

EXPLANATORY MEMORANDUM TO
THE CROWN COURT (RECORDING AND BROADCASTING) ORDER 2020
2020 No. 637

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of her Majesty.

2. Purpose of the instrument

- 2.1 This Order sets out the conditions under which visual and sound recording and broadcast of the sentencing remarks of specified judges of the Crown Court may take place.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The instrument does not have any minor or consequential effects outside England and Wales.
- 3.3 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.
- 3.4 The Department has reached this view because the instrument applies only in relation to the Crown Court (which is part of the Senior Courts of England and Wales), and the power under which it is made extends to England and Wales only.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State, Chris Philp MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Crown Court (Recording and Broadcasting) Order 2020 are compatible with the Convention Rights.”

6. Legislative Context

- 6.1 Section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981 prohibit visual and sound recording and broadcast of court proceedings.
- 6.2 Section 32 of the Crime and Courts Act 2013 provides that the Lord Chancellor, with the concurrence of the Lord Chief Justice, may make an order to disapply the statutory prohibitions if prescribed conditions are met.
- 6.3 This Order prescribes the conditions under which visual and sound recordings and broadcasts of sentencing remarks in the Crown Court will be permitted.

7. Policy background

What is being done and why?

- 7.1 This Order will allow the recording and broadcast of sentencing remarks made by specified judges in the Crown Court when sitting in open court. Such recording or live broadcast can only be done by persons who have been given specific permission by the Lord Chancellor. In addition, the recording or live broadcast in any specific case may only take place with the permission of the relevant judge. Only the judge sitting in the case will be filmed and normal reporting restrictions will continue to apply to protect victims or witnesses involved in the case.
- 7.2 The policy aim of court broadcasting is to increase transparency in the justice system and public engagement with, and understanding of, what happens in courts. The UK Supreme Court has allowed broadcasting of its proceedings since it was established in 2009 and television broadcasting of proceedings in the Court of Appeal in specified circumstances has been possible since 2013 under the Court of Appeal (Recording and Broadcasting) Order 2013 (S.I. 2013/2788), made under the power in section 32 of the Crime and Courts Act 2013 (c. 22).
- 7.3 During the Parliamentary debates on the earlier legislation, concerns were expressed about maintaining the dignity of the trial process, while supporting victims and witnesses, if broadcasting of any proceedings in the Crown Court were to be permitted. The Lord Chancellor and Lord Chief Justice agreed to restrict filming in the Crown Court to sentencing remarks made by the judge in open court only, to maintain the integrity of the trial process since the outcome of the cases will have already been established. The filming of others in court, especially victims and witnesses, is not permitted (article 5 of the Order restricts filming to the judge when making sentencing remarks in open court).
- 7.4 The Crown Court (Recording) Order 2016 (S.I. 2016/612) allowed test recordings of judges' sentencing remarks to be carried out at eight Crown Court centres. During the debates on that Order, support was expressed for an extension to court broadcasting if it led to increased public understanding of the court system and greater transparency of court judgements. A not for broadcast test ran between July 2016 and February 2017 to enable assessment of the practical and technical challenges of filming in the Crown Court.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 In England and Wales none is required.

10. Consultation outcome

10.1 The (then) Department of Constitutional Affairs consulted on allowing cameras in court in 2005. The overall response was mixed. While there was no strong support for filming or broadcasting overall, the majority of respondents thought that judges' decisions and sentencing remarks should be allowed, and that broadcasting would educate the public about what happens in court. The current proposals support the results of that consultation and the lessons learned from broadcasting in the Court of Appeal where cases have been broadcast successfully since 2013, and from the not for broadcast test of filming in the Crown Court referred to above.

11. Guidance

11.1 An operational protocol has been developed for staff and the judiciary. All court staff and judges will receive training and new supporting guidance before filming and broadcasting commences in the Crown Court.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as no significant impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The effect of the changes made by this Order will be monitored and reviewed as part of an associated contract with broadcasters who will undertake filming. Use of the new filming and broadcasting powers will be monitored every month for the first year and then quarterly thereafter. The operation of the contract will be reviewed at the end of the first year and then every three years.

15. Contact

15.1 Julie Clouder at the Ministry of Justice, Criminal Courts Policy, Telephone: 07795 497127 or email: julie.clouder@justice.gov.uk can be contacted with any queries regarding this instrument.

15.2 Matthew Gould, Deputy Director of Criminal Courts and Criminal Law Policy at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Philp MP, the Parliamentary Under-Secretary of State for Justice can confirm that this Explanatory Memorandum meets the required standard.