



Department of
Justice

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**THE USE OF LIVE LINKS FOR POLICE DETENTION/INTERVIEWS - A
CONSULTATION**

SUMMARY OF RESPONSES

JUNE 2020

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1. INTRODUCTION

1.1. This document provides a summary of responses to the targeted consultation carried out between 20 April and 1 June 2020 on proposals for the use of live links for police detention/interviews. This introduction sets out a high level indication of some of the key issues identified in the consultation responses. Fuller detail on responses to each of the 4 consultation questions can be accessed in Section 2 of the report.

1.2. This was a targeted consultation with emails issued to 54 stakeholder organisations. Provision was made for the consultation to be made available in alternative formats but no requests of this nature were received.

1.3. The proposals were subject to an initial Equality Screening which, following feedback from the Equality Commission Northern Ireland (ECNI), concluded that a full Equality Impact Assessment was not required. Whilst the proposals will apply equally to all individuals who are detained in custody, a number of groups were identified as being minimally impacted by the proposals and mitigating actions were included in the proposals.

1.4. The Department also undertook a Legal Aid Impact Screening which, following feedback from the Legal Services Agency, concluded that the proposals would cause minimal impact in this area.

1.5. The Department received substantive responses from 10 organisations (in alphabetical order):

Consultation Respondents (in alphabetical order)
Campbell & Co Solicitors
Children's Law Centre (CLC)
Include Youth
Law Society Northern Ireland (LSNI)
MindWise
Northern Ireland Human Rights Commission (NIHRC)
Northern Ireland Policing Board (NIPB)
Peter Dornan & Co Solicitors
Police Federation NI (PFNI)
Superintendents' Association Northern Ireland (SANI)

Policy Background

1.6. Delivering an effective justice system is a key priority for the Department. The use of technology is important in that work and the Department is keen to facilitate the use of live links in as wide a range of circumstances as is appropriate.

1.7. Live link services have already operated for a number of years in a range of court processes including in court for preliminary hearings; certain sentencing and appeal

hearings; for the giving of evidence by vulnerable witnesses, defendants and appellants; and between courts and hospitals in certain types of case. The prisons and courts regularly use live links for remand hearings.

1.8. The aim of the Department's proposals is to introduce live links into other areas of the justice system to provide more efficient services with less delay.

1.9. The consultation sought the views of key stakeholders and other interested parties regarding proposals to amend the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE). The proposed amendments would enable videoconferencing technology referred to as 'live links' to be used by the PSNI for a number of custody functions. These functions include the extension of detention by both the PSNI and the courts and police interviews with a suspect. The Department also proposed using this legislative opportunity to make some minor amendments within PACE to replace any references to 'video-conferencing' with 'live link'. This would ensure the continuity of terminology throughout.

1.10. PACE is the primary legislation that provides the framework and powers for the PSNI to combat crime. The legislation is supported by Codes of Practice (The Codes) A-H. There is a statutory requirement in Article 65 of PACE which requires the issue of Codes of Practice to set out in more detail the powers that the PSNI have, and the associated rights and safeguards for suspects and the public in Northern Ireland. Throughout this document we will refer to proposed changes to the Codes and it should be noted that any amendments to the Codes will be subject to a separate consultation as set out in Article 66 of PACE.

1.11. The consultation asked respondents to consider the use of live link technology for:

- reviews of police detention – update of terminology;
- extension of PACE detention by a superintendent;
- extension of PACE detention by the courts; and, □ interviews of a detained person.

Reviews of police detention – update of terminology

1.12. Article 41 of PACE states that a review of the continued detention of each person held in police custody in connection with the investigation of an offence shall be carried out periodically by a review officer.

1.13. Currently Article 41A of PACE permits a review of detention by an inspector to be carried out by means of a telephone conversation. Article 46A of PACE permits the use of video-conferencing facilities to be used if available, instead of a telephone conversation, but is subject to the introduction of regulations. It is proposed to update the terminology in the legislation to replace the term 'video-conferencing' with 'live

link'. The Department plans to introduce regulations that will facilitate the use of live links for inspector reviews of detention.

Summary of Views

1.14. There were no objections in relation to the proposal to upgrade the terminology in the legislation to replace the term 'video-conferencing' with 'live link', with only one organisation commenting on this proposal specifically, and in neutral terms.

Extension of PACE detention by a superintendent or above by live link

1.15. It was proposed that a superintendent could undertake a review of the extension of PACE detention via live link. This would allow reviews from across Northern Ireland to be considered by the superintendent, regardless of their location, without excessive travel. Operationally, reviews could be dealt with speedily, whilst managing competing demands, to create a more efficient police system. The amendments will ensure that the existing safeguards in place for face to face superintendent extensions will apply to live link reviews.

Summary of Views

1.16. The majority of respondents were supportive of the use of live links for the extension of PACE detention by a superintendent or above. Additional comments focussed on the need to ensure that the introduction of the proposals would not undermine the rights of the detainee and the need for appropriate safeguards, including legal representation. All of the respondents with the exception of SANI supported the safeguarding measures proposed for superintendent extensions of detention.

Extension of PACE detention by the courts by live link

1.17. It was proposed that magistrates' court proceedings relating to applications for an extension of detention could be heard via live link. The use of live link would allow a detainee to participate in the proceedings before the court via video link without the need for the detainee, their legal representation, or the officer to travel to the court in person, therefore making efficiencies on travel and escort costs. The amendments will ensure that the existing safeguards in place for face to face hearings will apply to live link hearings.

Summary of Views

1.18. Again, the majority of respondents were supportive of the use of live links for extension of PACE detention by the courts. Similar to those of superintendent

extension of detention, most additional comments focussed on ensuring that the rights of the detainee would not be undermined during the process. However, some respondents commented on a lack of trained staff and appropriate technology.

Police Interviews

1.19. It was proposed to amend Article 40 of PACE to enable the PSNI, if necessary, to carry out a police interview via live link. Occasionally, it may be necessary for a detained suspect to be interviewed by an officer who is at a station some distance away.

1.20. These amendments would ensure that compliance with PACE and the Codes is appropriately transferred when the interview is carried out using live link technology. The proposed amendments would ensure that the existing safeguards in the Codes applicable to the conduct and recording of 'face to face' interviews will apply to live link interviews.

Summary of Views

1.21. The proposal around police interviews via live link is one that raised the most commentary with nearly half of respondents objecting to its use. Comments focussed primarily on the ability of the detainee to understand the proceedings and participate effectively as well as the necessary safeguards to ensure that the vulnerabilities of children and young people, people with disabilities, people experiencing mental illhealth, older people, those who require an interpreter, along with other vulnerable groups are considered on a case by case basis.

General Comments

1.22. In addition to the comments made on the above individual live links proposals, there were a number of additional comments with concerns expressed more generally about the use of live links and, in particular, how they might operate where children and vulnerable people were concerned. A full summary of responses follows in section 2.

2. SUMMARY OF CONSULTATION RESPONSES

Comments in support

2.1. Generally, respondents were supportive of the overall aims of the policy, recognising the benefits in making the justice system less prone to delay, more efficient and effective; for example, the use of live links may result in the reduction in time waiting for a superintendent to attend in person. Some respondents suggested that the proposals may help to reduce delay, travel and waiting times.

Responses to individual consultation questions

2.2. The following information outlines the key points raised regarding each of the specific policy proposals on the use of live links. It should be noted that some of the issues raised may relate to more than one question/area - therefore, in order to ensure that we accurately reflect the issues raised, there may be some duplication in the content.

Police detention – updating terminology

2.3. There were no objections in relation to the proposal to upgrade the terminology in the legislation to replace the term ‘video-conferencing’ with ‘live link’, with only one organisation commenting on this proposal specifically, and in neutral terms.

The use of live link technology for extension of PACE detention

2.4. The majority of respondents agreed to the use of live links for the extension of PACE detention by a superintendent or above and recognised the proposals would result in a faster justice system.

2.5. All of the respondents with the exception of SANI supported the safeguarding measures proposed for superintendent extensions of detention.

2.6. SANI contended that the use of live link should be the default position and only in exceptional circumstances (and with the prior approval of the Superintendent) should the review be carried out in person. SANI asserted that the ‘in person’ stipulation is disproportionate and is an extremely inefficient use of senior officers’ time.

2.7. SANI also expressed concern about the introduction of the additional safeguards that focus on the custody officer authorising the use of live link. Their view asserts that the PACE review is, in and of itself, a safeguard to ensure that the detainee has had access to their rights, that representations can be made and that their continued detention is well considered and justified.

2.8. Whilst there were no other specific concerns raised, a number of respondents raised a general concern regarding the issue of consent, both in terms of who might provide consent and the ability of children and those with vulnerabilities to understand what they were consenting to. The consent of the detainee is one of the safeguards proposed before the use of live links is considered.

2.9. MindWise, who are a registered charity responsible for the provision of the Northern Ireland Appropriate Adult Scheme, asserted that consideration should be given to extending the role of the appropriate adult to include providing consent for the use of live links in the absence of a parent or guardian. MindWise provided examples of where the lack of a consent role has proven problematic in the past.

2.10. A secondary concern around consent was in relation the detainee's ability to understand what they were agreeing to when providing consent to the use of live links for extension of detention. These concerns are mitigated by additional safeguards being proposed for the statutory Codes of Practice, which will place a responsibility on the custody officer to ensure that regard is given to the detainee's age, ability to communicate effectively and any vulnerabilities they may have.

Department's Response

2.11. The Department acknowledges the response from SANI in relation to the default use of live links and their comments in relation to the additional safeguards. However, it has been overwhelmingly evident that the additional safeguards that will be introduced are welcomed by all other respondents and are a key element of ensuring that all aspects are considered on a case by case basis, before an instruction to use live link is issued. This includes age, vulnerability, mental vulnerability, disability and the detainee's ability to understand and communicate effectively during a live link interview. It is, therefore, our view that it would be impossible to progress the proposals without these additional safeguards in place.

2.12. The issue of consent is defined in statute under Article 53(1) of PACE and as such the MindWise proposal outlined in paragraph 2.10 cannot be considered for inclusion without further consultation to amend the wider primary legislation. The Department will consider this issue further when undertaking the next general review of PACE NI.

2.13. It is anticipated that the secondary issue of consent will be addressed by amendments to PACE Code C in line with England and Wales. Their purpose is to ensure that the detainee has had the advice of their legal representative on the use of live links and, for juveniles and the mentally vulnerable, that the appropriate adult is present and able to advise before the detainee provides consent.

The use of live link technology for extension of PACE detention by the courts

2.14. The majority of respondents agreed to the use of live links for the extension of PACE detention by the courts with similar comments to those of superintendent extensions regarding support for the safeguards to be introduced.

2.15. Some specific comments focussed on the continued right of the detainee to be advised by and consult in private with their legal representative. Additionally, one respondent commented that, in relation to court extensions, there should be an independent assessment by the magistrate of whether it is in the interest of justice for a person to attend a hearing via live link.

2.16. Whilst the issue of technology was raised a number of times in general comments, one respondent specifically raised the issue of the current use of live links in court and asserted that there was neither appropriate technology nor adequately trained PSNI/court staff.

Department's Response

2.17. The concerns raised in relation to safeguards will be addressed by the proposed amendments to the legislation and anticipated future amendments to PACE Code C. The current rights of the detainee to legal advice, as set out at section 6 of PACE Code C, will not be impacted by these proposals.

2.18. With regards to the concerns raised about technology, the Department is unaware of a systematic failing in the live link equipment. In relation to court hearings the Department and the Northern Ireland Courts and Tribunals Service maintain a full information technology service to address any difficulties or hitches that may occur. In any event, if a live link facility were to fail during the course of a hearing, statutory requirements are in place to ensure the speedy resumption of the case. Amendments to PACE Code C will also include safeguards to test and demonstrate the use of live links before it is used.

2.19. The PSNI has not yet introduced their new IT equipment and the Department will request that the Chief Constable arranges for rigorous user acceptance testing, including compatibility tests with the courts systems, before any services arising from the current proposals are launched.

2.20. The Department accepts the importance of confidentiality in live link services and already has the appropriate standard of service in place in courts. As the current proposals develop it will ensure that this level of service is continued.

The use of live link technology for police interviews with suspects

2.21. Almost half of respondents objected to the use of live links for police interviews. Comments focussed primarily on the ability of the detainee to understand the proceedings and participate effectively. Comments also covered concerns regarding the provision of necessary safeguards to ensure that the vulnerabilities of children and young people, disabled people, people experiencing mental ill-health, older people, those who require an interpreter, along with other vulnerable groups are considered on a case by case basis.

2.22. A number of respondents commented on the inability of interviewers to engage fully with the detainee, to build rapport and the possible misinterpretation of non-verbal cues and body language if the interviewer was not present with the detainee. Additionally, several respondents commented on possible issues around the presentation of exhibits/evidence via a live link interview.

2.23. Several respondents were expressly concerned about the impact of the proposals on children and young people, with others focussing on multiple other vulnerable groups.

2.24. Some of the responses appeared to indicate that the respondent assumed that the solicitor would be joining the interviews remotely. They claimed that extending the use of live links technology to solicitors would greatly impact the proceedings in a negative manner. Others that were supportive of the proposals for the use of live link for police interviews suggested that consideration must be given to allow other participants, such as solicitors, to partake in an interview and consultation process via live link technology.

Department's Response

2.25. The Department acknowledges the concerns raised in relation to this proposal. It is anticipated that the safeguards introduced as an amendment to the PACE Codes of Practice before commencement of the live links proposals, will go some way in alleviating many of these concerns.

2.26. Regarding the issue of solicitors joining the interview remotely, this was not within the scope of this consultation.

General Comments

2.27. In addition to the responses regarding specific proposals, a number of additional comments were made in relation to the overall use of live links, and specifically in terms of the use of live links in children's and young person's matters.

2.28. In terms of general concerns, these were around the use of live links for those who fall into vulnerable categories, including the young, the elderly, people with disabilities and the mentally vulnerable. Comments focussed on ensuring that the policies did not impinge upon, or weaken, a person's human rights. An additional concern was the ability of the individual to understand, participate fully and communicate effectively in the proceedings.

2.29. Caution was expressed by the children's and young people's groups that administrative ease or financial expediency must never take precedence over the rights of often vulnerable children or young people. Children's groups were also concerned about the potential impact the system could have on children and young people participation in proceedings claiming that children and young people in particular could see their interaction and understanding of proceedings hindered.

2.30. The Children's Law Centre cautioned that live links are fundamentally unsuitable for proceedings involving children or young people. Assertions were made around breaches of Article 6 of the ECHR and Articles 3.12 and 40 of the United Nations Conventions of the Rights of the Child (UNCRC).

Department's Response

2.31. Regarding concerns of all individuals, including children and young people, and their ability to understand, fully participate and effectively communicate during the use of live links, the Department has outlined as part of the consultation that the consent of the individual will be one of the main safeguards introduced.

2.32. The Department plans to make revisions to PACE Code C that will introduce provisions that ensure decisions taken regarding the use of live links will require the custody officer to give consideration to multiple factors which include, age, vulnerability, disability, mental vulnerability and the individuals ability to effectively communicate via live link. Additionally, the individual will have had to receive advice from their legal representative and provided consent to its use. The amendments to the Codes, which will be subject to consultation, should go some way to alleviating the concerns raised.

2.33. In terms of the comments around human rights and the assertions that proposals were breaching a number of those rights, live links are already long established as being European Convention on Human Rights (ECHR) compliant and are already operating in a number of areas including in courts and prisons as outlined in paragraph 1.8 of this document.

2.34. The Department recognises the importance of particular care where live links are used in children's cases, but does not agree that live link facilities are breaches of the Convention nor that they are intrinsically unsuitable to the process. Live links are well established in statute and in operation and, in terms of young people, already exist between, for example, the Juvenile Justice Centre and courts.

2.35. All of the current rights of the detainee under PACE will remain, including the right to legal advice either in person, in writing or by telephone. A live link would not, therefore, diminish the rights of the detainee or their ability to instruct their legal representative to make representations on their behalf.

2.36. The Department recognises the importance of informed consent and support, particularly where young people are concerned. It is for that reason that these safeguards, including consent and the presence of an appropriate adult, will be introduced into the Codes of Practice. This, in addition to the aspects that the custody officer must give consideration to, should ensure that the individual understands the use of live link and their part in the proceedings, and informed consent is provided.

Equality Screening

2.37. A number of organisations suggested that the Department's equality screening had not been sufficiently comprehensive or fully taken account of the impact on or views of the groups affected by this policy. Some respondents, felt that the Department should have undertaken a full Equality Impact Assessment (EQIA) on the policy.

Department's Response

2.38. The Department notes the comments made on its equality screening conclusions. However, following feedback from the Equality Commission Northern Ireland (ECNI) during the consultation process, the Department have now reviewed their equality screening assessment and have amended the screening conclusion to – "Screened out with Mitigating Actions". Whilst the proposals will apply equally to all individuals who are detained in custody, a number of groups were identified as being minimally impacted by the proposals - however, mitigating actions were included in the proposals.

Review

2.39. The Northern Ireland Policing Board (NIPB), Include Youth and the Northern Ireland Human Rights Commission have all recommended that a review should be completed following the introduction of the new provisions.

Department's Response

2.40. This is a reasonable request. In addition to the responsibility of Criminal Justice Inspection Northern Ireland to review custody processes, the Department will recommend that the Chief Constable initiates a review of the processes 12-18 months after introduction. The Department notes that the NIPB have suggested that the Custody Visitors scheme may be able to assist by adding an independent element to review. Additional feedback from MindWise could also be sought as they are working with young people and vulnerable adults in the custody environment.

3. CONCLUSION AND WAY FORWARD

3.1 Consultation responses were received from a broad range of organisations, from those within the policing family to those dealing with the rights of the vulnerable. The Department wishes to thank all respondents to the consultation for their invaluable input.

3.2 Respondents have generally welcomed the proposals while stressing that the rights, voice and participation of the detainee must be maintained at all times. The Department has noted the issues and complexities raised in the consultation.

3.3 The Department now proposes to prepare legislation for the proposals outlined in the consultation document for the use of live links as follows:

- Reviews of Police Detention – update of terminology;
- extension of PACE detention by a superintendent;
- extension of PACE detention by the courts; and,
- interviews of a detained person.

It is hoped that the new legislation will be included as part of the Justice (Miscellaneous Provisions) Bill that is currently being prepared by the Department.

3.4 The Minister of Justice will share this summary with the Justice Committee and seek Executive approval to the new legislation in due course.

3.5 If you require any further information in relation to the consultation or this document please contact:

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