

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

Way Forward

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Department of
Justice

An Roinn Díl agus Cirt
Máinnstríe O tha Laa

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Foreword

This report sets out my Department's plans for new legislation to provide for the future use of live links in courts and tribunals in this jurisdiction.

It is part of our 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.

Positive outcomes can be achieved when all involved in the criminal justice system work together to the benefit of victims, witnesses, defendants and the overall administration of justice. Increased use of technology for court and tribunal business is one of the tools available to achieve this. Remote Evidence Centres can reduce the risk of re-traumatisation of vulnerable victims and witnesses as well as contribute to improved witness participation in the criminal justice process.

The consultation paper 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 and for the almost unanimous support for retaining the facility of remote hearings on a wider basis where it is in the interests of justice.

I hope the proposed way forward will receive a similar level of consensus as that recorded during the consultation.

Naomi Long MLA

Minister of Justice

Background

1. A public consultation on the use of 'live links'¹ 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 objective is to establish effective and modern courts and tribunals using available resources, including technology, to enhance and improve access to justice for the people of Northern Ireland.
2. The consultation paper offered a variety of ways for legislation to be tailored to suit the experience and needs of Northern Ireland. A total of thirty-eight responses were received to the consultation, in hard copy and via citizenspace. The almost unanimous support for retaining the facility of remote hearings through using 'live links', provided a judge considers that their use is in the interests of justice, was a welcome outcome.
3. A summary report of the responses was published in March 2023 and is available on the Department of Justice website at [Audio and Video Links Live Links Consultation Responses | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/consultation-responses-live-links)
4. The monitoring of developments on the use of live links within other jurisdictions has continued, most notably the change of approach adopted in Scotland within the Coronavirus (Recovery and Reform) (Scotland) Act 2022 as well as the outworking of the Scottish consultation on 'Improving Victims' Experiences of the Justice System'. This policy area links into the Department's work on improving the experience of the justice system for victims. The expansion of and positive feedback from those who have used or visited the Remote Evidence Centres is very welcome.
5. In the March 2023 report, we indicated engagement with operational stakeholders would continue with a view to having a range of options available for consideration by a future Justice Minister. The Minister has now considered and agreed a way forward as set out in this paper.
6. The proposed way forward may potentially have some additional resource implications but is mainly cost neutral or part of non-capital expenditure² as a continuing running cost. The majority of the capital investment has already occurred.

¹ Live Links is the generic term used to encompass audio only conferencing or video conferencing systems to allow some or all court or tribunal business to be conducted remotely.

² Approximately £6.1 million has been invested in courtroom technology and for physical changes to courtrooms to facilitate live links. There remains a continuing cost for Sightlink of approximately £120 thousand.

Questions 1,2 and 4: test for judiciary.

1. There was significant support for the continuation of an ‘interests of justice’ test. The proposed test has been arrived at by considering the answers to questions 1, 2 and 4 of the consultation.

Consultation questions

2. These three questions enquired whether the statutory test for deciding upon the use of live links by persons to attend remotely should be:-
 - ‘in the interests of justice’,
 - in the interests of justice and not prejudicial or contrary to the fairness of the proceedings, or
 - either or both of those proposed tests but accompanied by an obligation upon the judiciary to have regard to any guidance issued by the Lady Chief Justice.

Consultation responses and discussion

3. While thirty-eight responses were received, not all respondents provided a definitive answer to each question. Some respondents chose to indicate for specific questions they were unsure or had no view; some bypassed a question totally. A definitive answer was provided by thirty-seven respondents to the first question, which favoured the continuation of the existing statutory test applied since March 2020 following enactment of the Coronavirus Act 2020.
4. Questions 2 and 4 proposed possible additions to the ‘interests of justice’ test. Thirty-one and twenty-nine definitive responses were received to those questions respectively. While an overwhelming majority of respondents (twenty-one) favoured the judiciary continuing to decide whether a person’s participation remotely in any court proceedings would be in the interests of justice, approximately twelve raised the need for clearer guidance for participants on entering a court remotely and others linked their support for this test with their responses to questions 2 or 8.
5. Question 8 concerned introducing a statutory default presumption for in-person hearings for contested final hearings of a case. The responses received to that question are dealt alongside question 9, later in this report alongside the decision of the Minister on the introduction of a statutory presumption.
6. Twenty-one respondents favoured including the additional requirement that the use of live links not be prejudicial to the fairness of the hearing within the statutory test. The responses which supported the addition of this ‘fairness’ element were not accompanied by additional comment which provided insight into the

underpinning rationale for their response. The single response providing a comment was that it might be “likely to improve public confidence”.

7. The consultation material had set out multiple examples of current legal requirements that address the need for the use of live links not to prejudice or undermine the fairness of a particular hearing. The Department highlighted the existing obligation under section 6 of the Human Rights Act 1998 for the courts and tribunals to ensure a 'fair' hearing occurred.
8. A response³ received from the Northern Ireland Human Rights Commission (NIHRC) endorsed the proposal that any future provision for the use of live links should continue to rely upon the court or tribunal considering that use is 'in the interests of justice'. The NIHRC, while not seeking to include a requirement about 'fairness' or 'not being prejudicial' to the fairness of a hearing, recommended the 'interests of justice' test be accompanied by a requirement that in determining 'the interests of justice' the court or tribunal 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).
9. The NIHRC within their response indicated the recommendation was aimed at ensuring human rights principles are appropriately embedded in the decision-making framework. This recommendation was considered against the principle that new or additional legislation should occur only where there is a need to address an identified gap in the available legislative framework.
10. The view expressed in the consultation regarding whether there was a need to include a 'fairness' test equally applies to this recommendation. It is considered that the requirement to have 'due regard' to Article 6 ECHR and ECtHR jurisprudence may risk undermining the clarity of the current obligation upon the court or a tribunal “to act compatibility” with Convention rights i.e. ensure any decision during a case provides a fair hearing for the parties. The Human Rights Act 1998 already requires that a court or tribunal when determining a question which arises in connection with a Convention right must consider or take account of any “judgment, decision, declaration or advisory opinion of the European Court of Human Rights” amongst other relevant opinions or decisions⁴ emanating from Strasbourg.
11. Against this background, the view of the Department is that ensuring fairness is built into the decision-making framework of the courts or tribunal. It is clearly reflected within multiple court or tribunal rules, Practice or Case Management Directions.

³ [Publication - Response to the Department of Justice's Consultation on audio and video links for NI Court and Tribunal Hearings | Northern Ireland Human Rights Commission \(nihrc.org\)](#)

⁴ Human Rights Act 1998, section 2.

12. There was a high level of support (twenty-seven respondents) for the introduction of a statutory obligation for the judiciary to have regard to guidance (Q.4) issued by the highest judicial post holder whether that is in the courts or for specific tribunals. Only two responses opposed such a requirement being introduced.
13. There are similar requirements within legislation applying in other United Kingdom jurisdictions. Many expressed the view this requirement might assist with introducing a standardised or consistent approach to judicial decision making. This requirement, accompanied by the existing provision that reasons for refusing an application for the use of live links are given in open court, should assist in enhancing transparency. It may help to inform court users as to the likelihood of successful applications for the use of live links.
14. A few respondents considered the guidance produced for the judiciary 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.
15. The consultation material recorded that any statutory test approved by the Minister would replicate some elements of the provisions currently within the Coronavirus Act 2020. The first is the requirement that the court or tribunal hear the views of the parties and/or the witness on the matter of the use of live links for the hearing or part of a hearing. The second requirement 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.
16. In regard to those who have expressed concern about not being able to identify all participants who are online for a remote hearing, the Northern Ireland Courts and Tribunals Service (NICTS) continue to take steps to improve the experience for participants through available technology⁵.
17. Since the initial installation of this technology where the range of views⁶ available and/or the layout of the courtroom and positioning of the cameras did not allow participants to have a view of the whole courtroom. Revised guidance from NICTS has issued to judiciary and staff regarding camera angles in court to ensure that court view is available to participants. When necessary, the judge can choose to join by Sightlink, although present in the courtroom, to provide the widest view of the court. The reality when attending a physical courtroom, such as a magistrates’

⁵ Options for alternative video conferencing solutions have been appraised that incorporate additional functionality that is lacking in Sightlink by NICTS although any new solution would not be implemented until, at the earliest, sometime during 2025.

⁶ Camera angles in the courtroom can display different views – court view, judge view, counsel view – with camera angles controlled by the court clerk.

court, is that participants can observe those present but would not know all those in the courtroom.

18. The Minister reflected upon the recent guidance issued by the Lady Chief Justice. Many of the respondents who favoured setting out in primary legislation specific factors to be taken into consideration by judiciary (Q.3,12 &13), when determining whether use of live links is in the interests of justice, identified factors within their responses which currently appear within the November 2023 guidance. Equally this guidance provides a presumption of in-person attendance for oral evidence during a final or contested hearing which should allay the concerns of those respondents who supported a statutory default presumption to rule out a virtual hearing for final/contested hearings (Q.8).
19. The current 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 in-person attendance 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”. The Minister considers the proposed way forward can provide an equivalent assurance to the public that ‘fairness’ will be at the heart of any judicial determination upon the use of live links.

The Way Forward – Questions 1, 2 and 4.

20. The Minister agreed with the majority view recorded from responses received - the judiciary should continue to decide whether a person’s participation remotely in any court proceedings would be in the interests of justice. The Minister decided there is no need to include a requirement that the use of live links is not prejudicial to the fairness of the hearing or to require a court or tribunal to have ‘due regard’ to Article 6 ECHR and ECtHR jurisprudence given (a) the existing legal obligations upon the judiciary to protect any party’s right to a ‘fair’ determination of a civil or criminal dispute and (b) the multiple existing court and tribunal rules which include an overriding objective commonly requiring the judge to deal with a case ‘justly’ and ‘fairly’.
21. Reflecting upon the number of responses which raised the need for increased consistency of approach by the judiciary, there will be included a requirement that courts shall determine the proposed test having regard to guidance issued by the Lady or Lord Chief Justice. As the Lady Chief Justice is not President of the tribunals or head of the tribunal judiciary, the Department will reflect this position by requiring tribunal judiciary to have regard to any guidance issued by the President of the relevant tribunal.
22. The Minister considers it would benefit all users to include within the legislation a provision requiring that a court provide reasons where the determination is to refuse the use of live links. Given similar requirements exist in legislation elsewhere, it is hoped with a court/tribunal outlining the reasons or factors

influencing the determination, perhaps with reference to the guidance, improved understanding and transparency will be produced for all parties to any hearing and wider circle of court users.

23. Lastly, within the criminal jurisdiction the proposed statutory test and obligations placed upon the judiciary in determining the ‘interests of justice’ test will be additional to the existing legislative provisions which allow specific categories of witnesses or defendants to avail of ‘special measures’⁷ to achieve their ‘best evidence’. As made clear in the consultation, the proposed legislation will not impact upon the provisions for the use of live links which already exist for use within the Industrial Tribunal or Fair Employment Tribunal.

The ‘interests of justice’ test will be accompanied by a requirement that any court/tribunal in determining the ‘interests of justice’ must have regard to any guidance issued by the Lady Chief Justice/President of that tribunal. Where a court or tribunal refuses an application from a party for the use of live links it will state its reasons for concluding why the use of live links was not ‘in the interests of justice’.

Questions 3, 11, 12, 13 and 14: legislating for factors.

24. The first four of these five questions were aimed at ascertaining public views on including in primary legislation multiple factors which the court would have regard to or be required to consider in determining whether the use of live links was ‘in the interests of justice’.
25. Question 14 was posed to allow respondents to do a “quick pick” between the differing approaches adopted by England and Wales, Scotland and Republic of Ireland. Most respondents (twenty-two) opted for being unsure or chose not to answer this question with only five expressing a clear preference, which was to follow the England and Wales approach.

Consultation questions

26. The first four questions (Q. 3,11,12 &13) sought to ascertain the level of public consensus on the preference of the Department as recorded within the consultation material. The preference stated was not to include within primary legislation a list of specific factors or matters a court/tribunal should have regard

⁷ 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 as well as vulnerable and intimidated witnesses, which encompasses offences of certain categories, be that a sexual offence, offence of domestic abuse, stalking or slavery or human trafficking. 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.

to when determining whether to direct the use of live links. Instead, the alternative proposed is to include a legislative power to make secondary legislation (i.e. regulations or rules) which could specify any matters the court/tribunal would be required to have regard to as part of the decision-making process in determining the 'interests of justice' where experience identifies a need to focus judicial attention on a certain 'factor' or 'circumstance'.

27. Question 11 enquired whether there should be within primary legislation a specific requirement in legislation for a court/tribunal to consider what arrangements could be made to accommodate 'open justice' when using live links. Questions 12 and 13 were not dissimilar to the subject matter of question 3. Question 12 was a follow up to question 3, with question 13 a follow up to question 12. Questions 3 and 12 sought to identify the level of disagreement with the position adopted by the Department and set out at paragraph 26 above. The later questions aimed at obtaining a clearer picture of how many and what factors those responding considered should be included in primary legislation.
28. In summary, the questions when read together presented a few choices including:-
- a. Rely on a power to make rules or regulations within secondary legislation which would specify factors or matters the court should consider as part of the process of determining whether a direction for the use of live links should be made applying the proposed statutory test,
 - b. Include in the primary legislation from the outset specific factors or matters the court should have regard to in determining whether the use of live links was in the interests of justice; if this was the respondent's view they were asked to indicate whether they desired fewer than four or five plus factors and offered the opportunity to identify what those factors might be, and/or
 - c. Not include within primary legislation a requirement for the court/tribunal to have regard to 'the arrangements for open justice' when determining whether the use of live links was 'in the interests of justice' provided the legislation 'includes provision for the broadcasting and/or transmission of wholly remote hearings to other locations'.
29. The consultation material provided details of the live links legislation within Scotland, England and Wales,⁸ the Republic of Ireland and some Commonwealth or European jurisdictions. The England and Wales approach focused on

⁸ The England and Wales legislation, Police, Crime, Sentencing and Courts Act 2022, 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.

expanding existing live links provisions within the criminal courts as there was already wider existing legislative provision within their civil and family courts⁹.

30. The Department made clear a single statutory test was tentatively preferred for application in “any” court or tribunal and adopting the approach within the Republic of Ireland¹⁰ was not favoured. Responses received indicated little desire within Northern Ireland to see a distinction made when determining the use of live links for a civil or criminal case.

Consultation responses and discussion

31. The consultation material identified multiple existing sources which included factors or matters which came into play when the judiciary were determining whether the use of live links was appropriate or ‘in the interests of justice’ for a particular witness or case. The Department was transparent about wanting to include a level of flexibility within the legislation to provide an element of ‘future proofing’ as technology and practice evolves. Regarding question 12, nearly three times as many responses agreed, as disagreed, with the Department’s position.
32. Developments since the consultation include the enactment of sections 198 to 202 and Schedule 20 of the Police, Crime, Sentencing and Courts Act 2022, which set out the relevant test and circumstances the eligible criminal courts are required to have regard to before making a direction for the use of live links. It is the same test whether the application for live links concerns a particular person or multiple persons, for the whole or only some aspects of eligible criminal proceedings or for witnesses or persons inside or outside the United Kingdom.
33. The earlier ‘Audio and Video Links (Live Links) for Northern Ireland Court and Tribunal Hearings’ document¹¹ recorded the principle of open justice is not an absolute principle. It highlighted several issues which arise with live broadcasting of a court hearing including protection of fairness and integrity of justice, the presumption of innocence, and the privacy rights of the persons present depending on the nature of the hearing as well as the need for a consistent approach by the judiciary.
34. Three times as many respondents indicated they were satisfied to continue to leave the matter of open justice (Q.11) accommodated under similar arrangements to those within the Coronavirus Act 2020, Part 2 of Schedule 21, as those who wished to see it mentioned as a factor in new primary legislation.

⁹ See “Audio and Video links for Northern Ireland Court and Tribunal Hearings– A Public Consultation”. Chapter 3, paragraphs 3.3 to 3.12.

¹⁰ In the Republic of Ireland legislation differing tests were introduced for the civil or criminal courts.

¹¹ [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/audio-and-video-links-for-northern-ireland-court-and-tribunal-hearings-live-links)

35. A minimum of detail was provided within the responses submitted to the Department as to what factors should be on the face of the legislation for the judiciary to consider, or to take account of, when determining whether live links should be used for a witness, parties or full or part hearing. A small number of responses favouring a list of ‘matters’ or ‘factors’ within the primary statute identified micro factors identified arguably already falling to be considered by the judge, whether under the ‘overriding objective’ set out in court rules or their obligation to ensure the parties are provided with a ‘fair’ hearing.
36. The guidance from the Lady Chief Justice¹² makes clear that the courts are open to all. It identifies several situations where in-person attendance is considered likely to be more appropriate as well as those hearings or applications which may be more suitable for the use of live links. All remain subject to the decision of the actual judicial post holder in charge of that court’s business at the relevant time.

The Way Forward – Questions 3, 11, 12, 13 and 14.

37. The Minister is convinced that adopting the legislative approach of England and Wales, Scotland or the Republic of Ireland is not the most appropriate way forward for Northern Ireland, taking account of the responses received during the consultation.
38. Including multiple factors in primary legislation could risk reducing judicial flexibility to determine how participants attend considering all the circumstances which apply to that case and individual participant. The Minister believes that a judge will, as part of the overall judicial task to determine what is ‘in the interests of justice’ and to ensure there is a ‘fair’ hearing, conduct a balancing exercise of relevant circumstances of the parties or witnesses, the nature of the evidence and issues raised. The absence of a list of factors might avoid judicial time spent on hearing argument about how factors should be balanced against another.
39. A substantial majority of respondents recorded their confidence that secondary legislation could adequately address the situation if cause arose to query whether the judicial guidance was operating as planned or being inconsistently applied. The Minister favours including a power for the Department to bring forward secondary legislation as changes can be made more promptly than would be the case were primary legislation to be amended.

Included within any legislation will be a power for the Department to make secondary legislation such as rules or regulations that could specify factors or matters a court should have regard to or take account of in determining whether the use of live links is ‘in the interests of justice’.

¹² [Guidance on Physical Remote and Hybrid Attendance - 6 Nov 23.pdf \(judiciaryni.uk\)](#)

Questions 8, 9 and 10: special measures and default statutory presumption.

Consultation questions

40. Questions 8 and 9 concerned the possible introduction of a default statutory presumption to rule out a virtual hearing (using live links) for oral evidence during a final or contested hearing, for any court or tribunal tier irrespective of whether it was a criminal or non-criminal case. A similar provision was already operating in Scotland accompanied by a power for the judicial postholder to set aside that presumption if satisfied that the statutory test could be met in the circumstances of that case/participant. The public consultation had included a discussion as to the pros and cons of adopting, as Scotland had, a default statutory position in legislation, to rule out a virtual hearing where the hearing is determinative of the matter/s at issue.
41. Question 10 concerned the proposal to protect the availability of pre-existing provisions on the use of live links, as part of the range of 'special measures'¹³ available for vulnerable or intimidated witnesses which facilitate a victim of crime or a witness to provide their 'best evidence'. The question was aimed at ascertaining the level of agreement or disagreement with the Department's stance.

Consultation responses and discussion

42. There were twenty-eight responses expressing a firm view upon question 10 and twenty-seven of them agreed with the Department's viewpoint. One response disagreed with the departmental position and ten responses indicated they were unsure, had no view or did not answer the question.
43. The Department stated in the consultation the aim was not to impact upon the pre-existing provisions for 'special measures'¹⁴ found within the Criminal Evidence (Northern Ireland) Order 1999 (the 1999 Order) which include the option of witnesses or defendants providing evidence by video link. Special measures apply

¹³ [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/audio-and-video-links-for-northern-ireland-court-and-tribunal-hearings-live-links)

¹⁴ 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 as well as vulnerable and intimidated witnesses, which encompasses offences of certain categories, be that a sexual offence, offence of domestic abuse, stalking or slavery or human trafficking. 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.

to prosecution and defence witnesses and are subject to the discretion of the court.¹⁵

44. Under the relevant legislation there are some witnesses who have been described as ‘automatically’ eligible¹⁶ for special measures as there is a primary rule covering all child witnesses (under 18 years) on the date of the contested hearing. They are assumed to be entitled to ‘special measures’ although the specific special measures may include more than the provision of their evidence by video link from a remote location.
45. Since March 2020, additional provisions were brought forward within the Northern Ireland Assembly extending eligibility for special measures to victims of offences involving domestic violence or abuse¹⁷ and stalking¹⁸ to those already listed - the victim of a sexual offence or offence of slavery or human trafficking. The amendments made to the 1999 Order now includes within the definition of ‘eligible’ witnesses in fear, intimidation, or distress of testifying for victims of all these offences.
46. Any adult witnesses who are the victim of a sexual offence or the offences of domestic abuse, stalking, slavery or human trafficking will have automatic eligibility to be considered for special measures, unless the witness informs the court that they do not wish to be eligible. Other intimidated witnesses, those who are in fear or distress about testifying in a case, are not automatically eligible for special measures.
47. Any witness whose quality of evidence is likely to be diminished because they suffer from a recognised physical or mental health condition or have some other significant condition which impairs or impacts adversely on their cognitive or social functioning will be perceived as a ‘vulnerable’ witness and may have eligibility for special measures. Once eligibility is established the court will consider and must be satisfied that the special measure or combination of special measures requested is likely to maximise the quality of the witness’s evidence before granting an application.

¹⁵ If a witness is deemed to be eligible, the court must be of the opinion that the use of special measures would be likely to improve the quality of the witness’s evidence. Vulnerable or intimidated witnesses are eligible and are defined within the legislation.

¹⁶ [Special Measures | Public Prosecution Service for Northern Ireland \(ppsni.gov.uk\)](https://www.ppsni.gov.uk/special-measures)

¹⁷ The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, which came into effect in February 2022 provides, at sections 23 to 25 various amendments to the Criminal Evidence (Northern Ireland) Order 1999 to include victims of domestic abuse as those eligible for special measures on the grounds of fear or distress. The Act defines domestic abuse, and victims will be eligible for special measures whenever it is alleged the behaviour of the accused falls within that definition. Equally amendments are introduced to a range of family law and civil proceedings to prevent cross-examination in person (section 36) and eligibility for special measures (section 37) where the witness has been or is at risk of domestic abuse.

¹⁸ Section 1 of the Protection from Stalking Act (Northern Ireland) 2021 The Protection from Stalking Act (Northern Ireland) 2022 came into effect in [insert date] and provides through amendments to the 1999 Criminal Evidence Order eligibility for special measures for a victim of the stalking offence created by section 1 of the 2021 Act.

48. Measures include the use of video link for the witness's evidence, the use of a video recording of a witness's evidence before cross examination through video link, use of a registered intermediary, screening from the offender or the public, giving evidence where the public are excluded from the court and the removal of wigs and gowns. These adjustments, just like the wider use of live links, have been reported to the Department as benefitting witnesses or parties by relieving or reducing some of the stresses associated with giving evidence in a courtroom.
49. Provision was also made for certain special measures to be available for witnesses of domestic abuse within specific family court or other civil proceedings.¹⁹ New court rules implementing those provisions for special measures (including giving evidence by live link) for victims of domestic abuse giving evidence in family proceedings were made in October 2022²⁰ and came into operation on 28 November 2022²¹.
50. As recorded in the earlier summary of responses report²² there was a narrow divergence of views on questions 8 and 9. Of the respondents who answered question 8, those who favoured the introduction of a default statutory presumption (18) were only slightly ahead of those who didn't (13). Seven respondents chose not to answer or recorded they had no view or were unsure.
51. There was universal opposition to the proposed statutory presumption, namely, excluding the use of live links for a final or contested hearing, from those respondents who advocate or represent various victim groupings. Representations were made by the Commissioner Designate for Victims of Crime, alongside her opposition to this statutory presumption, for increased participatory rights for all victims of crime. She advocated the justice system should be building on the positive experience when video link is used as a special measure for those deemed vulnerable or intimidated.
52. The Department is aware that the most recent guidance from the Lady Chief Justice²³ identifies full or final proceedings as matters generally more suited to predominantly physical in-person attendance within the courtroom. There is also reference to "The Court of Appeal, Divisions of the High Court and presiding judges at other tiers may, where deemed necessary, issue specific practice guidance as to when remote attendance may be permitted". The guidance includes a limited generic indication as to when remote attendance may be more suited for specific types of hearings or 'expert' witnesses.

¹⁹ The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 also introduced to a range of family law and civil proceedings legislative provision to prevent cross-examination in person (section 36) and eligibility for special measures (section 37) where the witness has been or is at risk of domestic abuse.

²⁰ The Statutory Rule numbers are 2022 No. 254/255.

²¹ Statutory Rule 2022 No.253

²² [report-on-consultation-upon-audio-video-links-summary-of-responses \(5\).pdf \(justice-ni.gov.uk\)](#)

²³ [Guidance on Physical Remote and Hybrid Attendance - 6 Nov 23.pdf \(judiciaryni.uk\)](#)

53. The feedback the Department received during a more recent engagement exercise on live links had a substantial number of respondents indicating some concern that this November 2023 guidance was a ‘regression’ from the wider use of live links.
54. Since the conclusion of the public consultation, changes were made to the Scottish legislation. In summary, Chapter 2 of Part 1 of the Schedule²⁴ to the Coronavirus (Recovery and Reform) (Scotland) Act 2022 removes, or allows for the removal of, requirements for people to physically attend court or tribunal hearings. There are different default positions on the removal of the requirement for physical attendance depending on the nature of the court business and/or the specific party involved.
55. Paragraph 6 of Chapter 2 of the Schedule deals with non-criminal cases, trials and processes before criminal courts in which the only party is a public official. In this situation the default assumption is a person will attend remotely provided the judge is satisfied that the use of live link will not prejudice the fairness of the proceedings, or otherwise be contrary to the interests of justice. The assumption for ‘a hearing in which a person is to give evidence’²⁵ is that the person will attend in-person unless the court disapplies that requirement. This change apparently is to reflect what was occurring in practice in the Scottish courts and the matters most likely to be dealt with remotely as opposed to an in-person hearing.
56. Paragraph 7 of Chapter 2 deals with criminal cases, apart from ‘a hearing in which a person is to give evidence’ from trials or where it is a hearing where the only party is a public official. Under that paragraph this legislation introduced a power for the Lord Justice General (equivalent to our Lady Chief Justice) to make ‘general’ determinations relieving people from the requirement to attend criminal courts in person.²⁶
57. A determination was published by the Lord Justice General at the end of September to come into force on 1 October 2022. It includes generic disapplication of any requirement to attend court where a person is suffering from Coronavirus or required to self-isolate. It also made specific disapplication of the attendance in person requirement for substantive appeal hearings or sentencing hearings where the person is in custody; for bail appeal hearings and for a range of community based or related disposals, including preliminary hearings for extradition in specific identified court areas or sherriffdoms. A court may still require in-person attendance in any individual case.

²⁴ Chapter 2, paragraphs 6 to 9 of Schedule Temporary Justice Measures of Coronavirus (Recovery and Reform) Act 2022; [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2022/11/schedule-1/1)

²⁵ Paragraphs 6 (1)(b), 6(3), 6(3) and 6(6) of Schedule Temporary Justice Measures of Coronavirus (Recovery and Reform) Act 2022

²⁶ The Lord Justice General has so far published one determination using the new power in the Act https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/practice-notes/criminal-courts/2022criminalcourts_determination_final_.pdf?sfvrsn=67edf183_4

58. The 2023 engagement exercise resulted in thirty seven of the forty-one respondents who favoured extensions of the 2020 live links provisions until primary legislation could be introduced. Many provided additional comments for their view. The report²⁷ published on those responses highlights at paragraphs 30 to 45 some of the common benefits perceived from using live links.

The Way Forward – Questions 8, 9 and 10.

59. The Minister has carefully considered both the responses received to the public consultation on these questions as well as developments elsewhere. It has been noted that 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.

60. The current legislation which provides eligibility for a range of special measures for the use of ‘vulnerable’ or intimidated witnesses, including those falling within recent amendments²⁸ to the 1999 legislation²⁹ will remain unaffected by the proposed wider provision to be made for the use of live links.

61. The Department, recognising the unanimity amongst victims and those who work with victims, determined there should be no suggestion of a ‘one rule to fit all’. An outcome where the use of live links in final hearings is automatically ruled out for all witnesses irrespective of the circumstances, other than ‘vulnerable’ or intimidated witnesses, is undesirable.

62. The Minister considers no need has been identified for a similar ‘general’ power, for the Lady Chief Justice, to issue ‘determinations’ for general application in a class of court business, participants or court areas.

63. Any reservations about potentially fettering judicial discretion by introducing a statutory presumption are removed where the judiciary are empowered to override the statutory presumption although it is considered inappropriate to adopt the Scottish approach of differing default statutory presumptions depending on whether the business before the court is criminal or civil. The Minister’s preference is to protect the level of flexibility potentially gained through the provision of a judicial discretion to be exercised within a ‘light touch’ framework of guidance, rules of court and practice protocols.

64. Accordingly, the preferred way forward is simply to retain the current practice which allows an application to be made for the use of live links in a final hearing and the judge can determine whether for that person the use of live links is, or is not, ‘in the interests of justice’. It is hoped by including a requirement for an

²⁷ [October 2023 Report on Extending the 2020 Live Links ~ September 2023 and beyond \(002\) \(justice-ni.gov.uk\)](#)

²⁸ The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 see sections 23 to 25, and Protection from Stalking Act (Northern Ireland) 2022 section 3(2) and 22(1).

²⁹ Criminal Evidence (Northern Ireland) Order 1999

explanation to be provided and recorded setting out the reason/s why a judge considered the use of live links is not 'in the interests of justice' for that specific hearing or witness can only be of benefit to court/tribunal users informing them as to the most likely occasions and circumstances when the use of live links will or will not be considered 'in the interests of justice'.

65. At the same time, the Minister favours the introduction of similar arrangements to those in Scotland for a statutory default position of virtual attendance where the only party to the hearing is a public official,³⁰ whether in criminal or civil courts. This presumption will only arise in those limited circumstances where an official is most likely making an ex parte application. The statutory provision will be permissive as the court will retain the power to overrule the presumption where or if it considers in-person attendance is 'in the interests of justice'.
66. Engagement exercises have indicated nearly a universal consensus within responses received that the ability to conduct court business remotely has been a positive development for professionals (legal/medical/others). Most expressed the desire to retain benefits which allow them to 'more efficiently' manage time and resources including involvement of experts outside of the jurisdiction without incurring the cost of them physically attending court. Those working within the public sector expressed a desire to optimise the opportunities to attend remotely along with the benefit of improved efficiency for case management, retention of personnel availability while awaiting remote attendance and savings accrued from avoiding waiting and travelling time as well as travel costs. Potential for savings to the public purse (including costs to the legal aid budget) or to clients cannot be ignored. While the advantages to a presumption being in guidance as opposed to legislation aids flexibility, the Minister considered there is arguably advantage for the public purse to have a level of certainty as to when virtual attendance might be the working 'norm'.

In summary, there will be no statutory assumption against the use of live links for a final contested hearing. It is clear from existing guidance it is likely most witnesses will attend in person for that type of hearing but the facility to apply for the use of live links remains open. The introduction of a statutory obligation upon the judiciary to have due regard to LCJ guidance and to provide reasons for refusals for the use of live links should assist in improving transparency and consistency in judicial decisions on these applications. There will be introduced a limited statutory presumption for virtual attendance where the only party to the hearing is a public official whether in criminal or civil courts.

³⁰ Within the Scottish legislation the definition of 'public official' is wide in nature given it is to be construed in accordance with section 6 of the Human Rights Act 1998.

Questions 5, 6 and 7: juries, appeals & complex cases.

Consultation questions

67. Questions 5, 6 and 7 are somewhat interrelated despite all involving different topics, ranging from the use of live links for juror attendance during a trial (Q.5), or for appeal hearings (Q.6) or complex matters of law (Q7).
68. All the questions sought to ascertain the public's view on whether they shared concerns or beliefs repeatedly expressed in some of the published research of the possible unsuitability of the use of live links for jurors to hear cases in the Crown Court remotely, for hearings involving complex matters of law or appeals from a lower court. The latter two repeatedly appeared as areas of concern. At the time of the consultation very limited feedback was available on jurors attending by way of live links.³¹
69. The Department set out in the consultation the reasons it was not convinced that allowing jury members to participate remotely is appropriate in the absence of hard "evidence". It highlighted limited research such as a study undertaken by a Victim Support court observer researcher³² which identified juror inactivity, sleeping and a lack of attention when counsel, judge and jury were present in the same courtroom.
70. The Department indicated within the consultation the reality is that any court or tribunal, of any court or tribunal tier, can have a novel or complex mixture of facts and established law raised occasionally. There are also different types of appeals, those by way of rehearing³³ and those solely on a point of law. There was little evidence to support a presumption that live links are unsuitable for the conduct of appeal hearings or hearings dealing with complex matters of law provided the relevant judiciary are satisfied the statutory test is met for their use.

Consultation responses and discussion

71. Twenty-eight and twenty-seven respondents respectively agreed with the Department's position favouring no exclusion, or presumption within legislation, that the use of live links would not be 'in the interests of justice' for appeals (Q.6) or for cases involving complex matters of law (Q.7). There was a very small number who disagreed with that proposition and a similar number who were unsure, had no view or didn't answer.

³¹ There was an evaluation of a pilot (not involving real cases) conducted in England and Wales and a limited qualitative assessment, based on a survey of participants, who were involved as jurors or other participant, in the remote jury trials that occurred in Scotland from 2020 into 2021.

³² "Bearing Witness" reports based on research in 2018-2019 with an update undertaken in 2022.

³³ The appeals by way of rehearing include those from the magistrates court to the county court (criminal) and those of a civil nature arising from the county court to the High Court (King's Bench Division).

72. The Police, Crime, Sentencing and Courts Act 2022³⁴ not only refers to the Court of Appeal within 'eligible' court proceedings for the use of live links but the legislation amended existing provisions³⁵ within the Courts Act 2003 to make clear the scope of the new section applies to proceedings in any 'court' within the meaning of the Contempt of Court Act 1981.
73. The earlier Scottish legislation had from the outset suspended all requirements for 'any' person³⁶ physically to attend court other than on foot of a direction issued by the relevant judicial post holder. This permitted the use of live links for juror attendance which led to the establishment of Remote Jury Centres.³⁷ The arrangements included the siting of all jurors for a trial together in one location, able to view the trial proceedings live on screen, with all other trial participants attending the courtroom. Scottish Court Tribunal Service staff were in situ to ensure smooth operation or to assist in addressing issues if they arose. Currently in-person attendance and remote attendance for jurors continues to operate in Scotland.
74. The Police, Crime, Sentencing and Courts Act 2022³⁸ also changed the earlier provisions within the Coronavirus Act 2020 which exclude jurors as eligible for consideration to attend via video link. Section 200 of the Police, Crime, Sentencing and Courts Act 2022 expanded the courts' powers to use technology across a wider range of hearings and participants so that any person (including members of the jury in a criminal trial) may take part in criminal proceedings through a live link. However, as in Scotland, any live link directions relating to the jury must apply to all members of the jury, who must all take part through live video link while present at the same place and at the same time. A direction for a live audio link cannot be made for a jury panel.
75. As the Department intends to undertake a wider review of the legislative arrangements for juror eligibility and their obligations, the consultation proposed any decision regarding the use of live links for jurors should await that wider review. Only one respondent disagreed with that proposal without comment for their choice. The other respondents either favoured postponing any decision on remote participation of jurors (25) or were unsure, had no view or chose not to answer (12).

³⁴ Section 200 (3)

³⁵ Section 85A(1) of Courts Act 2003 was amended; "Court" in the Contempt of Court Act 1981 (see section 19 of that Act) means "any court, tribunal or other body exercising the judicial power of the State."

³⁶ Coronavirus (Scotland) Act 2020, section 5 and Schedule 4

³⁷ The Scottish Courts and Tribunal Service reported in 2020 that the Scottish Government provided £6.5 million to enable the new Remote Jury Centres to deliver capacity for 18 jury trial courts to operate. The majority of Remote Jury Centres, where juries were accommodated was at cinema venues and by mid-2022 some of them began to be decommissioned with jury courts returning to the position where they attend for service at court buildings late 2022, initially for the High Courts and Sheriff courts with criminal proceedings continuing to be linked to Remote Jury Centres as part of their criminal court recovery programme.

³⁸ Section 200 (3)

The Way Forward – questions 5, 6 and 7.

76. As already indicated earlier, the Minister has decided there is no need in this jurisdiction for a similar power to that provided to the Lord General Justice in Scotland within the Coronavirus (Recovery and Reform) (Scotland) Act 2022.
77. The approaches adopted within our nearest neighbouring jurisdictions in regard to the use of live links for appeal hearings leaves the Minister satisfied there is no need to change the current position - the use of live links for any hearing, including appeals, will be for the judiciary to decide and that use should continue to be determined case by case.
78. There is very little 'hard' evidence or evaluation research of the efficiency of remote jury versus in-person attendance available. The independent Court User Satisfaction Survey commissioned by the Scottish Courts & Tribunals Service (SCTS) in 2021 for jury trial cases was conducted using remote tools of communication. The results reported reflected more the views and experiences of the jurors, as opposed to other participants who were in the courtroom as the number of juror respondents outnumbered practitioners and others³⁹ 11 to 1.
79. The survey reported that satisfaction between user groups varied "with jurors most satisfied (97%), followed by crown professionals (76%), other court users (73%) and then defence professionals (56%)". Just over half (53%) of the jurors with previous experience of in person jury service felt the remote arrangements were better while around half (51%) of the professional respondents felt it was better to have the jury in the courtroom.
80. The Scottish experience indicates there is a cost to accommodating the remote engagement of jurors.⁴⁰ The SCTS has not published any further survey. The Department continues to monitor research and have considered the findings of the National Centre for State Courts reports relying upon user feedback on accessibility and fairness where jurors or parties have attended in-person or remotely.⁴¹ The publication of the findings on the 2022-2023 year long study conducted on the diversity of jurors for remote hearings or in-person is still awaited.

³⁹ Others encompassed witnesses, supporters of victims or witnesses and staff from victim support organisations.

⁴⁰ The Scottish government provided £6.5m for the centres which involved the use of Odeon Cinemas under contract. Ten centres including Odeon cinemas in Glasgow's Braehead and Fort Kinnaird were set up to offer jurors a safe way of viewing proceedings on giant screens, substituting for High Court buildings. The joint inspection by HM Inspectorate of Prosecution in Scotland and HM Inspectorate of Constabulary for Scotland of emergency criminal justice provisions reported in September 2020 that remote jury centres would be used to restart High Court solemn trials from 28 September with £5.5 million in support from the Scottish Government. By late 2021, 300 High Court trials had been beamed to remote jury centres located around Scotland since they were established in 2020.

⁴¹ [Measuring-Access-and-Fairness-in-Remote-Court-Proceedings.pdf \(ncsc.org\)](#); [JTC-2023-04-Remote-Jury-Selection-QR-Final.pdf \(ncsc.org\)](#)

81. While the Police, Crime, Sentencing and Courts Act 2022 has increased the possibility of jurors attending remotely in England and Wales, the Remote Observation and Recording (Courts and Tribunals) Regulations 2022 introduce a range of additional matters for the judiciary to consider and balance in determining whether there should be remote juror attendance.
82. Legislating, in the absence of any cost and resource plans for the additional physical changes which might be required to accommodate the remote engagement of jurors, risks criticism for raising an expectation that the legislative provision would be utilised. The Minister considers any discussion regarding remote attendance of jurors is more appropriately included within a wider review of jury participation to be undertaken by the Department in the future.

There will be nothing proposed within any ‘live links’ Northern Ireland legislation to rule out the use of live links for appellate courts or complex cases. It is recognised that current guidance suggests most complex cases might not be suitable for the use of live links but there remains no absolute bar to their use for an appropriate case or person involved within such a case. Reliance is placed on the selected statutory test accompanied by the proposed statutory obligation to have regard to relevant guidance or case law to meet current domestic and international obligations. Any decision as to the use of live links for jury members will be postponed pending a wider review of the jury arrangements in Northern Ireland.

Next Steps

83. The Minister confirmed during debates within the Northern Ireland Assembly on 11 March 2024⁴² and 14 May 2024⁴³ that it is her intention to include legislation on the future provision of live links for this jurisdiction within the first Justice Bill to be introduced in the Northern Ireland Assembly in this mandate.
84. In the intervening period secondary legislation, which extends for six months at a time the current live links provision within the Coronavirus Act 2020, will continue to be made and placed before the Northern Ireland Assembly for approval.
85. The Northern Ireland Courts and Tribunals Service continues to work on achieving the objectives within its published Digital Strategy 2021-2026. Improving digital capability is a key strategic aim for that organisation and work is ongoing towards replacing the existing Sightlink solution to provide enhanced functionality. A summary model is provided at Annex A. A summary analysis of responses received to the 2022 public consultation is found at Annex B.

⁴² [plenary-11-03-2024.pdf \(niassembly.gov.uk\)](#); pages 11 to 16

⁴³ [Official Reports \(niassembly.gov.uk\)](#) From 2.45 to 3.00pm

Summary of proposed future model for use of live links within Northern Ireland Courts and Tribunals

The 'interests of justice' test will be adopted and accompanied by several requirements operating already. These include that the court or tribunal:-

- hear the views of the parties and/or the witness on the matter of the use of live links for the hearing or part of a hearing,
- satisfies itself that 'live links' enable 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, and
- where the determination is to refuse the use of live links the court or tribunal must state its reasons for concluding the use of live links was not 'in the interests of justice'.

A statutory duty will be introduced and placed upon the judiciary. When determining whether the use of live links for that hearing, party, witness or other participant is in the 'interests of justice', a court must have regard to any guidance issued by the Lady Chief Justice and a tribunal must have regard to guidance issued by the President of that tribunal.

The legislation will include a power for the Department to make secondary legislation such as rules or regulations that could specify factors or matters a court should have regard to or take account of in determining the use of live links.

The 'special measures' for witnesses or vulnerable defendants, which include the use of video links will be maintained as a separate facility for witnesses who satisfy the statutory requirements set out in existing legislation.

Where the only party in a hearing or application is a public official or an employee of a public authority (within the meaning of section 6 of Human Rights Act 1998), there will be a statutory assumption that attendance would be by electronic means unless the court directs, in a specific case/hearing, that attendance remotely would not be 'in the interests of justice'.

Whether a person is participating in-person or remotely, the same protection for the solemnity and integrity of proceedings will apply including the prevention of unauthorised recording or transmitting of a live hearing as well as unlawful interruption of that hearing by someone attending remotely. Those attending remotely will be subject to the same requirements that their evidence be truthful or be held to account for perjury as would occur had they been present in the courtroom.

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?	
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?	
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.	
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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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.

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