

Audio and Video Links (Live Links) for Northern Ireland Court and Tribunal Hearings

SUMMARY OF CONSULTATION RESPONSES

The consultation ran from 29 July 2022 until 26 September 2022

March 2023



Department of
Justice

An Roinn Díl agus Cirt
Mánnystrie O tha Laa

Foreword

This consultation arose from the drive to establish effective and modern courts and tribunals, making the best use of resources and to improve access to justice for the people of Northern Ireland.

Increased use of technology for court and tribunal business not only forms part of the Department's plan but more recently the Lady Chief Justice, Dame Siobhan Keegan KC, in her opening of term address in September 2022 identified as a key priority moving forward with modernisation of the system.¹

The consultation paper provided background information and research, highlighting the widespread use of audio and video technology within our own jurisdiction as well as 160 or more countries across the world. Of key importance, the consultation offered a variety of ways for legislation to be tailored to suit the experience and needs of Northern Ireland.

I am grateful to those who took time to respond to the consultation and for your views. Responses were thoughtful and considered. There was almost unanimous support for retaining the facility of remote hearings on a wider basis where it was in the interests of justice. A number of helpful suggestions received are being taken into account in developing our thinking.

This document summarises the responses received, which will inform a range of proposals to be put to an incoming Minister of Justice for their consideration.

¹ The Judicial Modernisation Paper issued in autumn 2021 by the Lady Chief Justice established a shared view of the way forward across the inter-reliant areas of courts estate, service re-design, and digital transformation. It fed into the Vision 2030 project which is a shared commitment by the Northern Ireland Courts & Tribunals Service, the Department of Justice and the judiciary to deliver a modernised, efficient and effective courts and tribunals system. [Judicial Modernisation Paper September 2021.pdf \(judiciaryni.uk\)](#)

Until recently Stormont had no agreed budget due to the lack of an Executive. A Northern Ireland Budget for 2022/23 was put in place by Northern Ireland Secretary Chris Heaton-Harris on 25 November 2022. Given the challenging fiscal environment in which public services are operating, and a range of competing pressures, the pace at which desirable improvements to the technical infrastructure for courts and tribunals can be implemented will, of course, depend on the availability of resources and Executive priorities.

This report, together with a transcript of all responses received, is available on the Department of Justice website at: [Audio and Video Links Live Links Consultation Responses | Department of Justice \(justice-ni.gov.uk\)](#)

A handwritten signature in blue ink, appearing to read 'R. Pengelly', is enclosed within a thin blue rectangular border.

RICHARD PENGELLY CB
Permanent Secretary
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Introduction

1. The public consultation on the use of 'live links' in courts and tribunals in Northern Ireland ran from 29 July 2022 until 30 September 2022, a short extension being allowed for a number of organisations to submit responses. The consultation allowed the respondent to address the questions posed in full or in part depending on where that respondent's interest lay. A public engagement event was held on 16 September which was well attended both in person and online. In addition, a small number of one-to-one engagement meetings were also facilitated.
2. There were a small number of responses received which did not answer specific questions posed. Responses received from Northern Ireland Human Rights Commission and Information Commissioner's Office were more in an advisory capacity as opposed to addressing specific consultation questions. Their responses included commentary and offered recommendations the organisations hoped the Department would consider relevant and helpful on the development of the policy. The Department determined that where there was material within any response which could be interpreted as applying or responding to a specific question, the material was treated as a response to that question.
3. There was a small number of respondents who disagreed with increased use of live links. The questions answered were accompanied by comments such as "Live links should cease", "All parties should attend before the court in person" or "the courts should return to normal and staff return to working in the courts". Such responses where the specific question was not answered are included as a response opposing or disagreeing with the proposal set out in the question. One person accessed the consultation on-line but answered no questions, made no comment or inputted no details of identity so they were not classed as participating in the consultation.
4. The consultation sought views and provided an opportunity for respondents to comment on the adequacy of current practice and procedure. The following is an overview of the thirty-eight responses received and next steps. Annex A provides a summarised table of the responses. The former Minister was briefed on the responses received including views expressed by respondents. Officials are continuing to engage with operational stakeholders to explore some of the issues raised with a view to having a range of options available for consideration by a future Justice Minister.

Interests of justice

Question 1: The Department seeks your views on the proposal the judiciary should continue to decide whether a person's participation remotely in any court proceedings would be in the interests of justice. Which of the following best describes what you think about this?

- 34 respondents indicated they agreed with that proposal.
 - 3 respondents indicated they did not agree with that proposal.
 - 1 respondent did not answer this question.
5. There were 37 responses to this question. An overwhelming majority of respondents (89%) favoured the judiciary continuing to decide whether a person's participation remotely in any court proceedings would be in the interests of justice. A majority favoured retaining the test applied since March 2020 within our courts and tribunals. The responses could be construed as showing confidence in the judiciary to apply the 'interests of justice' test correctly.
6. Respondents in support stated:-
- "The presiding Judge has sufficient knowledge of the case and the nature of the evidence having heard representations from both prosecution and defence to be able to ascertain if the giving of evidence remotely is in the interest of justice."
 - "We appreciate that the interest of justice are complex and must be assessed on a case by case basis, and that judges are the most appropriate vehicle for this."
 - "While endorsing the ethos behind the Court Service's "Vision 2030" strategy that our legal system should adopt a "digital first" approach, it should still have the ability to facilitate a more traditional model to enable choice, openness, transparency, the right to a fair trial and access to justice for all court users."
 - "The court usually hear representations from the parties to proceedings before a decision is made, applying the interests of justice test. The Judge can then determine the matter based on all of the circumstances of the case to ensure that the remote facility is used in the appropriate circumstances."
7. Within the small number of respondents who did not agree with the proposed test their concerns included:-
- "remote hearings take too long";

- “totally impersonal for victims giving evidence especially if it is related to something personal or sensitive as there is no way of telling who is in the court room”; (this was not a view universally expressed by respondents who identified as a victim or as a victim advocate);
 - “whilst the high-level principles, focusing on justice, are the same for both criminal and civil proceedings, the detail of the regimes is very different.” This respondent believes the best approach would be to consider the regimes separately, as occurred in the Republic of Ireland, and put in place requirements tailored to each part of the justice system rather than adopting an overarching approach.
8. Some respondents made suggestions they considered would improve the experience for participants while some recorded their support on the use of live links from an environmental point of view such as “avoiding needless car journeys”. A few considered the guidance produced could be enhanced by including a trauma focused approach or highlighting as part of the interests of justice test consideration of the needs for victims of crime including their vulnerabilities. The latter already occurs when the courts consider the use of video recorded evidence and cross-examination remotely to enable the provision of ‘best evidence’ within the criminal courts.
 9. Some responses (approximately 12) raised the need for clearer guidance for participants on entering a court remotely. Mention was made of the need for very clear guidance for all persons entering a court remotely but most importantly for the non-legally qualified or knowledgeable. Some felt the guidance should not be restricted to what the court expects from those participating, including when not to speak, but tips on how to effectively engage or communicate with the court or a legal team. It was felt upfront reminders on the type of behaviour carrying the risk of committing an offence would be helpful in an emotionally charged situation.
 10. Concern was expressed by one respondent in regard to there being only one camera angle available in the courts. The respondent suggested there is a need for the defendant to be able to follow proceedings and that could be assisted if the camera angles allow the defendant not only to see the judge but the court generally, including anyone else who is present.
 11. Some respondents (14) linked their support for this test with their responses to Questions 2 and 8. Question 8 is addressed in detail later but concerns a statutory default presumption for in person hearings for contested final hearing of a case. The Department considers that Questions 1 and 2 are inextricably linked and so the proposed way forward is set out at paragraphs 19 to 24 below.
 12. Question 2 concerns whether there should also be a mention within the statutory test that the use of live links is not prejudicial to the fairness of the hearing. Just over twice as many respondents (52%) felt this fairness should be included within

legislation than those who considered it was unnecessary to include it as an additional requirement (24%) or those who were unsure or didn't answer (24%).

Fairness of proceedings

Question 2: The Department seeks your views on whether the statutory test for participating remotely should include that the court must be satisfied the use of live links is in the interests of justice and not prejudicial or contrary to the fairness of the proceedings. Which of the following statements below best describes what you think about this?

- 10 respondents did not consider the statutory test of interests of justice should be accompanied by this additional requirement.
 - 21 respondents considered the statutory test of interests of justice should be accompanied by this additional requirement.
 - 4 respondents indicated they were unsure or had no view.
 - 3 respondents did not answer the question.
13. There were 31 responses to this question which indicated a preference. A strong preference was demonstrated to including a reference to the use of live links not being prejudicial or contrary to the fairness of the proceedings.
14. Those who did not consider the statutory test should include this additional requirement stated:
- a. “There should be a presumption in favour of live links for those cases due to potential benefits for participants but the use should always be conditional on meeting Article 6 rights and obligations”;
 - b. “Unable to perceive how the use of live links (which are highly secure) would be prejudicial or contrary to the fairness of the proceedings”;
 - c. “it is not necessary to have an additional statutory requirement which may prove to be restrictive; the judicial discretion supported by rules and regulations should be sufficient”; and
 - d. “consider a more appropriate statutory test for civil cases should be consideration of whether or not it delivers upon the existing overriding objective within court rules which includes requiring dealing with a case ‘justly’ and ‘fairly’”.
15. Answers which supported the addition of this ‘fairness’ element to the current ‘interests of justice’ test mostly were accompanied by no additional comment other than one response which considered it was “likely to improve public confidence”. A small number commented generally on the importance that live links would not impact upon the fairness of the proceedings rather than why it was considered current legislative provisions such as section 6 of the Human Rights Act 1998 and

court rules or practice directions, set out in the consultation document, were insufficient.

16. The Department, in the consultation, set out multiple reasons for the view that there was nothing to be gained, in practical effect, by including a reference to ‘fairness’ as part of the statutory test. It would appear that message was partly successfully communicated. Some responses recorded that the interests of justice captures and incorporates a requirement not to act in a way that is prejudicial or unfair to either side and ‘fairness of proceedings’ is a component of the interests of justice and would naturally fall within the judge’s deliberations.
17. At least one respondent expressed concern that including ‘fairness of proceedings’ separately may in fact tip the balance unnaturally towards requiring the rights of defendants to take absolute primacy in the decision-making. The respondent considered this could erode the rights of victims and go beyond the already substantial rights of the accused that are enshrined within our legal system.
18. The Northern Ireland Human Rights Commission agreed any future provision for the use of live links should occur when the court or tribunal considers their use is ‘in the interests of justice’ but recommended it be accompanied by a requirement that in determining ‘the interests of justice’ the court or tribunal should pay ‘due regard to Article 6” of the European Convention on Human Rights (ECHR) and to relevant jurisprudence of the European Court of Human Rights (ECtHR).
19. One respondent who answered a number of questions, including these questions, indicated throughout her responses that a return to pre-covid use of live links was desired as well as in-person hearings. Other responses were critical of the ‘impersonal’ nature of the remote or hybrid hearing, that their use elongated the hearing and there is no way of telling who else is in the courtroom. Discussions are ongoing with operational colleagues to scope out the potential for an increased uniformity of approach and for participants to have a wider view of the court. In regard to those who express concern about not being able to identify all who are online for a hearing, the current practice in courts where the level of business permits is for the judiciary to ask those online to identify themselves at the outset of a hearing. It is, however, a fact that people in a physical courtroom such as a magistrate’s court would not be able “to know who is in the courtroom”. It is accepted they may or can observe those present.
20. We note that many of the factors those who responded wished to see specified in primary legislation (see Questions 3 & 12) are already set out within the guidance issued by the Lady Chief Justice in June 2022. This is accompanied by an existing statutory obligation upon judiciary to provide a “fair” hearing as well as dealing with matters “fairly and justly”. Equally the guidance provides a presumption which addresses concerns recorded by those supporting a statutory default presumption

to rule out a virtual hearing for oral evidence during a final or contested hearing (see Question 8).

21. The current (June 2022) guidance provides not only an indication as to the type of hearing or matters which may make a specific case or witness more suitable for that evidence or issue to be determined in person or remotely but highlights the aim of the guidance is “to assist in promoting consistency and predictability of approach to the question of remote attendance in courts”.

Specific Factors

Question 3: Which of the following statements below best describes what you think about the Department not immediately including within legislation factors or matters for a court to have regard to before determining whether the use of live links meets a statutory test like ‘the interests of justice’ or any alternative? Instead, any legislation would include a power to make court rules or regulations.

- 19 respondents agreed with this proposal.
 - 11 respondents did not agree with this proposal and wished any factors or matters to be in primary legislation.
 - 3 respondents were unsure or had no view
 - 5 respondents did not answer this question.
22. The Department proposed in the consultation Northern Ireland should adopt a different approach to that of England and Wales or the Republic of Ireland. In relation to a later question (Question14) which allowed respondents to select between the differing approaches only a small number selected a preference – mainly the approach taken in England and Wales. Further detail of responses received to Question 14 is set out later in this report. It is noteworthy that 87% of respondents opted to express no preference. A few desired to see an approach reflecting best practice or learning from all these jurisdictions.
23. While the Republic of Ireland adopted an approach for criminal cases, which specified multiple matters in the legislation upon which a court should be satisfied before directing the use of live links, a different approach was adopted for civil cases.² Little desire was identified within Northern Ireland to see a distinction made when determining the use of live links for a civil or criminal case.
24. The Department was upfront in the consultation that it was minded not to immediately legislate to specify factors or matters a court should have regard to or take account of in determining whether the use of live links was in the ‘interests of justice’. Instead, existing material available to both parties and judiciary which sets out factors or matters which should play a role in determining whether the use of live links is appropriate for a particular witness or case was highlighted including the commitment that it will be kept under review.
25. The Department considered this would facilitate the built in flexibility desired in any legislative provision so that it is future proofed as both technology and practice

² The approach adopted for civil cases was similar to that within the Northern Ireland provisions included within Schedule 27 of the Coronavirus Act 2020.

evolve. Reliance upon secondary legislation, such as court rules and/or regulations, would provide greater flexibility than primary legislation to react to any deficiencies or issues identified in practice. There is little evidence at this time to suggest that the current guidance and judicial approach being utilised in Northern Ireland is found wanting by most court users.

26. This question was not dissimilar to the subject matter of question 12. However, the latter question (along with question 13) was aimed at trying to gain a clearer picture of how many and what factors those responding to these questions consider should be included in primary legislation. The responses received to questions 12 and 13 are set out later in this report.
27. There was more than one response that expressed a concern about 'open justice'. At least one respondent connected that concern to the current guidance or practice directions in particular that the focus is primarily on media access as opposed to the general public or academics. Question 11 deals more fully with the responses received about open justice and live links.
28. Those who supported relying upon a secondary legislative power provided reasons such as:
 - The law is so fluid and the Courts should be allowed to determine whether live links are allowed rather than relying on the rigidity of the legislative process.
 - Standardisation through legislation creates security, but as we know it can be slow to change. There needs to be a balance between judicial jurisdiction and accountability.
 - Secondary legislation is appropriate for determining a checklist of matters to be considered if adopting a hybrid or fully remote mode of hearing.
 - Similar to consultations that have happened in 2022 re e-bundles, e-discovery checklist, the detail of matters to be considered could be "fleshed out" via secondary legislation and following real life experience of considerations drawn from practitioners.
29. Those who considered the Department should not rely on a power to make secondary legislation (29% approximately) at some date in the future if required and preferred factors to be within the primary legislation from the outset provided reasons such as:-
 - it would be more satisfactory even if the provision desired was already one in secondary legislation such as the overriding objective to act 'justly' and 'fairly'...as rules would be automatically updated should the overriding objective change...delivers certainty now and flexibility for the future.
 - a non-exhaustive list of factors in primary legislation would focus submissions of parties before the court ...ensure a more structured approach...promote greater clarity...and greater consistency in ...the decision making process.

30. Over 50% of the responses received to this question agreed with the Department. In summary, those respondents were satisfied that reliance on a power within primary legislation to make court rules or regulations to introduce specific factors or matters to which a court should have regard when determining whether the use of live links was in the interests of justice was adequate.
31. Approximately over two thirds as many respondents were unsure or did not answer Question 3 as those who opposed the view expressed by the Department. More responses reflected a confidence, perhaps by the material within the consultation, that irrespective of the approach taken in terms of the test to be applied the judiciary will determine the use of live links against their obligations under section 6 of the Human Rights Act 1998, the existing overriding objectives included in court and tribunal rules and the recent guidance issued by the Lady Chief Justice.
32. Only one respondent indicated a preference for legislating differently between the criminal and civil jurisdiction. The thrust of their proposal was that within the civil jurisdiction they preferred to put the parties in the driving seat. The judge would have a deciding role only where the parties could not agree.
33. The apparent objective of those who wished to see a court take account of specific factors or matters when determining whether the use of live links was appropriate is already reflected within the June 2022 guidance. Earlier practice directions issued by the senior judiciary include a number of overarching principles including requiring the judiciary to plan and conduct a remote hearing “in a manner designed to secure ...the right to a fair hearing”.
34. Setting out multiple factors in legislation could reduce judicial flexibility to determine how participants attend depending on the circumstances of that case and the needs of those participants.
35. Allowing flexibility to the judge to determine what is appropriate ‘in the interests of justice’ would reduce both judicial time engaged on hearing argument by lawyers about specific factors and prevent an additional ground of appeal arising from the determination made by the judge on the use of live links. The level of support for no immediate inclusion of a list of factors in primary legislation was 50% against 29%.
36. The majority of respondents agreed that the Department’s proposition that a power for the Department to make secondary legislation was preferable for achieving inbuilt flexibility. The Department will remain alert to any evidence that the option proposed is insufficient to meet the requirements for all users of the court or tribunal system.

LCJ guidance

Question 4: Should legislation include, as occurred in Scotland, England and Wales, an obligation that a court or tribunal should have regard to any guidance issued by the Lady Chief Justice? Which of the following best describes what you think about this?

- 27 respondents agreed legislation should include such an obligation.
 - 2 respondents did not agree legislation should include such an obligation.
 - 3 respondents were unsure or had no view.;
 - 6 respondents did not answer this question.
37. There were 32 responses who answered this question. Over 71% of those responding considered the legislation should include placing an obligation upon a court or tribunal to have regard to relevant guidance issued by the Lady Chief Justice.
38. There was overwhelming support within the responses received for the introduction of a statutory obligation in primary legislation. While 5% opposed the introduction of such an obligation, 24% approximately had no view, were unsure or chose not to answer. Many who indicated support for placing a statutory obligation commented it could assist with introducing a standard or consistency of approach to the use of remote and/or hybrid hearings as well as retaining flexibility for judicial discretion. A standardisation of approach can be an important element of delivering access to justice and not just a level of predictability and consistency.
39. There are many strong positive examples of the type of guidance that could be issued or already exists. Within the criminal courts Practice Direction 2/2019, the requirement to deal with a case 'justly' includes not only recognising the Article 6 ECHR rights of any party but also taking into account the gravity of the offence alleged, complexity of what is in issue as well as dealing with a case efficiently and expeditiously. In the civil sphere, dealing 'justly' and fairly will include ensuring equality of treatment between the parties, dealing in ways proportionate to the complexity and importance of the issues to the parties, while avoiding delay and saving expense.
40. At least one response identified they were in agreement with the legislative obligation in the context that it would form one item to be considered by the court in addition to core factors to be taken into account. Some highlighted the fact that this legislative approach was adopted within the recent legislation for England and Wales – section 200 (5) of the Police, Crime, Sentencing and Courts Act 2022.

41. Those who did not agree appeared to support the issue of guidance but considered it unnecessary for there to be placed a legislative obligation upon the judiciary to have regard to it when determining the use of live links. Their responses were accompanied by comments such as:
- The legislation should be sufficiently clear so that it ought not to require guidance from the Lady Chief Justice.
 - Parties are already obligated by professional rules to have regard to guidance of the Lady Chief Justice.
 - Guidance is just that, it is so fluid and the Courts should be allowed to determine whether live links are allowed rather than relying on the rigidity of the legislative process.
42. While recognising that certain matters were outside the scope of this consultation, one response indicated a desire to see a review of IT issues as well as setting out a detailed description of areas where it considered additional guidance would be beneficial. This included a variety of options put forward such as on the handling of sensitive documents or materials relevant to parties or issues before the court. Another response wished to see hard copies of relevant guidance being provided to litigants in person as a matter of course rather than “obligations” or procedural information for court users being advised or signposted as available online. These administrative or practical issues have been communicated to relevant operational colleagues.
43. The current test accompanied by the guidance was described by a number of those responding as effective, flexible and improving efficiency for certain hearings as well as court users. Practitioners’ responses indicate a belief a ‘one size fits all’ approach is not suitable for the diverse range of subject matter and participants often involved in cases before the courts.

Juries

Question 5: The Department is not convinced that allowing jury members to participate remotely in a trial is appropriate for Northern Ireland at this time. The Department considered the outworking of the mock jury pilot project operated in England and the evaluation of that pilot. The Department's view is that any such change more appropriately lies within a wider review of jury arrangements in Northern Ireland. The Department, therefore, proposes that all members of juries should continue to be required to attend court in person. Which of the following best describes what you think about this?

- 25 respondents agreed with this proposal.
 - 1 respondent did not agree with this proposal.
 - 7 respondents were unsure or had no view.
 - 5 respondents did not answer this question.
44. The Department set out in the consultation the reasons it was not convinced that allowing jury members to participate remotely is appropriate and preferred to await both any assessment of the remote jury trials that occurred in Scotland as well as a wider review of jury arrangements in this jurisdiction.
45. Twenty five out of the thirty three who answered this question were in agreement with the Department's preferred way forward.
46. Those who provided comments referred to the serious and responsible task undertaken by jurors, the importance of technical impediments not impacting on progression of a trial or the ability of the jury to follow and hear the proceedings. At least one mentioned the need to ensure insulation of jurors from unlawful or unwarranted interference and that changes made to the court estate ensures protection for jury members. One response highlighted research undertaken by their organisation which raised for them the concern that use of live links might create too casual an environment for jurors and exacerbate conditions which may lead to inattention.
47. There was only one respondent who disagreed with the proposal but they did not provide any additional information in regard to that choice. Over 65% of respondents were in agreement to postpone any decision on remote participation of jurors at this time.

48. Many respondents indicated they agreed with the Department's underlying rationale that any change should be evidence based. The recent development of using live links for jury service in Scotland has not produced any objective evaluation. Indications are that juries will shortly return in person to Scottish courts, as Scottish Courts & Tribunals Service (SCTS) begins to decommission the majority of its remote jury centres.
49. The SCTS commissioned an independent Court User Satisfaction Survey³ for jury trial cases only. The results of this remote jury aggregate survey tend to reflect the views and experiences of the jurors. The results were generally positive across all groups, albeit that jurors were perhaps most satisfied, followed by crown professionals, and then defence professionals. The relevant England and Wales legislation is not yet commenced operationally.
50. The support for postponing any decision or wider discussion on remote siting of jurors selected to participate in a jury trial and relying on the use of live links was 66% versus 3%.
51. Over a third of responses were either unsure, gave no view or didn't answer this question. A few respondents indicated they were not opposed to remote jurors at some time once further evidence or evaluation of such practice elsewhere had occurred.

³ [court-user-satisfaction-survey-2021-phase-1-results-final-report.pdf \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk/court-user-satisfaction-survey-2021-phase-1-results-final-report.pdf)

Appeals

Question 6: The Department, having reviewed the various legislative provisions recently passed for England and Wales as well as the Republic of Ireland, considers there should be no presumption of exclusion from the use of live links for an appeal hearing. Which of the following best describes what you think about this?

- 28 respondents agreed with the Department's position.
- 3 respondents did not agree with the Department's position.
- 3 respondents were unsure or did not have a view.
- 4 respondents did not answer this question.

52. This question is interrelated with Question 7 as appeal courts can at times consider complex issues but at other times, in particular on the criminal or civil side, the appeal court is simply considering an appeal against conviction and/or the sentence imposed or the level of award made by a lower court.

Question 7: The Department considers that all courts, including appeal courts can be an appropriate forum for the court to determine complex matters of law, via live links, subject to judicial discretion. Which of the following best describes what you think about this?

- 27 respondents agreed with the Department's position.
- 4 respondents did not agree with the Department's position.
- 3 respondents were unsure or had no view
- 4 respondents did not answer this question.

53. The question was posed that there should be no exclusion of the use of live links either for appeal hearings or complex matters of law. Substantial majorities agreed live links should be used for complex matters of law (71% v 11%) and by appeal courts (74% v 8%) provided the statutory test is met.

54. The consultation had sought to assess the depth of concerns or belief about the use of live links for complex matters of law or by appeal courts as both repeatedly appeared in various research as potential areas of concern. The overwhelming majority of responses were in agreement that hearings using live links are capable

of dealing with complex matters of law subject to judicial discretion. Many respondents did not provide additional comments to supplement their response.

55. Those who agreed that appeal courts should use live links for hearings provided the statutory test is satisfied stated:
- in the case of an appeal by way of complete re-hearing, there should be an opportunity to apply for the same mode of hearing...the same opportunity above as below would need to be facilitated i.e. attendance of experts remotely etc.
 - The same caveats will apply to appeal ...ensuring that participation is effective.
 - With a focus on legal argument and with no lay participation, our experience is that appeal hearings are often suitable for remote hearing. There should be no presumption of exclusion subject to the decision meeting the statutory test.
56. Of the three respondents who did not agree that appeal courts should use live links for hearings provided the statutory test is satisfied, no substantive reason or comment was provided to support that position.
57. Those who agreed all courts, including appeal courts, can be an appropriate forum for the court to determine complex matters of law via live links, subject to judicial discretion, stated:
- Appeal hearings have been conducted via live links without major issues. Live links for appeals of sentence in criminal matters can result in time and cost savings due to avoiding having to await the arrival of the defendant from prison.
 - Logical that appeals be included for remote provision and may be beneficial for them to be conducted remotely or in a hybrid fashion as this could facilitate increased familiarity with such a processes among professionals. It may help embed a hybrid approach as standard more swiftly.
 - Observance of the interests of justice and fairness also apply to appeal hearings as well as the adoption of a consistent approach.
58. The small number who did not agree that all courts, including appeal courts can be an appropriate forum for the court to determine complex matters of law, via live links, subject to judicial discretion expressed concerns about “cutting corners” for the highest court in Northern Ireland or adding no additional value to appeal court proceedings. One advocacy group for victims of domestic violence stated they opposed the wider use of live links beyond vulnerable witnesses as it “could only

be for the benefit of the judiciary as a tool of convenience rather than of benefit to those engaged with the courts or justice system”.

59. The view held by that advocacy group was not mirrored in other responses received from those who had an interest in advocating for victims of crime. At least one response expressed reservation in taking a view as they preferred to see more research and evaluation. They recorded that existing research which has not been properly tested suggests that matters of law rather than exploration of facts are more suited to online proceedings. This is reported as being due to the capacity of lawyers to manage the additional demands compared to the emotion felt by litigants attached to the contestation of facts.
60. At least one respondent made the point there is no exclusion in recent statutes passed for England and Wales or Scotland of the use of live links for appellate courts or complex cases. The Police, Crime, Sentencing and Courts Act 2022⁴ includes the Court of Appeal within ‘eligible’ court proceedings for the use of live links.
61. The recent Coronavirus (Recovery and Reform) (Scotland) Act 2022 provided a power to the Lord General Justice to issue determinations which could make a generic suspension of the requirement to attend court for identified courts, proceedings or types of hearings or for specific localities.
62. The first determination issued identified remote hearings would be the default, subject to judicial override case by case, for persons detained (either imprisoned or otherwise lawfully detained) participating in a substantive appeal hearing in the High Court of Justiciary; a person detained (either imprisoned or otherwise lawfully detained) participating in an appeal on sentence in the High Court of Justiciary; or a person participating in a procedural hearing relating to appeal proceedings in the High Court of Justiciary.
63. The June 2022 guidance issued by the Lady Chief Justice identifies complex cases or those where “quantum”⁵ is an issue as more likely to be suited to in person attendance. The same guidance indicates cases where the proceedings/parts of proceedings are mainly or fully by way of legal submissions are likely to be more suitable for virtual attendance or hearings. Appeals on the basis that a point of law is at issue, either because the lower court did not properly consider it or apply it to the facts, will invariably be conducted by legal submission and argument before the appellate judiciary.

⁴ Section 200 (3)

⁵ Quantum is the legal term to indicate the level of compensation in financial terms due or awarded in a particular civil action.

Default statutory presumption

Question 8: The Department recognises that the introduction of a default statutory presumption to rule out a virtual hearing for oral evidence during a final or contested hearing (whether criminal, civil including public or private law or within the remit of a statutory tribunal) might satisfy those who hold reservations:-

- about live links and the “effective” testing of evidence,
- maintaining control of the court to ensure no undue interference with the evidence of a remote witness, and
- minimising any risk to the solemnity or integrity of the court process.

Which of the following best describes what you think about this?

- 18 respondents agreed with a default statutory presumption.
 - 13 respondents did not agree with a default statutory presumption.
 - 2 respondents were unsure or had no view.
 - 5 respondents did not answer this question.
64. Question 8 is interlinked with Question 9. Accordingly, the Department’s future approach will be informed by responses received for both questions.
65. There was a slightly higher percentage (13%) of responses that favoured the introduction of a default statutory presumption as those who opposed its introduction (47% v 34%). However, every victim representative group as well as advocates for victims or vulnerable adults who responded to this consultation opposed the introduction of such a presumption.
66. The vast majority answering Question 9 (71%) agreed that the judge hearing the case, if satisfied the statutory test/s is met, could deviate from any default statutory presumption
67. Those respondents who agreed there should be a default statutory presumption to exclude the use of live links for final hearings where contested oral evidence is required stated:-
- I feel that oral evidence (except some expert evidence) is best given and tested by cross examination when given in person in the presence of parties, the judge and legal representatives.
 - The research evidence to date suggests that contests of fact rather than law are less suited to online hearings.

- We note the provision adopted in Scotland...believe that a presumption in favour of an in-person hearing in cases where the hearing is determinative of the matter ensures the fairness of proceedings.
- We believe that it is in the interests of justice to have in-person hearings in this situation, not solely to ascertain the credibility of witnesses but to ensure that all witnesses are given an opportunity to provide evidence devoid of technological issues such as connection, lighting and sound issues.

68. Those respondents who opposed the introduction of a default statutory presumption to exclude the use of live links for final hearings where contested oral evidence is required stated:

- Live link evidence effectively happens in a controlled setting where Special Measures have been granted.
- If judges are steered by the statutory test reflecting the “overriding objective” and a requirement that guidance of the Lady Chief Justice is taken into account...do not believe a further statutory presumption is necessary.
- Default statutory provisions should be a guidance reviewed by all parties of the court, including the defendant and the prosecution. Oral evidence can be given by vulnerable parties and it is our organisation's position that the safety of the individual(s) providing testimony be given all opportunities to participate with their "best evidence".
- Any decision regarding the use of live link for victim testimony in particular should come down to the individual needs assessment of the victim considered by the Judge alongside the requirements and complexities of that case.
- A statutory presumption to exclude the use of live links has potential to fetter judicial discretion.
- Respondent takes the view that oral evidence of lay persons will usually be more appropriately heard in-person but it is subject to exceptions such as credit hire proceedings, or where parties agree the most suitable mode of trial subject to consent of the court and for the presentation of expert witness testimony.

69. A number of responses, both for and against the default statutory presumption, included similar comments such as:

- live links can create a delay in (a) communication with the court or between legal teams, (b) flagging an objection to the Judge regarding the evidence given or (c) interrupts the natural flow of question and answer.
- the importance of body language in assessing witness evidence as only the face can be seen and quality of image can vary, management of documents , CCTV, or other digital evidence.
- ensuring the integrity of the witnesses from undue influence or interruption.

70. The Department notes that all the victim representative groups who responded to the consultation were unanimous in their opposition to any weakening of current 'special measures'. Victim representative groups, including NSPCC and Mindwise, opposed the introduction of a statutory default presumption reporting the positive experience for young witnesses in particular. These responses favoured increased use of Remote Evidence Centres (RECs). The RECs were described as providing a safe location for the giving of evidence as well as reducing or removing the need for children to attend courts for the use of live links.

Question 9: The Department considers any default statutory presumption, if introduced, to protect the principle of judicial independence, must be capable of being deviated from when the judge is satisfied the statutory test is met. Which of the following best describes what you think about this?

- 27 respondents agreed with the Department's position.
 - 3 respondents did not agree with the Department's position.
 - 2 respondents were unsure or had no view
 - 6 respondents did not answer this question.
71. The vast majority (27) of responses received agreed that the judge hearing the case, if satisfied the statutory test is met, should be able to deviate from any default statutory presumption. While there was a narrow divergence of views in regard to the responses to Question 8, only 8% of those who favoured a default presumption objected to the presumption being accompanied by a judicial discretion to set it aside. An overwhelming 71% supported judicial discretion to set aside the presumption where the statutory test for the use of live links was satisfied.
72. Those who favoured the judicial override being available to any default statutory presumption set out at Question 8 commented along the following lines:
- The focus needs to be on maintaining the fairness of the proceedings.
 - Parties/ witnesses who wish to give evidence in person should be able to do so and there should be no provision within the statutory presumption which would prevent them doing so.
 - What power would a party have to appeal a judicial decision to override the default statutory presumption, either as a stand-alone point of appeal or as evidence of a more general appeal that includes prejudicial actions by the judge.
 - Would there be some form of evaluation of the use of this judicial power to ensure that the rule is being consistently and appropriately applied.
 - The discretion is necessary to protect judicial independence.

- Judicial guidelines, equivalent to those set out more broadly in the Equal treatment Bench Book, would be necessary for consistent and coherent application of the power.
- 73. Those who did not agree with the proposed judicial discretion queried the value or point of having a statutory presumption if it can be overridden by a judge. If there was to be discretion they indicated they considered the consent of the parties (or at least the defence) should be required.
- 74. Scotland recently changed their initial approach to the use of live links from that set out in the consultation to align the legislation better with how the courts were actually holding hearings in practice within Scotland. The June 2022 Lady Chief Justice guidance already identifies full or final proceedings as matters generally suited to predominantly physical attendance. The Scottish experience suggests that it is prudent to reflect in legislation what may already be occurring in practice.
- 75. The Police, Crime, Sentencing and Courts Act 2022 includes trials on indictment or any other trial in the Crown Court as eligible for the use of live links.
- 76. Experience with live links has highlighted certain types of evidence (maps, dash camera, CCTV or other exhibits requiring viewing) which can present technical challenge to live links. There has been useful learning as to the potential physical and person resources required for non-vulnerable witnesses or parties who may wish to avail of giving evidence remotely. It is anticipated that, for the immediate future, most criminal and civil contested matters are likely to continue with the majority of witnesses providing evidence in person.
- 77. There was an unanimity of opposition to the proposed statutory presumption by those who advocate or represent various victim groupings. A grouping of respondents, consisting of victim representative groups, the Victims of Crime Commissioner Designate, NSPCC and Mindwise all recorded a preference to see the victim's view being taken into account on whether live links should be used for their evidence 'in the interests of justice'.
- 78. Providing victims of all types of crime with a choice as to how their evidence is presented would not only recognise victims as participants in the process but could enhance how the system can meet their interests and needs.
- 79. The response of the Victims of Crime Commissioner Designate emphasised that all victims of crime should have increased participatory rights and that the time is right to build on the positive experience of the use of live links as a special measure for those deemed vulnerable or intimidated. There is clear evidence that further harm and re-victimisation can be caused to victims through engagement with the criminal justice system.

Existing legislative provision

Question 10: The Department does not wish to see any diminution of video link procedures in place, before the pandemic, which allows young and vulnerable witnesses to provide their “best evidence”. Accordingly it is proposed provision be made to prevent any default statutory presumption excluding the use of live links for final hearings from impacting upon legislative provisions in force before the Coronavirus Act 2020. Which of the following best describes what you think about this?

- 27 respondents agreed with the Department’s proposal.
 - 1 respondent did not agree with the Department’s proposal.
 - 5 respondents were unsure or had no view.
 - 5 respondents did not answer this question.
80. There were 28 responses which expressed a firm view upon this question. Only 3% disagreed with the departmental position and 26% either were unsure, had no view or did not answer the question.
81. There were few comments within the responses to this question. One respondent who was unsure of the answer to the question suggested that how existing provisions would align with a statutory default presumption should be treated as a separate issue for consultation.
82. The overwhelming majority of respondents, approximately 71%, agreed with the proposal that any legislative changes coming out of this consultation should ensure no reduction of access to any pre-existing legislative provisions, whether ‘special measures’ for the use of video link for expert witnesses or for those vulnerable by youth, incapacity, or intimidation of witnesses or defendants. An advocate for those who are mentally vulnerable highlighted that the release from in-person attendance is welcomed but requires there to be safe location procedures in place from wherever the evidence is transmitted.
83. The Department clearly stated in the consultation the aim was not to reduce the availability of pre-existing provisions on live links for witnesses or defendants, and in particular those aimed at allowing a victim of crime or a witness to provide their

'best evidence'⁶. Since March 2020, additional provisions⁷ were brought forward relating to victims of domestic violence. New court rules implementing that specific provision for special measures (including giving evidence by live link) for victims of domestic abuse giving evidence in family proceedings were in October 2022⁸ and came into operation on 28 November.

⁶ The Criminal Evidence (Northern Ireland) Order 1999, Part II provides a full range of grounds for special measures (including the giving of evidence remotely through video link and/pre-recording of evidence in chief amongst others), based on age, incapacity, and for vulnerable and intimidated witnesses. Part 2A of the Order provides live links for certain accused persons. Article 21C in Part2A makes clear that any provision made in Part 2A for accused persons is not to affect the 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 upon the operation of any rule of law relating to evidence in criminal proceedings.

⁷ The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, which came into effect in February 2022 provides, at section 37, that victims of domestic abuse will be automatically eligible for special measures on the grounds of fear or distress. The Act defines domestic abuse, and victims will be automatically eligible for special measures whenever it is alleged the behaviour of the accused falls within that definition.

⁸ The Statutory Rule numbers are 2022 No. 254/255.

Open justice

Question 11: The Department's view is that protection of the principle of Open Justice, provided any legislation includes similar provisions to those within Part 2 of Schedule 27 of the Coronavirus Act 2020, can be left to a blend of secondary legislation, judicial guidance or practice directions. Which of the following best describes what you think about this?

- 18 respondents agreed with the Department's position.
 - 6 respondents did not agree with the Department's position and considered provision to protect open justice should be in the primary legislation.
 - 8 respondents were unsure or had no view
 - 6 respondents did not answer this question.
84. Twenty four responses adopted a specific position on this question. A majority of those agreed with the Department's view. More than twice as many respondents (47% v 16%) agreed as disagreed that the provision of powers, similar to those within the Coronavirus Act 2020, allowing courts to make arrangements for broadcasting part or all of live links hearings to a designated location for public access, ruled out any immediate need for additional legislative provision to ensure compliance with the principle of open justice.
85. The title for Part 2 of Schedule 27 of the Coronavirus Act 2020 reads "Public Participation in Proceedings where Live Links used". The provisions allow the live-broadcasting of a court hearing subject to a judicial direction while at the same time creating an offence if someone makes an illicit recording or transmission of those proceedings.
86. Three times as many responses indicated a level of satisfaction to leave the matter of open justice to be accommodated under current arrangements as those who wished to see it mentioned specifically in primary legislation.
87. The spectrum of responses went from "if protection of open justice requires to be dealt with legislatively, it should be dealt with in primary legislation" to "Open justice is a legal principle that requires that judicial proceedings be conducted in a transparent manner and with the oversight of the people... but as matters stand, it is capable of being dealt with by the judiciary...No issue as long as the position is the same for in person versus virtual hearings".
88. There were a number of respondents who commented or signposted to the department material relevant to this issue. One highlighted research upon the media experience of reporting during Covid -19 for criminal courts and whether it

impacted on their role in supporting open justice. This research reported while most reporters believed that virtual courts afforded greater opportunities to access a wider range of hearings the loss of face-to face contact challenged their more traditional approach for follow up enquiries. There was no definitive conclusion that this had a negative impact upon the quality and depth of reporting but the possibility was flagged.

89. One response who identified as a journalist described on-line access to hearings as a “game changer”, transforming the way journalists work, and asked that online access be maintained rather than physical travel to court be required.
90. The observation was made that live links are currently somewhat obscured on the NI Courts and Tribunals Service website or within guides for legal practitioners and the media. The same participant also expressed the view the principle of open justice is important so live links for observing court business must be available to the public.
91. One response considered provision to protect open justice should be in primary legislation because there had been particular difficulties for academic researchers in accessing hearings to assess the impact of the move to online hearings. This response recorded the view that the potential for media observation in Northern Ireland appears to them much less robust than in England and Wales. Accordingly, they believed as the digital court is a new development it would be appropriate to be specific in reasserting the principle of open justice in primary legislation.
92. One response recognised that resolving the tension between open justice and the risks posed by any permanent remote system is complex and considered that the broad range of issues around broadcasting of trials, access to live streams, the risk of cyber abuse and the anonymity of spectators should be explored in detail and consulted upon before any definitive action is taken.
93. One response wished the Department to follow the England and Wales legislation⁹ which includes a legislative requirement not only that a court must consider any guidance given by the Lord Chief Justice but also all the circumstances of the case. The circumstances are, essentially, factors or matter the court is required to give consideration to, including “*what arrangements would or could be put in place for members of the public to see or hear the proceedings*” conducted in accordance with the judicial direction for the use of live links.
94. Another response favoured a lengthy list of factors in primary legislation (see also Questions 3 & 12) including open justice. However, it is noteworthy that in regard to question 12 the concession was made that such factors could be within secondary legislation.

⁹ Police, Crime, Sentencing and Courts Act 2022

95. The principle of open justice is not an absolute principle. There are existing restrictions such as for a child's case in the criminal justice system, most family and care proceedings and cases involving national security. There are likely to be other restrictions on public access such as the outworking of the recommendations made within the Review of the Law and Procedures in Serious Sexual Offences in Northern Ireland" conducted by the Right Honourable Sir John Gillen PC.
96. The live-broadcasting of a court hearing creates a number of issues regarding protection of fairness and integrity of justice, the presumption of innocence, and also the rights of the persons present in the courtroom. The common argument which arises around broadcasting from within a court is that it is suitable solely for limited parts of the hearing (such as opening statements, and the announcement of the court's verdict).
97. There are without doubt issues to be considered such as scope for continuing on-line access for the press, academic access to the courts and for on-line hearings, as well as the developmental needs of younger or less experienced members of the legal professions who often gain useful insight and learning from observing more experienced members of their profession in action.
98. The need for a consistent approach by the judiciary was also mentioned within a number of responses (9).

Legislating for factors

Question 12: The Department is aware the Crown Court Rules (Northern Ireland) 1979 do not include an overriding objective similar to that mentioned within the Magistrates' Court Criminal Case Protocol or County Court. However, the level of respondents to the 2021 engagement who support "the Coronavirus Act 2020 provisions or similar" being made permanent makes the preferred approach of the Department not to immediately legislate on factors or matters which a court/tribunal should have regard to when it determines whether the use of live link should occur. The Department prefers to make secondary legislation, if required, that could set out factors or matters which a court should have regard to when determining the use of live links (See Q 3). Which of the following best describes what you think about this?

- 17 respondents agreed with the Department's position.
- 6 respondents did not agree with the Department's position.
- 9 respondents were unsure or had no view.
- 6 respondents did not answer this question.

Question 13: If in Q 12 above you did not agree with the Department and consider specific factors or matters should be included in legislation as part of the court/tribunal determining a person's participation remotely, how many and what factors would you wish to see?

- 0 respondent preferred a short list.
- 5 respondents preferred a long list.
- 11 respondents were unsure or had no view
- 22 respondents did not answer this question.

99. Question 12, similar to Question 3, aimed to assess whether those responding were persuaded that irrespective of the test to be applied by the judiciary when determining the use of live links, courts and tribunals will determine their use against the obligations to provide the parties with a 'fair' hearing whether under section 6 of the Human Rights Act 1998 or guidance issued by the Lady Chief Justice.

100. Question 13 was aimed at those who disagreed with the Department's preference for a level of flexibility within any proposed legislation for live links. The Department posed the questions with a view to eliciting clarification on what factors or matters those responding wished to see specified in primary legislation and any rationale for that choice. It was considered this would be helpful when trying to maintain a balance between judicial independence and satisfying the public there are appropriate safeguards in place.
101. There was minimal commentary from those who wished to see factors in primary legislation. One response focused upon the criminal area of law and one focused on the civil area of law.
102. The majority, in fact nearly three times as many responses, agreed as disagreed on whether legislation needs to set out specific matters or factors for the court to consider when determining whether a person should participate remotely in any court proceedings. Most of those who agreed provided no additional comment upon this question.
103. A slightly less number of respondents who agreed with the expressed view of the Department were obtained for this question as for Question 3 (17 v 19). There was some inconsistency within those responses. Just over half of those who indicated for Question 3 they wished for factors to be included in primary legislation, either selected the alternative position or chose not to answer Question 12.
104. The level of support obtained at Questions 3 and 12 for no immediate inclusion within primary legislation of a list of factors for the court to be satisfied upon or have regard to in determining the 'interests of justice' test was 50% and 45% respectively. In contrast, those against the proposed 'wait and see' approach equated to 29% and 16% respectively.
105. Question 13 only came into play if the respondent disagreed with the Department's stated view on the issue posed within Question 12. Accordingly it is unsurprising there was a lower number of responses for the follow on question. However, half of those who thought factors should be placed in primary legislation chose not to identify what those factors should be in the free text box provided for that purpose.
106. Of the small number of responses (13%) who at Question 13 indicated they wanted a lengthy list of factors, only two enumerated factors. One response proposed replicating recent England and Wales legislation, while the other respondent indicated a desire for what could be termed micro elements relating to the circumstances of the specific case. These included matters such as having access to a suitable location from which to provide the evidence, technical competence of the relevant parties, the ability to be able to communicate in

confidence during the hearing. This respondent was in favour of legislating differently between the criminal and civil jurisdiction.

107. A third response favoring including in primary legislation factors a court should have regard to when determining the use of live links at question 3 indicated at question 12 those factors could be addressed in secondary legislation. The same response at Question 13 recorded that “the notion of a number of factors set out in a list is an arbitrary measure. There should be flexibility in protecting the system and enhancing the experience of its participants”.

Other jurisdictions

Question 14: Which of the following statements best describes your view when considering the differing approaches adopted for England and Wales, Republic of Ireland and Scotland. The statements offered a choice of indicating a preference for England and Wales approach, Republic of Ireland approach, Scotland's approach, or being unsure or having no view.

- 5 respondents preferred the England and Wales approach.
 - 0 respondents preferred the Republic of Ireland approach.
 - 0 respondents preferred Scotland's approach.
 - 22 respondents were unsure or had no view.
 - 11 respondents did not answer this question.
108. This question offered a quick preference indicator between the equivalent legislation on live links in the nearest jurisdictions. It was an opportunity for respondents to select between the differing approaches adopted by England and Wales, Scotland and the Republic of Ireland. The Department had proposed within the consultation a different approach to that of the Republic of Ireland by making no distinction in the legislative test for the use of live links in whatever court or jurisdiction the issue arose.
109. Over 87% of responses recorded no preference. A small percentage (13%) favoured the England and Wales approach. Most respondents were unsure, had no view or chose not to answer. This was in excess of three times as those who indicated a preference.
110. Most comments received concerned a preference for an approach tailored to Northern Ireland. Some of the comments aligned with choices made in the preceding questions. A number of respondents commented they were not in favour of a 'copy and paste' approach or following all the provisions of one jurisdiction. Some desired to see an approach reflecting best practice or learning from all these jurisdictions. Others wished to be provided with further information on how the legislation was operating in each of those jurisdictions before making a judgement.
111. Some responses indicated a preference to await further assessment of the impact of remote hearings in this jurisdiction.

Qualitative Analysis of Remote and Hybrid Hearings

112. In the summer of 2022 a qualitative analysis was conducted by the independent Northern Ireland Statistics & Research Agency on remote and hybrid hearings at the request of the Northern Ireland Courts and Tribunals Service. The research aims to gain an insight into key stakeholders' experiences to help inform, from an operational and technical perspective, how improvements could be made.
113. As the total number of participants was small, it is accepted the findings may not be completely representative of the overall views and opinions of the key sixteen organisations¹⁰ which participated.
114. By and large, participants reported an overall positive experience 'conducting business' using remote technology which might be summarised as "feedback suggests some civil cases worked quite well remotely whilst, many family cases benefitted from a more hybrid approach. Criminal cases of a more serious nature tended to work better in a face to face environment". Participants also strongly felt there was a need for a consistent approach and expressed a perception that individual judges have different preferences towards remote hearings.
115. Participants acknowledged there have been improvements in the technology since March 2022 but some felt the technology 'can be fallible at times' and 'not sophisticated'. A particular need for virtual break out rooms to help assist with communication and the quality of client care between parties and legal representatives was identified.
116. The report highlighted mixed views regarding which mode of hearing offered a greater degree of privacy as well as a desire to see exploration of the use of municipal buildings, such as libraries or hubs, where equipment and assistance could be available if required for accessing courts/tribunals remotely. This was proposed by participants as allowing retention of the benefits of reduced travelling and costs while reducing the potential impact from any differential in digital access or technological capacity. It also could offer a more secure location for participants.
117. In summary, similar themes to those identified through this consultation on live links arose including the need for development in areas such as technology, infrastructure and a focus on accessibility for all.

¹⁰ Key Stakeholders/Organisations included: Judiciary, The Police Service of Northern Ireland (PSNI), Probation Board for Northern Ireland (PBNI), Public Prosecution Service (PPS), Northern Ireland Prison Service (NIPS – PECCS), Victim Support, National Society for Prevention of Cruelty to Children (NSPCC), Litigant in Person Reference Group Representative, The Law Society of Northern Ireland, The BAR of Northern Ireland, Health Trusts, NI Guardian Ad Litem Agency (NIGALA), Directorate of Legal Services (DLS), Parole Commissioners and Representation from Tribunals and Appeals.

Next Steps

118. The consultation stated clearly the aim was not to reduce the availability of pre-existing provisions on live links for witnesses or defendants, in particular those aimed at allowing a victim of crime or a witness to provide their 'best evidence', which occurs generally by video link. Over 70% of respondents supported this approach. There was significant support for the continuation of the 'interests of justice' statutory test around the use of live links (34 out of 38 responses). This test replicates an element of the temporary provisions within the Coronavirus Act 2020.
119. If a similar test to that within the Coronavirus Act 2020 were to be introduced within an Assembly bill, to comply with international law such as the European Convention of Human Rights there would need to be the additional two requirements that exist within the current provisions. The first is the requirement that the court or tribunal hear the views of the parties and/or the particular witness on the matter of the use of live links for the hearing or part of a hearing.
120. The second requirement which would accompany the 'interests of justice' test is that the court satisfies itself that "the live link" enables the person giving evidence (P) "to see and hear all other persons participating in the proceedings who were not in the same location as P and equally to allow them to see and hear P" before determining the statutory test is met.
121. The view was also recorded, not only from those who responded or engaged with the consultation but also by participants to the recent research undertaken on behalf of the Northern Ireland Courts and Tribunals Service, that where possible individuals should be offered a 'choice' in how they access justice.
122. Within the responses received there was overwhelming support for the introduction of a statutory obligation upon courts, when determining the use of live links for a particular case or participant, to have regard to any guidance issued by the Lady Chief Justice. This was identified in some responses as having potential to improve consistency in judicial decisions on the use of live links, again a theme which arose in the research mentioned above.
123. Any future legislation to be introduced in the Northern Ireland Assembly will be determined by an incoming Minister. Clearly the timing or progression of any draft legislation within the Northern Ireland Assembly will be subject to the priorities established by an incoming Executive, Assembly Committee for Justice and Minister for Justice. In the interim, the Department continues to liaise with operational colleagues to explore potential legislative or administrative solutions to some of the issues arising out of the consultation responses and engagement events. Operational colleagues are aware of the request for clearer guidance for participants on entering a court remotely and continue to explore how the technology available can be improved to enhance the experience of the user and to evaluate options to build on or replace the existing Sightlink solution to provide enhanced functionality.

124. At the start of 2022 the Northern Ireland Courts and Tribunals (NICTS) published its Digital Strategy 2021-2026. Improving digital capability is a key strategic aim for that organisation. The strategy, which was developed with staff, judiciary and key stakeholders sets out the ambition and commitment within NICTS to embrace technological advances to deliver future courts and tribunals services, enabled by digital solutions and new ways of working as set out within NICTS's overarching Vision Statement.¹¹ This strategy is being taken forward by NICTS under their modernisation programme – known as Vision 2030.
125. A summary analysis of responses received is found at Annex A.

¹¹ Department of Justice – NICTS Digital Strategy 2021-2026 - Date published 17th January 2022

Summary Table of Analysis of Responses

Question No 1:

The Department seeks your views on the proposal the judiciary should continue to decide whether a person's participation remotely in any court proceedings would be in the interests of justice.

Which of the following best describes what you think about this?

Preferences	Responses
I agree	34
I do not agree	3
I am unsure or I have no view	0
Not Answered	1

Question No 2:

The Department seeks your views on whether the statutory test for participating remotely should include that the court must be satisfied the use of live links is in the interests of justice and not prejudicial or contrary to the fairness of the proceedings.

Which of the following statements below best describes what you think about this?

Preferences	Responses
I do not consider the statutory test should include this additional requirement.	10
I consider the statutory test should include this additional requirement that the use of live links should not be prejudicial to the fairness of the proceedings.	21
I am unsure or I have no view	4
Not Answered	3

Question No 3:

Which of the following statements below best describes what you think about the Department not immediately including within legislation factors or matters for a court to have regard to before determining whether the use of live links meets a statutory test like 'the interests of justice' or any alternative? Instead, any legislation would include a power to make court rules or regulations.

Preferences	Responses
I consider the Department should rely on a power to make court rules or regulations to address, at some future date, specific factors or matters a court should have regard to in determining the use of live links.	19
I consider the Department should not rely on a power to make court rules or regulations to address specific factors or matters a court should have regard to in determining the use of live links but should include these factors in an Act of the Northern Ireland Assembly.	11
I am unsure or I have no view	3
Not Answered	5

Question No 4:

The final question in this chapter concerns whether legislation includes, as occurred in Scotland, England and Wales, an obligation that a court or tribunal should have regard to any guidance issued by the Lady Chief Justice.

Which of the following best describes what you think about this?

Preferences	Responses
I agree legislation should include an obligation a court or tribunal have regard to relevant guidance issued by Lady Chief Justice	27
I do not agree legislation should include an obligation a court or tribunal have regard to relevant guidance issued by the Lady Chief Justice.	2
I am unsure or I have no view	3
Not Answered	6

Question No 5:

The Department is not convinced there is evidence that allowing jury members to participate remotely in a trial is appropriate for Northern Ireland at this time. The Department considered the outworking of the mock jury pilot project operated in England and the evaluation of that pilot. The Department's view is that any such change more appropriately lies within a wider review of jury arrangements in Northern Ireland. The Department, therefore, proposes that all members of juries should continue to be required to attend court in person.

Which of the following best describes what you think about this?

Preferences	Responses
I agree.	25
I do not agree.	1
I am unsure or I have no view.	7
Not Answered	5

Question No 6:

The Department, having reviewed the various legislative provisions recently passed for England and Wales as well as the Republic of Ireland, considers there should be no presumption of exclusion from the use of live links for an appeal hearing.

Which of the following best describes what you think about this?

Preferences	Responses
I agree that appeal courts should use live links for hearings provided the statutory test is satisfied.	28
I do not agree that appeal courts should use live links for hearings provided the statutory test is satisfied.	3
I am unsure or I have no view	3
Not Answered	4

Question No 7:

The Department considers that all courts, including appeal courts can be an appropriate forum for the court to determine complex matters of law, via live links, subject to judicial discretion.

Which of the following best describes what you think about this?

Preferences	Responses
I agree that hearings using live links are capable of dealing with complex matters of law subject to judicial discretion.	27
I do not agree that hearings using live links are capable of dealing with complex matters of law subject to judicial discretion.	4
I am unsure or I have no view	3
Not Answered	4

Question No 8:

The Department considers there will always be cases for which remote evidence may be less desirable either “in the interests of justice” or to ensure “fairness” to the parties before the court or tribunal. The Department’s firm view is the judicial member is best placed to determine, on a case-by-case basis, what should occur having being required to hear the views of the parties. However, the introduction of a default statutory presumption to rule out a virtual hearing for oral evidence during a final or contested hearing (whether criminal, civil including public or private law or within the remit of a statutory tribunal) might address the reservations expressed to date about live links.

Which of the following best describes what you think about this?

Preferences	Responses
I agree there should be a default statutory presumption to exclude the use of live links for final hearings where contested oral evidence is required.	18
I do not agree there should be a default statutory presumption to exclude the use of live links for final hearings where contested oral evidence is required.	13
I am unsure or I have no view	2
Not Answered	5

Question No 9:

The Department considers any default statutory presumption, if introduced, to protect the principle of judicial independence, must be capable of being deviated from when the judge is satisfied the statutory test is met.

Which of the following best describes what you think about this?

Preferences	Responses
I agree the judge hearing the case, if satisfied the statutory test/s is met, can deviate from any default statutory presumption.	27
I do not agree the judge hearing the case, if satisfied the statutory test/s is met, can deviate from any default statutory presumption.	3
I am unsure or I have no view.	2
Not Answered	6

Question No 10:

The Department does not wish to see any diminution of video link procedures in place, before the pandemic, which allows young and vulnerable witnesses to provide their “best evidence”. Accordingly it is proposed provision be made to prevent any default statutory presumption excluding the use of live links for final hearings from impacting upon legislative provisions in force before the Coronavirus Act 2020.

Which of the following best describes what you think about this?

Preferences	Responses
I agree pre-existing legislative provisions permitting the use of remote evidence before the Coronavirus Act 2020 should fall outside the impact of any default statutory presumption to exclude the use of live links for final hearings.	27
I do not agree pre-existing legislative provisions permitting the use of remote evidence before the Coronavirus Act 2020 should fall outside the impact of any default statutory presumption to exclude the use of live links for final hearings.	1
I am unsure or I have no view.	5
Not Answered	5

Question No 11:

The Department’s view is that protection of the principle of open justice, provided any legislation includes similar provisions to those within Part 2 of Schedule 27 of the Coronavirus Act 2020, can be left to a blend of secondary legislation, judicial guidance or practice directions.

Which of the following best describes what you think about this?

Preferences	Responses
I agree.	18
I do not agree. I think the primary legislation should include a reference to “open justice” arrangements.	6
I am unsure or I have no view	8
Not Answered	6

Question No 12:

The Department is aware the Crown Court Rules (Northern Ireland) 1979 do not include an overriding objective similar to that mentioned within the Magistrates' Court Criminal Case Protocol or County Court. However, the level of respondents to the 2021 engagement who support "the Coronavirus Act 2020 provisions or similar" being made permanent makes the preferred approach of the Department not to immediately legislate on factors or matters which a court/tribunal should have regard to when it determines whether the use of live links should occur. The Department prefers to make secondary legislation, if required, that could set out factors or matters which a court should have regard to when determining the use of live links (See Question No 3).

Which of the following best describes what you think about this?

Preferences	Responses
I agree that the legislation does not need to set out specific matters or factors the court should consider when determining whether a person should participate remotely in any court proceedings.	17
I consider specific matters or factors should be set out in legislation as part of the court determining whether a person should participate remotely in any court proceedings.	6
I am unsure or I have no view	9
Not Answered	6

Question No 13:

If in Question 12 above you did not agree with the Department and consider specific factors or matters should be included in legislation as part of the court/tribunal determining a person's participation remotely, how many and what factors would you wish to see?

Preferences	Responses
I wish to see a short list (no more than 4) specific matters or factors set out in legislation. Please add details of those matters or factors as additional comments below.	0
I wish to see a long list (5 or more) of specific matters or factors set out in legislation. Please add details of those matters or factors as additional comments below.	5
I am unsure.	11
Not Answered.	22

Question No 14:

Which of the following statements best describes your view when considering the differing approaches adopted for England and Wales, Republic of Ireland and Scotland.

Preferences	Responses
I prefer the approach adopted for England and Wales.	5
I prefer the approach adopted for the Republic of Ireland.	0
I prefer the approach adopted for Scotland.	0
I am unsure.	22
Not Answered	11