



# **Extending the use of live links in courts and tribunals in Northern Ireland – September 2023 and beyond**

**October 2023**

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## Introduction

1. The Department of Justice consulted on the future use of audio and video links (commonly referred to as ‘live links’) in courts and tribunals last year and will put proposals on the way forward to an incoming Minister of Justice. In the interim, provisions in the Coronavirus Act 2020 (the 2020 Act) currently enable any court or tribunal in this jurisdiction to allow any hearing if satisfied it is in the “interests of justice” to proceed by way of live links. ‘Live links’ is the commonly used term for the audio and video conferencing systems being operated by Northern Ireland Courts and Tribunals Service (NICTS) which are a key element of the modernisation of courts and tribunals here.

2. The Department of Justice conducted a recent engagement exercise to ascertain the need and support for the continued use of the power provided within the 2020 Act to extend the expiry date of the Act’s provisions on live links. Live links support the progression of court and tribunal business. The engagement occurred with the main users of the courts and tribunals in June to July 2023. This document provides a summary of the forty two responses received.

## Background

3. The use of technology in courts and tribunals in the form of participation by live link was not extensive before March 2020. The approach for these pre-pandemic legislative provisions, within the civil and criminal courts, was to identify proceedings which could be facilitated by live video link, or the receipt of evidence by video link, provided specified conditions were satisfied and the use of video link was approved by a relevant judge. Since the 2020 Act came into force in March 2020 live links have been more extensively used.

4. A wide range of participants have experience of their use and see them as critical to facilitating the wider participation in courts or statutory tribunal proceedings from locations outside the courtroom or tribunal room, in particular, for the criminal courts. The Department is satisfied this facilitation for conducting a range of court or tribunal business through digital means, whether fully or partly, is an essential part of the toolkit required to maintain positive case progression within the Northern Ireland Courts and Tribunals Service.

5. The former Minister of Justice obtained agreement from her Executive colleagues that the provisions included within Schedule 27 of the Coronavirus Act 2020 would be extended beyond 24 March 2022 to support and facilitate the continuation of the work of the judiciary in the courts and tribunals, in particular, to address any impact on the progression of cases through the courts as a result of the pandemic. It was recognised that there would be a need for a public consultation on future use of live links within the courts and tribunals. It was recognised that there would be a need for a public consultation on future use of live links within the courts and tribunals before there would be an opportunity to introduce primary legislation within the Assembly. In October 2021, it was anticipated, that at least three extensions of the Schedule 27 live links provisions may be required.

6. The public consultation ran from July to September 2022. The Department received thirty eight responses. Thirty four favoured the creation of live links provisions for Northern Ireland through an Assembly Bill with the judiciary continuing to be able to determine whether the use of live links was in the “interests of justice” for any particular case or participant. A report has been published on the responses received and is accessible at [Audio and Video links for Northern Ireland Court and Tribunal Hearings Live Links | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/tribunal-hearings-live-links).

7. In August 2022 the press reported the former Minister’s observation that the courts backlog caused by Covid-19 may not be cleared until 2028 without extra resources and the loss of access to remote disposal of court business is not reflected in that projection. The Department is in ongoing liaison with operational colleagues against the current background of budgetary restraint as there is full awareness any additional delay for the resolution of disputes or criminal trials has an adverse impact upon victims, witnesses and defendants as well as access to justice more generally.

8. In September 2022 the then Minister made a second Statutory Rule<sup>1</sup> extending these ‘live links’ provisions to March 2023. The Department considered and concluded there was a public interest in making a further statutory rule days before the September 2022 extension was due to expire. The alternative was not to make the extension order and return, in particular the criminal courts, to relying on in person hearings for most remands as well as any contested hearings, adjournments or pleas.

9. The modernisation of our courts and tribunals is a key priority for the Department of Justice. The temporary provisions provided for in Schedule 27 of the Coronavirus Act 2020 remain an important element of the delivery of public services as sustainably, effectively and efficiently as possible. Those provisions have allowed the digitalisation of the courts and tribunals to be speeded up and assimilated into current practice and procedure whilst safeguarding the key principles of our justice system for users.

10. In May 2023, the Lady Chief Justice issued new Guidance<sup>2</sup>, to replace earlier June 2022 Guidance relating to the use of live links by the courts. The May 2023 Guidance stresses that all should attend court in person unless a judge has decided they can attend remotely. There is general guidance indicating the type of hearings or court business where in person attendance is expected, in particular by counsel or solicitors. The guidance also includes an indication of matters which generally could be suitable for remote attendance

11. The Department in consultation with the Northern Ireland Courts and Tribunals Service decided that as the public consultation had been a year previous and, in the absence of an Executive, up to date user feedback would be beneficial. The engagement exercise was not a ‘consultation’ in the usual sense. Instead, the focus was on ascertaining the views of justice stakeholders and others identified as

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<sup>1</sup> The Coronavirus Act 2020 (Extension of Provisions Relating to Live Links for Courts and Tribunals) Order (Northern Ireland) 2022; 2022 No 227

<sup>2</sup> The new guidance was titled “Guidance on Physical (In-Person), Remote and Hybrid Attendance”.

the main users of the current provisions, on the need for additional six month extensions of these live links provisions or the perceived impact identified should no further extensions be made.

## The Engagement Process

12. The engagement exercise was conducted with the issue of an engagement letter setting out the legal context for the regulation making powers within the 2020 Act and the use made of them to date. It provided background information on the recovery strategy for the justice system, the Department's assessment of the role live links has in assisting that strategy, a summary of the Department's approach against the standards established under domestic and international legal obligations and some of the key feedback identified within responses received to the 2022 public consultation.

13. A similar engagement exercise conducted in November 2021, looked at further extending the provisions in September 2022 via secondary legislation, subject to the agreement of the Northern Ireland Assembly. Both that exercise and the wider public consultation in 2022, suggests there is wide support for live links provision to be maintained and relying upon the judiciary to determine whether the use of live links is in the interests of justice for any particular case or participant.

14. A number of stakeholders considered the use of live links has produced savings in time previously lost to travel or waiting around courts as well as an increased flexibility in the allocation of resources when personnel do not have to attend or accompany others to court.

15. Respondents were invited to indicate their opinion on a range of options which included having no view or being unsure but also supporting the extension of live links provisions beyond September 2023, extending live links further than March 2024 or only extending until March 2024. Respondents were also invited to record any additional comments or relevant observations based on their experience of live links to date.

16. A privacy notice accompanied the letter. It stated:-

"Any information that you provide will be treated in strict confidence and will not be used to identify you. Analysis of responses will be carried out on an anonymous basis under the guidelines of the GDPR.

Anonymised comments may be used in support of policy development and may be published."

17. The Department of Justice is grateful to all of those who took the time to respond.

## Overview of Responses and Comments

18. There was only one question posed in this engagement exercise. Respondents could select from a range of options mentioned previously at paragraph 15 and set out in detail at paragraph 21 below. Forty two responses were received from the persons, organisations or representative bodies invited to participate in this engagement exercise. The table below provides a summary of the returns received including those from professional or representative organisations who are all regular users of the courts or tribunals.

Consultees	Letter Issued	Responses received
Councils including request to pass to Planning Departments	11	2
Health and Social Care Trusts including Legal Directorate	3	3
Justice Stakeholders	11	8
Professional or Representative Bodies	6	26
Victims Representative Bodies	4	3

19. Forty one respondents indicated they considered the provisions for remote hearings should continue to be extended beyond September 2023. Most responses went on to make additional comment with over ten percent specifically recording that they disagreed with any suggestion there should be only one additional extension following the September 2023 Statutory Rule. Only one respondent indicated they were not in favour of any further extension of these live links provisions beyond September 2023. No additional comment or observation was provided to help inform the Department on the underpinning reasons for that choice. This was one out of four responses received that provided no additional comment or observations.

20. A single response was received after the deadline for responses. This response was not included in the overall analysis, though the respondent indicated they were unsure as to their preference from the options provided.

## Information Sought

21. The question posed in this engagement exercise included the range of options set out in the table below. Respondents were also offered a space to input additional comment or observations.

Which of the following best describes your view on the proposal to make further extensions of live links provisions? (indicate/tick as appropriate)	
I think the provisions for remote hearings should continue to be extended beyond September 2023.	41
I think the provisions for remote hearings should be extended beyond September 2023 but not beyond March 2024.	
I do not think the provisions for remote hearings should be extended beyond September 2023.	1
I am Unsure	
I have no view	

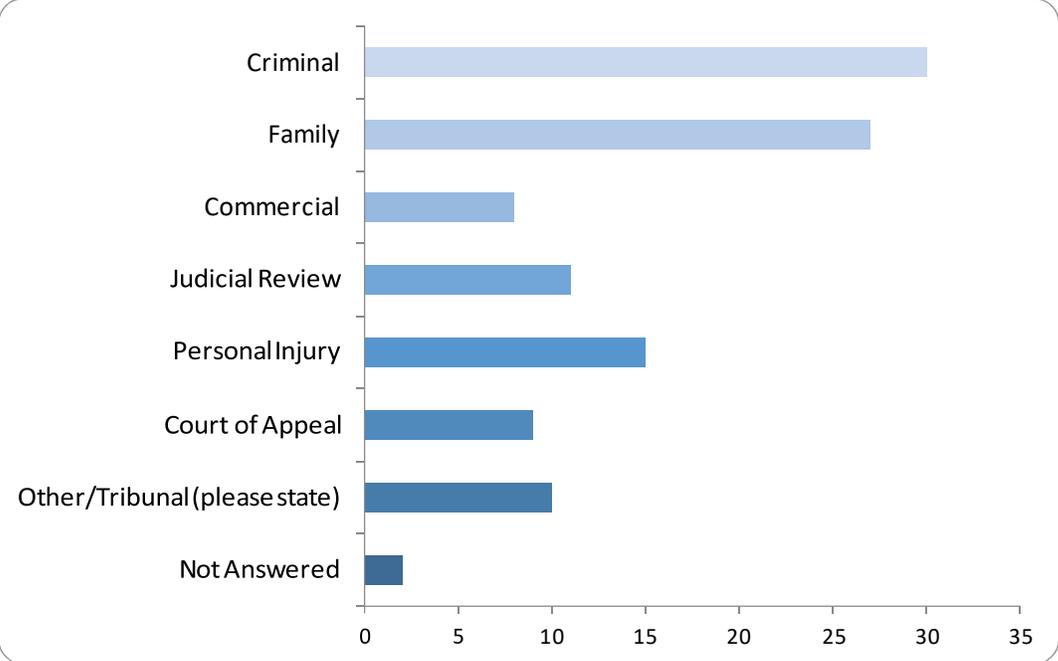
22. While no respondents selected the second option within the table above, five respondents who had already selected the first option as their preferred choice inputted against the second and third option in the above table the words “disagree” or “no”. Another five respondents indicated within their additional comments that they considered the provisions should be retained “indefinitely” or “permanently”.

23. Within the forty one responses favouring extensions beyond March 2024, thirty seven respondents provided a range of additional comment or observations in support of live links. Within those comments they detailed benefits they had obtained as well as identifying some perceived drawbacks for the justice system or the service user if the wider utilisation of live links as a facility for conducting some court business remotely is lost. Some common themes arising are set out below at paragraphs 30 to 45.

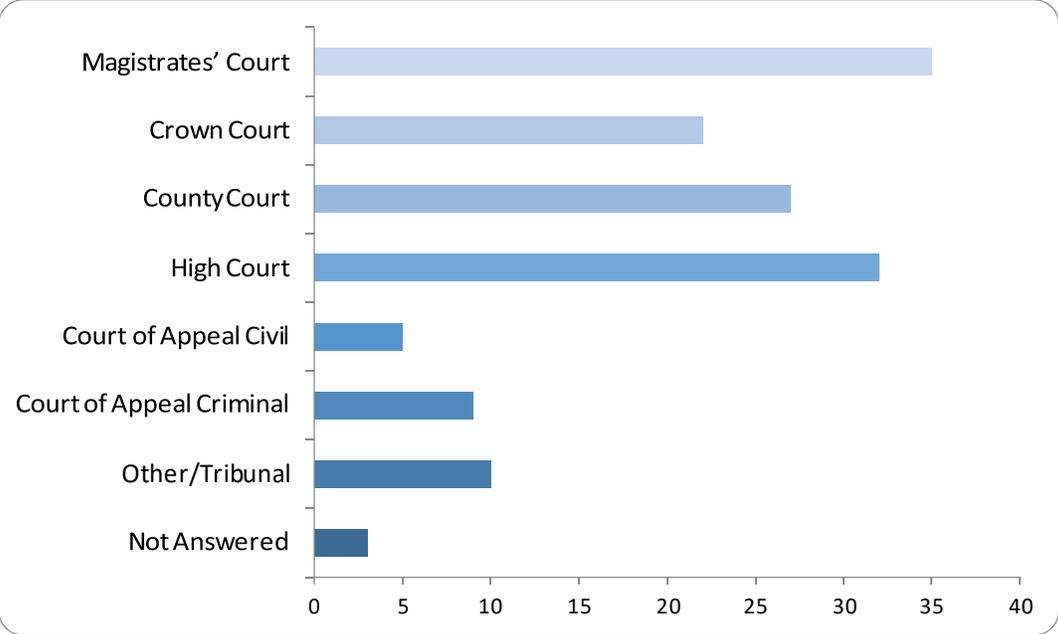
24. The majority, including in particular those specifically working with children or victims engaged in court proceedings, were positive about the wider use of live links. The detailed written responses received from a number of respondents raised issues relating to the Guidance issued in May 2023 by the Lady Chief Justice, mentioned at paragraph 11 above. The overall position taken from these responses might be summarised as the investment and progress made in the use of audio and video live links for reception of evidence or conduct of hearings remotely should not be wasted or a “backward” step taken away from modernisation.

25. The second task requested of respondents was to provide an indication from (a) a range of legal business areas and (b) the full range of courts, including all tiers

and tribunals, which best described for them or their organisation where they made use of live links. The responses received are reflected in the “bar charts” below.



Range of Business Areas



Range of Court Tiers or Tribunal

26. The majority of respondents who identified as legal practitioners indicated they were accessing a range of courts within the criminal and civil jurisdiction, as reflected in the “bar chart” above. Forty two percent of respondents indicated they used live links in multiple legal business areas while twelve percent indicated their

experience of live links was in a single area of law. Within that twelve percent, five percent of responses indicated that single area was criminal and five percent indicated family law.

## Summary of Responses and Comments

27. The majority of respondents saw a continuing role for live links, with some identifying their use as more suitable for certain types of hearings. Seven respondents expressed reservations on the suitability for a court to receive evidence remotely where it was a hearing which concluded the proceedings or included a final disposal of the matter before that court. In regard to hearings within the sphere of family law some expressed strong views against requiring clients or lawyers to attend in person where terms of settlement had been agreed between the parties.

28. Most respondents considered the remote hearing facilities worked well, with some highlighting specifically divorce or review hearings in regard to care or contact orders. The majority of responses, specifically those working with children or victims engaged in court proceedings, were positive about their experience and the overall views expressed are reflected in the following comment by one respondent *“to end remote hearings is a regressive step after 3 years of use and substantial investment by courts and offices. Additionally it is environmentally unfriendly to have practitioners back on the road when work can be done effectively from the office.”*

29. The Department while taking note of all comments received considered there was benefit to sharing themes identified as common to multiple responses. They have been grouped under a number of headings below.

### Benefits to and Requirements for victims of crime or witnesses generally

30. Those working with victims of crime expressed the firm belief that victims and witnesses of crime should have increased participatory rights including choosing how they prefer to give their evidence. Victims can have different views on how they wish to provide their evidence but the opinion was expressed that any facility which eases the anxiety and fears associated with attendance at a hearing to provide evidence of a traumatic experience should be used. It was mentioned that resolving the mode of attendance for a witness should occur in a timely fashion, but definitely before the day of hearing. This early resolution equally applies to identifying any connectivity requirements or support for older victims who may be less familiar with technology.

31. The positive experience of the use of live links as a “special measure” for vulnerable or intimidated witnesses should be expanded wider. The use of live links for children, whether as witnesses or young offenders, was considered a more positive experience than attending in-person the court or court building. Two observations made in different responses reflect this feedback - it *“enabled a more child centred approach as young witnesses avoid any risk of meeting a defendant”* and it *“reduces disruption to the education of young offenders while also allowing them access to support staff”*.

32. A number of organisations representing victims observed retaining the flexibility to use live links will continue to result in efficiencies for all stake holders. A number indicated that the preferred location for the remote delivery of evidence was in an appropriately resourced evidence centre.

### Benefits to people with disabilities or caring responsibilities

33. A number of respondents mentioned that Sightlink (the video conferencing system utilised within the courts) was a most welcome development for those in the profession with mobility issues.

34. Mention was made in multiple responses of the benefit live links brought for clients in more rural communities in particular those clients without easy access to private or public transport. Some responses highlighted how live links when used for appropriate hearings offered not only the efficiencies of cost and time highlighted in paragraph 36 below but also an opportunity for a better balance of work and care responsibilities.

35. One respondent observed that “*Sightlink has had the unintended benefit of allowing vulnerable women to proceed with their divorces when otherwise they would have been too scared to attend court*”. Another highlighted that asking clients who have child care responsibilities and no access to private vehicles to attend a court early morning (10.00am) places a burden to seek alternative care arrangements for the school run as well as the cost of transport. A number of responses highlighted the reduction in time and budgetary pressure on clients reliant on public transport to attend court in particular for those with mobility restrictions.

### Benefits when evidence or court business is provided remotely including cost savings to clients, savings to the public purse, the environment and the more efficient use of personnel resources

36. There was nearly a universal consensus that the ability to conduct court business remotely had been a positive development for professionals (legal/medical/others) and not only for witnesses. Most legal practices as well as organisations regularly engaging with courts or tribunals had reorganised how they approached attendance at or for court. They expressed the desire to retain benefits such as:-

- reduced costs of travel,
- more productive use of time and personnel by avoiding the unproductive waiting around in court buildings,
- being able to provide attention to client/case care or complete tasks essential to the delivery of a public service while waiting to be called remotely to give evidence,
- allowing to “more efficiently manage time and resources”, and
- “enabling the involvement of experts outside of the jurisdiction without incurring the cost of them physically attending court” in this jurisdiction.

37. Over twenty one responses identified by retaining the use of Sightlink the essential savings to be gained to their organisations, the public purse (including

costs to the legal aid budget) or to clients. Many practitioners highlighted how practices or professions had reorganised how they operated with one describing what was *“an organic shift”* in the area of family law to a *“more collaborative advocacy between practitioners”* where *“negotiations take place well in advance of reviews and presented to the judiciary for approval or execution”*.

38. Approximately fifteen percent of those who supported extending live links beyond March 2024 expressed support for the wider use of live links to be retained indefinitely. The majority of responses expressed views highlighting that live links were perceived as *“effective, efficient and saving costs”*.

39. A smaller percentage (seven) while supporting the extension of the current live links provisions wished for their use to be more restricted. Observations made included:- *“the majority of matters should be dealt with in person”*, *“brief matters are suitable for remote technology”*, they should be retained *“for those who genuinely cannot attend court in person”* or *“use of remote hearings should be limited to administrative matters”*.

40. Far more responses while recognising live links might not be suitable for all hearings also made statements about requiring attendance simply because that was the pre March 2020 situation an unwelcome approach with one describing it as *“a retrograde step”*.

41. Overall, the wider use of live links was described as a significant step in modernising the justice system, some expressed the opinion that modernisation was *“long overdue when compared to England and Wales”*. Some observed removing the wider use of live links *“will result in a significant detriment to a very public service”* and could place *“significant stress on general practices with potential closures given the rise in costs faced in the current climate”*.

42. Seven responses specifically mentioned the environmental benefits to be gained with observations such as:- *“eliminating a great deal of wasted travel time”*, *“preventing unnecessary travel reduces carbon footprint”*, placing additional expense to public purse due to travelling and waiting times is the wrong direction of travel given budgetary restraints, *“travel is not ecologically responsible”*, and being *“mindful”* that Northern Ireland has *“the worst air quality in the entirety of Europe”*.

43. The feedback in regard to tribunals is that live links is well suited for use in that business area, in particular, where the tribunal is non-adversarial and of a more inquisitorial nature.

### Desired improvements or requirements to reduce concerns of respondents

44. Most respondents appeared content that any of the initial technology difficulties had been largely resolved. A small number mentioned reinforcement was required for practitioners as to suitable etiquette, attire and choice of remote venue. When connectivity issues arise they can result in delaying the hearing but most responses gave no mention that such occasions were occurring with any frequency.

45. Some respondents included observations on the outworking or impact of the May 2023 Guidance issued by the Lady Chief Justice on “Physical (In-Person), Remote & Hybrid Attendance”. The Department will, as occurred with the public consultation concluded in 2022, continue in liaison with operational colleagues to explore potential legislative or administrative solutions to the issues raised within those responses.

### Summary of the benefits or drawbacks identified by the use of live links for the disposal of court or tribunal business

46. The benefits identified by respondents can be generally summarised as:-
- reducing the impact on people, especially those who are vulnerable, when going through what is already a stressful event,
  - attending court in this manner allows better management of time and resources for solicitor practices,
  - savings in time, cost and impact on the environment (reducing the carbon footprint) with the reduction in travelling to and from Court,
  - the benefit for children in giving evidence remotely in a child friendly and neutral environment,
  - reducing the risk of unplanned encounters with defendants or their relatives,
  - potential saving in costs of staff engaged in transportation, and
  - the saving in waiting around time for practitioners, police, expert witnesses as well as making it cost effective to use expert witnesses from outside this jurisdiction.

### Next steps

47. The Department will reflect on these responses recognising some of the comments received go beyond the responsibilities of the Department. The immediate need for a further extension of the Schedule 27 provisions to assist with addressing the backlog and throughput of cases was reflected in the further Statutory Rule<sup>3</sup> made on 21 September 2023 extending these live links provisions until and including 24 March 2024. The Department continues to screen and, where necessary, assess the policy against its duties under s 75 of the Northern Ireland Act 1998, under the Data Protection Act 2018 as well as the General Data Protection Regulation (GDPR) UK, and alongside the obligation to assess any Rural Impact.

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<sup>3</sup> SR. 2023 No. 138; The Coronavirus Act 2020 (Extension of Provisions Relating to Live Links for Courts and Tribunals) (No.2) Order (Northern Ireland) 2023