008 No.

The Criminal Justice (Northern Ireland) Order 2008

PART 5

MISCELLANEOUS AND SUPPLEMENTARY

Live links

Live links: introductory

79.—(1) Articles 80 and 81—

- (a) apply, respectively, to preliminary hearings and sentencing hearings in the course of proceedings for an offence; and
- (b) enable the court in the circumstances provided for in those Articles to direct the use of a live link for securing the accused's attendance at any such hearing.

(2) The accused is to be treated as present in court when, by virtue of a live link direction under either of those Articles, he attends a hearing through a live link.

(3) In this Article and Articles 80 and 81—

- (a) references to a person being held in custody are references to his being held in custody in a prison, young offenders centre, juvenile justice centre or other institution;
- (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) “the Order Book” means the Order Book required to be kept under rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984 (No. 225);
- (d) “preliminary hearing” means a hearing in the proceedings held before the start of the trial, other than a hearing at which the court may commit the accused for trial;
- (e) “sentencing hearing” means any hearing following conviction 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 him in respect of the offence;
- (f) “the start of the trial”—
 - (i) in the case of a trial on indictment, has the meaning given by section 39(3) of the Criminal Procedure and Investigations Act 1996 (c. 25); and
 - (ii) in the case of a summary trial, shall be taken to occur—
 - (A) when the court begins to hear evidence for the prosecution at the trial or to consider whether to exercise its power under Article 44(4) of the [Mental](#)

[Health \(Northern Ireland\) Order 1986 \(NI 4\)](#) (power to make hospital order without convicting the accused), or

(B) if the court accepts a plea of guilty without proceeding as mentioned in head (A), when that plea is accepted.

- (4) A court shall not give a live link direction under Article 80 or 81 unless—
- (a) it has been notified by the Secretary of State that a live link is available between the court and the institution in which the accused is or is to be held in custody; an
 - (b) the notice has not been withdrawn.

Use of live link at preliminary hearings

80.—(1) This Article applies in relation to a preliminary hearing in a magistrates' court or the Crown Court.

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

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

(4) 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.

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

(6) If in a case where it has power to do so a magistrates' court decides not to give a live link direction under this Article, it shall—

- (a) state in open court its reasons for not doing so; and
- (b) cause those reasons to be entered in the Order Book.

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

- (a) that the accused 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 accused to court before he ceases to be held in custody.

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

Use of live link at sentencing hearings

81.—(1) This Article applies where an accused person is convicted in the course of proceedings for an offence in a magistrates' court or the Crown Court.

(2) If it appears to the court by or before which the accused is convicted that it is likely that he will be held in custody during any sentencing hearing for the offence, the court may give a live link direction under this Article in relation to that hearing

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

- (4) A live link direction under this Article—
- (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 hearing or hearings as may be specified or described in the direction.
- (5) The court may not give a live link direction under this Article unless—
- (a) the offender has given his 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 Article at any time before or during a 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 Article in relation to the offender).
- The court may exercise this power of its own motion or on an application by a party.
- (7) The offender may not give oral evidence while attending a hearing through a live link by virtue of this Article unless—
- (a) he consents to give evidence in that way; and
 - (b) the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.
- (8) 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 Article; and
 - (b) if it is a magistrates' court, cause those reasons to be entered in the Order Book.

Evidence of vulnerable accused

- 82.**—(1) The [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) is amended as follows.
- (2) After Article 21 (interpretation etc of Part 2) insert—

“PART 2A

USE OF LIVE LINK FOR EVIDENCE OF CERTAIN ACCUSED PERSONS

Live link directions

- 21A.**—(1) This Article applies to any proceedings (whether in a magistrates' court or before the Crown Court) against a person for an offence.
- (2) The court may, on the application of the accused, give a live link direction if it is satisfied—
- (a) that the conditions in paragraph (4) or, as the case may be, paragraph (5) are met in relation to the accused; and
 - (b) that it is in the interests of justice for the accused 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 the accused is to be given through a live link.
- (4) Where the accused is aged under 18 when the application is made, the conditions are that—

- (a) his ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by his level of intellectual ability or social functioning; and
 - (b) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).
- (5) Where the accused has attained the age of 18 at that time, the conditions are that—
- (a) he suffers from a mental disorder (within the meaning of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#)) or otherwise has a significant impairment of intelligence and social function;
 - (b) he is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court; and
 - (c) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).
- (6) While a live link direction has effect the accused 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 the accused).
- 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.

Meaning and effect of live link.

21B.—(1) In Article 21A “live link” means an arrangement by which the accused, while absent from the place where the proceedings are being held, is able—

- (a) to see and hear a person there; and
- (b) to be seen and heard by the persons mentioned in paragraph (2);

and for this purpose any impairment of eyesight or hearing is to be disregarded.

(2) The persons are—

- (a) the judge and the jury (if there is one);
- (b) where there are two or more accused in the proceedings, each of the other accused;
- (c) legal representatives acting in the proceedings; and
- (d) any interpreter or other person appointed by the court to assist the accused.

Saving

21C. Nothing in this Part affects—

- (a) any power of a court to make an order, give directions or give leave of any description in relation to any witness (including an accused), or
- (b) the operation of any rule of law relating to evidence in criminal proceedings.”.

(3) In Article 2(2) (interpretation) in the definition of “judge” at the end add “and (in the case of a youth court) any lay magistrate”.

Live links in appeals under Criminal Appeal Act

83.—(1) In section 24 of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (right of appellant to be present at proceedings in Court of Appeal), after subsection (2) insert—

“(2A) The Court of Appeal may at any time give a live link direction in relation to any proceedings at which the appellant is expected to be in custody but is entitled to be present.

(2B) For this purpose—

- (a) a “live link direction” is a direction that the appellant (if he 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 he is held; and
- (b) “live link” means an arrangement by which the appellant 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)

(2C) The Court of Appeal—

- (a) shall not give a live link direction unless—
 - (i) the appellant has consented to the direction; and
 - (ii) any other party to the appeal 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).

(2D) The Court of Appeal must not give a live link direction unless—

- (a) it has been notified by the Secretary of State that a live link is available between the Court and the institution at which the appellant is expected to be in custody; and
- (b) the notice has not been withdrawn.”.

(2) In section 25 of that Act (giving of evidence), after subsection (3) insert—

“(4) A live link direction under section 24(2A) does not apply to the giving of oral evidence by the appellant 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.”.

(3) In section 45(2) of that Act (powers exercisable by single judge), after paragraph (f) there is inserted—

- “(fa) to give a live link direction under section 24(2A);”.