

We are indebted to HHJ Lana Wood for the preparation of these digests of the principal changes made by the Coronavirus Act 2020

New sections inserted into the Courts Act 2003 by the Coronavirus Act 2020

Use of live video or audio links: public participation & offences of recording etc

85A Enabling the public to see and hear proceedings

(1) If the court directs that proceedings are to be conducted wholly as video proceedings, the court—

(a) may direct that the proceedings are to be broadcast (in the manner specified in the direction) for the purpose of enabling members of the public to see and hear the proceedings;

(b) may direct that a recording of the proceedings is to be made (in the manner specified in the direction) for the purpose of enabling the court to keep an audio-visual record of the proceedings.

(2) If the court directs that proceedings are to be conducted wholly as audio proceedings, the court—

(a) may direct that the proceedings are to be broadcast (in the manner specified in the direction) for the purpose of enabling members of the public to hear the proceedings;

(b) may direct that a recording of the proceedings is to be made (in the manner specified in the direction) for the purpose of enabling the court to keep an audio record of the proceedings.

(3) A direction under this section may relate to the whole, or to part, of the proceedings concerned.

85B Offences of recording or transmission in relation to broadcasting

(1) It is an offence for a person to make, or attempt to make—

(a) an unauthorised recording, or

(b) an unauthorised transmission,

of an image or sound which is being broadcast in accordance with a direction under section 85A.

(2) It is an offence for a person to make, or attempt to make—

(a) an unauthorised recording, or

(b) an unauthorised transmission,

of an image of, or sound made by, another person while the other person is viewing or listening to a broadcast made in accordance with a direction under section 85A.

(3) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that, at the time of the actual or attempted recording or transmission of the image or sound concerned—

(a) he or she was not in designated live-streaming premises, and

(b) he or she did not know, and could not reasonably have known, that the image or sound was—

(4) A person guilty of an offence under this section (i) being broadcast in accordance with a direction under section 85A (in the case of an offence under subsection (1)), or

(ii) an image of, or sound made by, another person while viewing or listening to a broadcast made in accordance with a direction under section 85A (in the case of an offence under subsection (2)), is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) For the purposes of this section it does not matter whether a person making, or attempting to make, a recording or transmission intends the recording or transmission, or anything comprised in it, to be seen or heard by any other person.

(6) For the purposes of this section a recording or transmission is

“unauthorised” unless it is—

(a) authorised by a direction under section 85A,

(b) otherwise authorised (generally or specifically) by the court in which the proceedings concerned are being conducted, or

(c) authorised (generally or specifically) by the Lord Chancellor.

85C Offences of recording or transmitting participation through live link

(1) It is an offence for a person to make, or attempt to make—

(a) an unauthorised recording, or

(b) an unauthorised transmission,

of an image or sound which is being transmitted through a live video link or transmitted through a live audio link.

(2) It is an offence for a person (P) to make, or attempt to make—

(a) an unauthorised recording, or

(b) an unauthorised transmission,

of an image of, or sound made by, any person (whether P or another person) while that person is participating in court proceedings through a live video link or a live audio link.

(3) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that, at the time of the actual or attempted recording or transmission, he or she did not know, and could not reasonably have known, that the image or sound concerned—

(a) was being transmitted through a live video link or through a live audio link (in the case of an offence under subsection (1)),

or

(b) was an image of, or sound made by, a person while that person was participating in court proceedings through a live video link or a live audio link (in the case of an offence under subsection (2)).

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) For the purposes of this section it does not matter whether a person making, or attempting to make, a recording or transmission intends the recording or transmission, or anything comprised in it, to be seen or heard by any other person.

(6) For the purposes of this section a recording or transmission is “unauthorised” unless it is—

(a) authorised (generally or specifically) by the court in which the proceedings concerned are being conducted, or

(b) authorised (generally or specifically) by the Lord Chancellor.

85D Interpretation

(1) This section applies for the purposes of sections 85A to 85C (and this section).

(2) The following expressions have the meanings given—

“court” means—

(a) the Court of Appeal;

(b) the High Court;

(c) the Crown Court;

(d) the county court;

(e) the family court;

(f) a magistrates’ court;

“court proceedings” means any proceedings in any court;

“designated live-streaming premises” means premises that are designated by the Lord Chancellor for the purposes of this section as premises provided by the Lord Chancellor for the purpose of enabling members of the public to see and hear, or hear, proceedings that are broadcast in accordance with directions under section 85A;

“recording” means a recording on any medium—

(a) of a single image, a moving image or any sound, or

(b) from which a single image, a moving image or any sound may be produced or reproduced;

“transmission” means any transmission by electronic means of a single image, a moving image or any sound (and “transmitted” is to be construed accordingly).

(3) A “live video link”, in relation to a person (P) taking part in proceedings, is a live television link or other arrangement which—

(a) enables P to see and hear all other persons taking part in the proceedings who are not in the same location as P, and

(b) enables all other persons taking part in the proceedings who are not in the same location as P to see and hear P.

(4) Proceedings are conducted wholly as video proceedings if—

(a) directions have been given, whether under section 51 of the Criminal Justice Act 2003 or any other power, for all of the persons taking part in the proceedings to do so through a live video link, and

(b) all of those persons take part in the proceedings in accordance with those directions.

(5) A “live audio link”, in relation to a person (P) taking part in proceedings, is a live telephone link or other arrangement which—

(a) enables P to hear all other persons taking part in the proceedings who are not in the same location as P, and

(b) enables all other persons taking part in the proceedings who are not in the same location as P to hear P.

(6) Proceedings are conducted wholly as audio proceedings if—

(a) directions have been given under section 51 of the Criminal Justice Act 2003 for all of the persons taking part in the proceedings to do so through a live audio link, and

(b) all of those persons take part in the proceedings in accordance with those directions.

(7) An image or sound is transmitted—

(a) through a live video link if it is transmitted as part of a person's participation in court proceedings through a live video link;

(b) through a live audio link if it is transmitted as part of a person's participation in court proceedings through a live audio link.

Extracts from the Crime and Disorder Act 1998
incorporating the amendments effected by the Coronavirus Act 2020

HHJ Lana Wood

Part 3A: *LIVE LINKS IN PRELIMINARY, SENTENCING & ENFORCEMENT HEARINGS*

Section 57A: Introductory

(1A) *This Part applies to—*

(a) preliminary hearings and sentencing hearings in the course of proceedings for an offence, and

(b) enforcement hearings.

[subsections (1) and (2) deleted]

(3) *In this Part—*

“bail” includes remand to local authority accommodation in accordance with Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“confiscation order” means an order made under

(a) section 71 of the Criminal Justice Act 1988;

(b) section 2 of the Drug Trafficking Act 1994; or

(c) section 6 of the Proceeds of Crime Act 2002; and

“custody”

(a) includes local authority accommodation or youth detention accommodation to which a person is remanded under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ; but

(b) does not include police detention;

“enforcement hearing” means a hearing relating to collection, discharge, satisfaction or enforcement of—

(a) a sum that has been adjudged to be paid on conviction by a magistrates’ court or the Crown Court, or

(b) a financial penalty that is enforceable in accordance with section 85(6) and (7) of the Criminal Justice and Immigration Act 2008 as if it were such a sum (including a hearing to determine whether a financial penalty is so enforceable);

“live link” means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during a hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);

“police detention” has the meaning given by section 118(2) of the Police and Criminal Evidence Act 1984;

“preliminary hearing” means a hearing in the proceedings held before the start of the trial (within the meaning of subsection (11A) or (11B) of section 22 of the 1985 Act) including, in the case of proceedings in the Crown Court, a preparatory hearing held under—

(a) section 7 of the Criminal Justice Act 1987 (cases of serious or complex fraud); or

(b) section 29 of the Criminal Procedure and Investigations Act 1996 (other serious, complex or lengthy cases);

“relevant youth offending team”, in relation to a case where—

(a) the accused, the offender or the person liable to pay the sum or financial penalty has not attained the age of 18 years, or

(b) the accused or the offender has attained the age of 18 years since proceedings for the offence were begun, and the court has decided to continue to deal with the case as if he or she had not attained that age,

means the youth offending team (established under section 39) whose functions are exercisable in relation to the accused, the offender or the person liable to pay the sum or financial penalty;

“sentencing hearing” means any hearing following conviction which is held for the purpose of—

(a) proceedings relating to the giving or rescinding of a direction under section 57E;

(b) proceedings (in a magistrates' court) relating to committal to the Crown Court for sentencing; or

(c) sentencing the offender or determining how the court should deal with him in respect of the offence (including reviewing, amending or revoking such a sentence or determination); or

(d) determining—

(i) how the offender has complied with a sentence given in respect of the offence, or

(ii) how the offender should be dealt with in respect of compliance with such a sentence;

and here “sentence” includes any way in which a court has determined that the offender should be dealt with in respect of the offence.

(4) A reference to a person taking part in a hearing includes—

(a) giving evidence in the hearing, and

(b) attending the hearing when not giving evidence.

(5) A “live audio link”, in relation to a person (P) taking part in a hearing, is a live telephone link or other arrangement which—

(a) enables P to hear all other persons taking part in the hearing who are not in the same location as P, and

(b) enables all other persons taking part in the hearing who are not in the same location as P to hear P.

(6) A hearing is conducted wholly as an audio hearing if—

(a) directions have been given under section 57B, 57E or 57F for all of the persons taking part in the hearing to do so through a live audio link, and

(b) all of those persons take part in the hearing in accordance with those directions.

(7) A “live video link”, in relation to a person (P) taking part in a hearing, is a live television link or other arrangement which—

(a) enables P to see and hear all other persons taking part in the hearing who are not in the same location as P, and

(b) enables all other persons taking part in the hearing who are not in the same location as P to see and hear P.

(8) A hearing is conducted wholly as a video hearing if—

(a) directions have been given, whether under section 57B, 57E or 57F or any other power, for all of the persons taking part in the hearing to do so through a live video link, and

(b) all of those persons take part in the hearing in accordance with those directions.

(9) The following matters are to be disregarded for the purposes of subsections (5) and (7)—

(a) the extent (if any) to which a person is unable to see or hear by reason of any impairment of eyesight or hearing;

(b) the effect of any direction or order which provides for one person taking part in a hearing to be prevented by means of a screen or other arrangement from seeing another person taking part in the hearing.

(10) Subsections (4) to (9) apply for the purposes of this Part.

(11) Nothing in this Part is to be regarded as affecting any power of a court—

(a) to make an order, give directions or give leave of any description in relation to any witness (including the accused), or

(b) to exclude evidence at its discretion (whether by preventing questions being put or otherwise).

Section 57B: Use of live link at preliminary hearings where accused is in custody

(1) This section applies in relation to a preliminary hearing in a magistrates' court or the Crown Court.

(2) *The court may, by a direction (a “live link direction”), require or permit a person to take part in the preliminary hearing through—*

(a) a live audio link, or

(b) a live video link.

(3) *But the court may not give a direction for a person to take part in a preliminary hearing through a live audio link or a live video link unless—*

(a) the court is satisfied that it is in the interests of justice for the person concerned to take part in the preliminary hearing in accordance with the direction through the live audio link or through the live video link,

(b) the parties to the preliminary hearing have been given the opportunity to make representations,

(c) the relevant youth offending team has been given the opportunity to make representations, if it is a case where—

(i) the accused has not attained the age of 18 years, or

(ii) the accused has attained the age of 18 years since proceedings for the offence were begun, and the court has decided to continue to deal with the case as if he or she had not attained that age.

(3A) *A direction under this section—*

(a) may be given by the court of its own motion or on an application by a party; and

(b) may be given in relation to all subsequent preliminary hearings before the court or to such hearing or hearings as may be specified or described in the direction.

(3B) *The power to give a live link direction under this section includes power to give—*

(a) a direction for a judge or justice to take part in a preliminary hearing through a live audio link or a live video link;

(b) a direction that is applicable to several, or all, of the persons participating in a particular preliminary hearing;

(c) a direction that is applicable to a particular person in respect of only some aspects of a particular preliminary hearing (such as giving evidence or attending the hearing when not giving evidence);

(d) a direction for a person who is outside England and Wales (whether in the United Kingdom or elsewhere) to take part in a preliminary hearing through a live audio link or a live video link.

(3C) *The power of the court to give a direction under this section is subject to Schedule 3A (prohibitions and limitations on use of live links).*

(3D) *The court may vary a live link direction under this section; and the provisions of this section and Schedule 3A that apply to the giving of such a direction also apply to the variation of such a direction.*

(3E) *The court may rescind a live link direction under this section at any time before or during the preliminary hearing to which it relates (but this does not affect the court's power to give a further live link direction in relation to the hearing).*

(3F) *A live link direction under this section may not be rescinded unless—*

(a) the court is satisfied that it is in the interests of justice for the direction to be rescinded,

(b) the parties to the preliminary hearing have been given the opportunity to make representations,

(c) the relevant youth offending team has been given the opportunity to make representations, if it is a case where—

(i) the accused has not attained the age of 18 years, or

(ii) the accused has attained the age of 18 years since proceedings for the offence were begun, and the court has decided to continue to deal with the case as if he or she had not attained that age.

(3G) *A live link direction under this section may be varied or rescinded by the court of its own motion or on an application by a party; but such an application may not be made unless there has been a material change of circumstances since the direction was given.*

(3H) *If a hearing takes place in relation to the giving or rescinding of a live link direction under this section, the court may require or permit a person to take part in that hearing through—*

(a) a live audio link, or

(b) a live video link.

(3I) *In deciding whether to give or rescind a direction under this section the court must consider all the circumstances of the case.*

(3J) *Those circumstances include in particular—*

(a) in the case of a direction relating to a witness—

(i) the importance of the witness's evidence to the hearing;

(ii) whether a direction might tend to inhibit any party from effectively testing the witness's evidence;

(b) in the case of a direction relating to any participant in the hearing—

(i) the availability of the person;

(ii) the need for the person to attend in person;

(iii) the views of the person;

(iv) the suitability of the facilities at the place where the person would take part in the hearing in accordance with the direction;

(v) whether the person will be able to take part in the hearing effectively if he or she takes part in accordance with the direction.

(4) If a hearing takes place in relation to the giving or rescinding of such a direction, the court may require or permit a person attending the hearing to do so through a live link.

(5) The court shall not give or rescind such a direction (whether at a hearing or otherwise) unless the parties to the proceedings have been given the opportunity to make representations.

(6) If in a case where it has power to do so a magistrates' court decides not to give a live link direction under this section, it must—

(a) state in open court its reasons for not doing so; and

(b) cause those reasons to be entered in the register of its proceedings.

(7) The following functions of a magistrates' court under this section may be discharged by a single justice—

(a) giving a live link direction under this section;

(b) rescinding a live link direction before a preliminary hearing begins; and

(c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b)

(8) A court may not refuse or revoke bail for a person (P) at a preliminary hearing if—

(a) any person takes part in the hearing — other than for the purpose of giving evidence — through a live audio link, and

(b) P objects to the refusal or revocation.

(9) If any person takes part in a preliminary hearing— other than for the purpose of giving evidence — through a live audio link, the court may not—

(a) accept a guilty plea, or

(b) deal with a person for contempt of court (including enquiring into conduct and imposing punishment).

[Consequential amendments: Sections 57C and 57D are omitted.]

Section 57E: Use of live link in sentencing hearings

(1) The court may, by a direction (a “live link direction”), require or permit a person to take part in a sentencing hearing through—

(a) a live audio link, or

(b) a live video link.

(2) But the court may not give a direction for a person to take part in a sentencing hearing through a live audio link or a live video link unless—

(a) the court is satisfied that it is in the interests of justice for the person concerned to take part in the sentencing hearing in accordance with the direction through the live audio link or through the live video link,

(b) the parties to the sentencing hearing have been given the opportunity to make representations, and

(c) the relevant youth offending team has been given the opportunity to make representations, if it is a case where—

(i) the offender has not attained the age of 18 years, or

(ii) the offender has attained the age of 18 years since proceedings for the offence were begun, and the court has decided to continue to deal with the case as if he or she had not attained that age.

(3) A live link direction under this section is a direction requiring the accused, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.

(4) A live link direction under this section—

(a) may be given by the court of its own motion or on an application by a party; and

(b) may be given in relation to all subsequent sentencing hearings before the court or to such hearing or hearings as may be specified or described in the direction.

(4A) The power to give a live link direction under this section includes power to give—

(a) a direction for a judge or justice to take part in a sentencing hearing through a live audio link or a live video link;

(b) a direction that is applicable to several, or all, of the persons participating in a particular sentencing hearing;

(c) a direction that is applicable to a particular person in respect of only some aspects of a particular sentencing hearing (such as giving evidence or attending the hearing when not giving evidence);

(d) a direction for a person who is outside England and Wales (whether in the United Kingdom or elsewhere) to take part in a sentencing hearing through a live audio link or a live video link.

(4B) The power of the court to give a direction under this section is subject to Schedule 3A (prohibitions and limitations on use of live links).

(4C) The court may vary a live link direction under this section; and the provisions of this section and Schedule 3A that apply to the giving of such a direction also apply to the variation of such a direction.

(5) The court may rescind a live link direction under this section at any time before or during a hearing to which it relates (but this does not affect the court's power to give a further live link direction in relation to the hearing).

(6) A live link direction under this section may not be rescinded unless—

(a) the court is satisfied that it is in the interests of justice for the direction to be rescinded,

(b) the parties to the enforcement hearing have been given the opportunity to make representations, and

(c) the relevant youth offending team has been given the opportunity to make representations, if it is a case where the person liable to pay the sum or financial penalty has not attained the age of 18 years and is a party to the hearing.

(6A) A live link direction under this section may be varied or rescinded by the court of its own motion or on an application by a party; but such an application may not be made unless there has been a material change of circumstances since the direction was given

(7) If a hearing takes place in relation to the giving or rescinding of a live link direction under this section, the court may require or permit a person to take part in that hearing through—

(a) a live audio link, or

(b) a live video link.

(7A) In deciding whether to give or rescind a direction under this section the court must consider all the circumstances of the case.

(7B) Those circumstances include in particular—

(a) in the case of a direction relating to a witness—

(i) the importance of the witness's evidence to the hearing;

(ii) whether a direction might tend to inhibit any party from effectively testing the witness's evidence;

(b) in the case of a direction relating to any participant in the hearing—

(i) the availability of the person;

(ii) the need for the person to attend in person;

(iii) the views of the person;

(iv) the suitability of the facilities at the place where the person would take part in the hearing in accordance with the direction;

(v) whether the person will be able to take part in the hearing effectively if he or she takes part in accordance with the direction.

(8) The person may not give oral evidence while attending a hearing through a live link by virtue of this section unless the court is satisfied that it is not contrary to the interests of justice for the person to give it that way.

(9) If in a case where it has power to do so a court decides not to give a live link direction under this section, it must—

(a) state in open court its reasons for not doing so; and

(b) cause those reasons to be entered in the register of its proceedings.

(10) The following functions of a magistrates' court under this section may be discharged by a single justice—

(a) giving a live link direction under this section;

(b) rescinding a live link direction before *an enforcement* hearing begins; and

(c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b).

(11) *If any person takes part in an enforcement hearing— other than for the purpose of giving evidence — through a live audio link, the court may not—*

(a) impose imprisonment or detention in default of payment of a sum or financial penalty, or

(b) deal with a person for contempt of court (including enquiring into conduct and imposing punishment.

[Section 57F which relates to enforcement proceedings following on from a confiscation order has been amended, but is not set out here]

Section 57G: Requirement to attend court, perjury

(1) A person who takes part in a hearing in accordance with a direction under section 57B, 57E or 57F is to be treated as complying with any requirement (however imposed or expressed) for that person to attend or appear before court, or surrender to the custody of the court, for the purposes of that participation in that hearing.

(2) A person who takes part in a hearing in accordance with a direction under section 57B, 57E or 57F is to be treated as present in court for the purposes of that hearing.

(3) A hearing that is conducted in accordance with directions under section 57B, 57E or 57F—

(a) wholly as an audio hearing, or

(b) wholly as a video hearing,

is to be regarded as taking place at the location where the member or members of the court take part in the hearing.

(4) A statement made on oath by a witness outside the United Kingdom and given in evidence through a live audio link or a live video link in accordance with a direction under this Part is to be treated for the purposes of section 1 of the Perjury Act 1911 as having been made in the proceedings in which it is given in evidence.

SCHEDULE 3A: PROHIBITIONS AND LIMITATIONS ON USE OF LIVE LINKS

PART 1: DIRECTIONS UNDER SECTION 57B — PRELIMINARY HEARINGS

Introduction

1 This Part of this Schedule applies to the conduct of preliminary hearings in accordance with live link directions under section 57B.

Use of audio links

2 (1) The accused may not take part in a preliminary hearing through a live audio link for the purpose of giving evidence.

(2) A person (other than the accused) may not take part in a preliminary hearing through a live audio link for the purpose of giving evidence unless—

(a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

(b) the parties agree to that person giving evidence through a live audio link.

(3) This paragraph does not apply to a preliminary hearing if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at the hearing (but see paragraph 4).

Disputed bail hearings

3 (1) This paragraph applies to a preliminary hearing at which the court is deciding whether to grant or continue bail if the making of the decision is disputed (including where the court is minded to refuse or revoke bail of its own motion).

(2) The accused may not take part in the hearing through a live audio link.

(3) A person (other than the accused) may not take part in the hearing through a live audio link unless—

(a) that person's participation through the live audio link is only for the purpose of giving evidence at the hearing,

(b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

(c) the parties agree to that person giving evidence through a live audio link.

Contempt of court

4 (1) This paragraph applies to a preliminary hearing at which the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment).

(2) The accused may not take part in the hearing through a live audio link.

(3) A person (other than the accused) may not take part in the hearing through a live audio link unless—

(a) that person's participation through the live audio link is only for the purpose of giving evidence at the hearing,

(b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

(c) the parties agree to that person giving evidence through a live audio link.

(4) References in this paragraph to the accused include references to the person whom the court is minded to deal with for contempt of court.

Unfitness to plead

5 (1) This paragraph applies to a hearing under section 4 of the Criminal Procedure (Insanity) Act 1964.

(2) The hearing may not be conducted wholly as a video hearing.

(3) The accused may not take part in the hearing through a live audio link.

(4) A person (other than the accused) may not take part in the hearing through a live audio link unless—

(a) that person's participation through the live audio link is only for the purpose of giving evidence at the hearing,

(b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

(c) the parties agree to that person giving evidence through a live audio link.

Acceptance of a guilty plea

6 (1) This paragraph applies to a preliminary hearing at which the accused is expected to plead guilty.

(2) The accused may not take part in the hearing through a live audio link.

(3) A person (other than the accused) may not take part in the hearing through a live audio link unless—

(a) that person's participation through the live audio link is only for the purpose of giving evidence at the hearing,

(b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

(c) the parties agree to that person giving evidence through a live audio link.

Other limitations to apply also

7 The limitations imposed under this Part of this Schedule are in addition to any others (such as those in section 57B(3)) which apply to the exercise of the power to give a direction under section 57B(2).

PART 2: DIRECTIONS UNDER SECTION 57E — SENTENCING HEARINGS

Introduction

8 This Part of this Schedule applies to the conduct of sentencing hearings in accordance with live link directions under section 57E.

Use of live audio links

9 (1) The offender may not take part in a sentencing hearing through a live audio link.

(2) A person (other than the offender) may not take part in a sentencing hearing through a live audio link unless—

(a) that person's participation through the live audio link is only for the purpose of giving evidence at the hearing,

(b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

(c) the parties agree to that person giving evidence through a live audio link.

Other limitations to apply also

10 The limitations imposed under this Part of this Schedule are in addition to any others (such as those in section 57E(2)) which apply to the exercise of the power to give a direction under section 57E(1).

PART 3: DIRECTIONS UNDER SECTION 57F — ENFORCEMENT HEARINGS

Introduction

11 This Part of this Schedule applies to the conduct of enforcement hearings in accordance with live link directions under section 57F.

Use of live audio links

12 (1) The person liable to pay the relevant sum may not take part in an enforcement hearing through a live audio link for the purpose of giving evidence.

(2) A person (other than the person liable to pay the relevant sum) may not take part in an enforcement hearing through a live audio link for the purpose of giving evidence unless—

(a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

(b) the parties to the hearing agree to that person giving evidence through a live audio link.

(3) In this paragraph “relevant sum” means the sum or financial penalty whose collection, discharge, satisfaction or enforcement the enforcement hearing is concerned with.

(4) This paragraph does not apply to an enforcement hearing if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at the hearing (but see paragraph 14).

Hearing where court minded to impose imprisonment or detention

13 (1) This paragraph applies to an enforcement hearing if the court is minded to impose imprisonment or detention on a person (the “defaulter”) in default of payment of a sum or financial penalty at the hearing.

(2) The defaulter may not take part in the hearing through a live audio link.

(3) A person (other than the defaulter) may not take part in the hearing through a live audio link unless—

(a) that person’s participation through the live audio link is only for the purpose of giving evidence at the hearing,

(b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

(c) the parties to the hearing agree to that person giving evidence through a live audio link.

Contempt of court

14 (1) This paragraph applies to an enforcement hearing at which the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment).

(2) The person liable to pay the relevant sum may not take part in the hearing through a live audio link.

(3) A person (other than the person liable to pay the relevant sum) may not take part in the hearing through a live audio link unless—

(a) that person’s participation through the live audio link is only for the purpose of giving evidence at the hearing,

(b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

(c) the parties to the hearing agree to that person giving evidence through a live audio link.

(4) In this paragraph—

(a) “relevant sum” means the sum or financial penalty whose collection, discharge, satisfaction or enforcement the enforcement hearing is concerned with;

(b) references in this paragraph to the person liable to pay the relevant sum include references to the person whom the court is minded to deal with for contempt of court.

Other limitations to apply also

15 The limitations imposed under this Part of this Schedule are in addition to any others (such as those in section 57F(2)) which apply to the exercise of the power to give a direction under section 57F.

Extracts from the Criminal Justice Act 2003
incorporating the amendments effected by the Coronavirus Act 2020

Section 51: Live links in criminal proceedings

(1) *A person may, if the court so directs, take part in eligible criminal proceedings through—*

(a) a live audio link, or

(b) a live video link.

(1A) *A direction under this section may be given for a judge or justice to take part in eligible criminal proceedings through a live audio link or a live video link.*

(1B) *But no direction under this section may be given for any member of a jury to take part in eligible criminal proceedings through a live audio link or a live video link.*

(2) *In this Part “eligible criminal proceedings” means—*

(a) a summary trial,

(b) a criminal appeal to the Crown Court and any proceedings that are preliminary or incidental to such an appeal

(c) a trial on indictment or any other trial in the Crown Court for an offence,

(ca) proceedings under section 4A or 5 of the Criminal Procedure (Insanity) Act 1964,

(cb) proceedings under Part 3 of the Mental Health Act 1983,

(cc) proceedings under—

(i) section 11 of the Powers of the Criminal Courts (Sentencing) Act 2000, or

(ii) section 81(1)(g) of the Senior Courts Act 1981 or section 16 of this Act in respect of a person who has been remanded by a magistrates’ court on adjourning a case under that section of the 2000 Act,

(d) an appeal to the criminal division of the Court of Appeal and any proceedings that are preliminary or incidental to such an appeal,

(da) a reference to the Court of Appeal by the Attorney General under Part 4 of the Criminal Justice Act 1988 and any proceedings that are preliminary or incidental to such a reference,

(e) the hearing of a reference under section 9 or 11 of the Criminal Appeal Act 1995 (c. 35) and any proceedings that are preliminary or incidental to such a hearing,

(f) a hearing before a magistrates' court or the Crown Court which is held after the defendant has entered a plea of guilty, and

(fa) a hearing under section 142(1) or (2) of the Magistrates' Courts Act 1980 or under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000,

(g) a hearing before the Court of Appeal under section 80 of this Act and any proceedings that are preliminary or incidental to such a hearing, and

(h) any hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted;

but hearings to which Part 3A of the Crime and Disorder Act 1998 applies (see section 57A(1) of that Act) are not eligible criminal proceedings

(3) A direction may be given under this section—

(a) on an application by a party to the proceedings, or

(b) of the court's own motion.

(4) *But the court may not give a direction for a person to take part in eligible criminal proceedings through a live audio link or a live video link unless—*

(a) the court is satisfied that it is in the interests of justice for the person concerned to take part in the proceedings in accordance with the direction through the live audio link or through the live video link,

(aa) the parties to the proceedings have been given the opportunity to make representations, and

(ab) the relevant youth offending team has been given the opportunity to make representations, if it is a case where the defendant is a party to the proceedings and either—

(i) the defendant has not attained the age of 18 years, or

(ii) the defendant has attained the age of 18 years since proceedings for the offence were begun, and the court has decided to continue to deal with the case as if he or she had not attained that age

(4A) *The power conferred by this section includes power to give—*

(a) a direction that is applicable to several, or all, of the persons taking part in particular eligible criminal proceedings;

(b) a direction that is applicable to a particular person in respect of only some aspects of particular eligible criminal proceedings (such as giving evidence or attending the proceedings when not giving evidence);

(c) a direction for a person who is outside England and Wales (whether in the United Kingdom or elsewhere) to take part in eligible criminal proceedings through a live audio link or a live video link.

(4B) *The power of the court to give a direction under this section is subject to Schedule 3A (prohibitions and limitations on use of live links).*

(4C) The court may vary a live link direction under this section; and the provisions of this Part that apply to the giving of such a direction also apply to the variation of such a direction.

(4D) If a court gives a live link direction under this section for a person to take part in particular proceedings by giving evidence through a live audio link or a live video link, the person may not give evidence except in accordance with the direction.

(4E) The court may rescind a live link direction under this section at any time before or during the eligible criminal proceedings to which it relates (but this does not affect the court's power to give a further live link direction in relation to the proceedings).

(4F) A live link direction under this section may not be rescinded unless—

(a) the court is satisfied that it is in the interests of justice for the direction to be rescinded,

(b) the parties to the proceedings have been given the opportunity to make representations,

(c) the relevant youth offending team has been given the opportunity to make representations, if it is a case where the defendant is a party to the proceedings and either—

(i) the defendant has not attained the age of 18 years, or

(ii) the defendant has attained the age of 18 years since proceedings for the offence were begun, and the court has decided to continue to deal with the case as if he or she had not attained that age.

(4G) A live link direction under this section may be varied or rescinded by the court of its own motion or on an application by a party; but such an application may not be made unless there has been a material change of circumstances since the direction was given.

(4H) If a hearing takes place in relation to the giving or rescinding of a live

link direction under this section, the court may require or permit a

person to take part in that hearing through—

(a) a live audio link, or

(b) a live video link.

(5) The withdrawal of such a notification is not to affect a direction given under this section before that withdrawal.

(6) In deciding whether to give or rescind a direction under this section the court must consider all the circumstances of the case.

(7) Those circumstances include in particular—

(a) in the case of a direction relating to a witness—

(i) the importance of the witness's evidence to the proceedings;

(ii) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence;

(b) in the case of a direction relating to any participant in the proceedings—

(i) the availability of the person;

(ii) the need for the person to attend in person;

(iii) the views of the person;

(iv) the suitability of the facilities at the place where the person would take part in the proceedings in accordance with the direction;

(v) whether the person will be able to take part in the proceedings effectively if he or she takes part in accordance with the direction.

(8) The court must state in open court its reasons for refusing an application for a direction under this section and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings.

(9) The following functions of a magistrates' court under this section may be discharged by a single justice—

(a) giving a live link direction under this section;

(b) rescinding a live link direction before the eligible criminal proceedings concerned begin; and

(c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b).

(10) A court may not refuse or revoke bail for a person (P) at eligible criminal proceedings if—

(a) any person takes part in the proceedings— other than for the purpose of giving evidence — through a live audio link, and

(b) P objects to the refusal or revocation.

(11) *But subsection (10) does not apply if section 4 of the Bail Act 1976 does not apply to P.*

(12) A court may not deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at eligible criminal proceedings in which any person takes part — other than for the purpose of giving evidence — through a live audio link.

Consequential amendment of Section 52: Effect of, and rescission of, direction

Now omitted

Section 53: Magistrates' Court permitted to sit at other locations

Amended – amendments not set out here

Section 53A: Requirement to attend court, perjury

(1) A person who takes part in eligible criminal proceedings in accordance with a direction under section 51 is to be treated as complying with any requirement (however imposed or expressed) for

that person to attend or appear before court, or to surrender to the custody of the court, for the purposes of that participation in those proceedings.

(2) A person who takes part in eligible criminal proceedings in accordance with a direction under section 51 is to be treated as present in court for the purposes of those proceedings.

(3) Eligible criminal proceedings that are conducted—

(a) wholly as audio proceedings, or

(b) wholly as video proceedings,

are to be regarded as taking place at the location where the member or members of the court take part in the proceedings.

(4) A statement made on oath by a witness outside the United Kingdom and given in evidence through a live audio link or a live video link in accordance with a direction under section 51 is to be treated for the purposes of section 1 of the Perjury Act 1911 as having been made in the proceedings in which it is given in evidence.

Section 54: Warning to jury

(1) This section applies where, as a result of a direction under section 51, evidence has been given through *a live audio link or a live video link by a witness (including the defendant)* in proceedings before the Crown Court.

(2) The judge may give the jury (if there is one) such direction as he thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the proceedings are held.

Section 55: Rules of court

(1) Criminal Procedure Rules may make such provision as appears to the Criminal Procedure Rule Committee to be necessary or expedient for the purposes of this Part.

(2) Criminal Procedure Rules may in particular make provision—

(a) as to the procedure to be followed in connection with applications under section 51 *or* 52, and

(b) as to the arrangements or safeguards to be put in place in connection with the operation of *live audio links and live video links*.

(3) The provision which may be made by virtue of subsection (2)(a) includes provision—

(a) for *uncontested* applications to be determined by the court without a hearing,

(b) for preventing the renewal of an unsuccessful application under section 51 unless there has been a material change of circumstances,

(c) for the manner in which confidential or sensitive information is to be treated in connection with an application under section 51 *or* 52 and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

(4) Nothing in this section is to be taken as affecting the generality of any enactment conferring power to make Criminal Procedure Rules.

Section 56: Interpretation of Part 8

(1) In this Part—

“bail” includes remand to local authority accommodation in accordance with Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,

“eligible criminal proceedings” has the meaning given in section 51(2),

“legal representative” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act),

“local justice area” has the same meaning as in the Courts Act 2003 (c. 39),

“relevant youth offending team” means the youth offending team (established under section 39 of the Crime and Disorder Act 1998) whose functions are exercisable in relation to the defendant concerned,

“witness”, in relation to any criminal proceedings, means a person called, or proposed to be called, to give evidence in the proceedings.

(2A) *A reference to a person taking part in eligible criminal proceedings includes—*

(a) giving evidence in the proceedings, and

(b) attending the proceedings when not giving evidence.

(2B) *A “live audio link”, in relation to a person (P) taking part in eligible criminal proceedings, is a live telephone link or other arrangement which—*

(a) enables P to hear all other persons taking part in the proceedings who are not in the same location as P, and

(b) enables all other persons taking part in the proceedings who are not in the same location as P to hear P.

(2C) *Eligible criminal proceedings are conducted wholly as audio proceedings if—*

(a) directions have been given under section 51 for all of the persons taking part in the proceedings to do so through a live audio link, and

(b) all of those persons take part in the proceedings in accordance with those directions.

(2D) *A “live video link”, in relation to a person (P) taking part in eligible criminal proceedings, is a live television link or other arrangement which—*

(a) enables P to see and hear all other persons taking part in the proceedings who are not in same location as P, and

(b) enables all other persons taking part in the proceedings who are not in the same location as P to see and hear P.

(2E) *Eligible criminal proceedings are conducted wholly as video proceedings if—*

(a) *directions have been given, whether under section 51 or any other power, for all of the persons taking part in the proceedings to do so through a live video link, and*

(b) *all of those persons take part in the proceedings in accordance with those directions*

(3) *A reference to the persons participating in eligible criminal proceedings includes—*

(a) *the defendant or defendants,*

(b) *member or members of the court and the jury (if there is one),*

(ba) *witnesses in the proceedings,*

(c) *legal representatives acting in the proceedings, and*

(d) *any interpreter or other person appointed by the court to assist in the proceedings.*

(3A) *Subsections (2A) to (3) apply for the purposes of this Part.*

(4) *The following matters are to be disregarded for the purposes of subsections (2B) and (2D)—*

(a) *the extent (if any) to which a person is unable to see or hear by reason of any impairment of eyesight or hearing;*

(b) *the effect of any direction or order which provides for one person taking part in proceedings to be prevented by means of a screen or other arrangement from seeing another person taking part in the proceedings.*

(5) *Nothing in this Part is to be regarded as affecting any power of a court—*

(a) *to make an order, give directions or give leave of any description in relation to any witness (including the defendant or defendants), or*

(b) *to exclude evidence at its discretion (whether by preventing questions being put or otherwise).*

SCHEDULE 3A: PROHIBITIONS AND LIMITATIONS ON USE OF LIVE LINKS

Conduct of proceedings wholly as audio proceedings

1 (1) *Eligible criminal proceedings may be conducted wholly as audio proceedings only if the proceedings meet one of the following conditions.*

(2) *Condition A: the proceedings are preliminary or incidental to a criminal appeal to the Crown Court.*

(3) *Condition B: the proceedings are preliminary or incidental to an appeal to the criminal division of the Court of Appeal.*

(4) *Condition C: the proceedings are preliminary or incidental to a reference to the Court of Appeal by the Attorney General under Part 4 of the Criminal Justice Act 1988.*

(5) Condition D: the proceedings are preliminary or incidental to the hearing of a reference under section 9 or 11 of the Criminal Appeal Act 1995.

(6) Condition E: the proceedings are a hearing following conviction held for the purpose of making a decision about whether to impose or vary conditions of bail in respect of the person convicted.

(7) Condition F:—

(a) the proceedings are a hearing following conviction held for the purpose of deciding whether to grant or continue bail in respect of the person convicted, and

(b) either—

(i) section 4 of the Bail Act 1976 does not apply to the person, or

(ii) the making of the decision is not disputed (including where the court is minded to refuse or revoke bail of its own motion).

(8) But proceedings which meet any of those conditions may not be conducted wholly as audio proceedings if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at the proceedings.

Conduct of proceedings wholly as video proceedings

2 (1) Eligible criminal proceedings may be conducted wholly as video proceedings only if the proceedings meet one of the following conditions.

(2) Condition A: the proceedings are—

(a) an appeal to the Crown Court which is an appeal only against sentence,

(b) an appeal to the Crown Court arising out of a summary trial—

(i) which is an appeal arising out of a summary trial which was itself conducted wholly as video proceedings, and

(ii) which the parties agree may be conducted wholly as video proceedings, or

(c) preliminary or incidental to any criminal appeal to the Crown Court.

(3) Condition B: the proceedings are preliminary or incidental to an appeal to the criminal division of the Court of Appeal.

(4) Condition C: the proceedings are preliminary or incidental to a reference to the Court of Appeal by the Attorney General under Part 4 of the Criminal Justice Act 1988.

(5) Condition D: the proceedings are preliminary or incidental to the hearing of a reference under section 9 or 11 of the Criminal Appeal Act 1995.

(6) Condition E: the proceedings are preliminary or incidental to a hearing before the Court of Appeal under section 80 of this Act.

(7) Condition F: the proceedings are a hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted.

(8) *Condition G:—*

- (a) the proceedings are a summary trial in a magistrates' court,*
- (b) a written procedure notice has been served on the defendant but the offence is not being tried in accordance with section 16A of the Magistrates' Courts Act 1980, and*
- (c) the parties agree to the proceedings being conducted wholly as video proceedings.*

(9) Condition H: the proceedings are a hearing under section 142(1) or (2) of the Magistrates' Courts Act 1980 or under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000.

Other use of live audio links in preliminary and incidental proceedings etc

3 (1) This paragraph applies to eligible criminal proceedings which meet any of the conditions in paragraph 1.

(2) The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.

(3) A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—

(a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

(b) the parties agree to that person giving evidence through a live audio link.

(4) This paragraph does not apply to proceedings which meet any of the conditions in paragraph 1 if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at the proceedings (but see paragraph 4).

Other use of live audio links in other eligible criminal proceedings

4 (1) This paragraph applies to—

(a) eligible criminal proceedings which do not meet any of the conditions in paragraph 1, and

(b) eligible criminal proceedings which meet any of those conditions if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment).

(2) The defendant may not take part in the proceedings through a live audio link.

(3) A person (other than the defendant) may not take part in the proceedings through a live audio link unless—

(a) that person's participation through the live audio link is only for the purpose of giving evidence in the proceedings,

(b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

(c) the parties agree to that person giving evidence through a live audio link.

(4) Where this paragraph applies by virtue of sub-paragraph (1)(b), references to the defendant include references to the person whom the court is minded to deal with for contempt of court.

(5) Where this paragraph applies to proceedings under section 4A or 5 of the Criminal Procedure (Insanity) Act 1964, it is for the defendant's representative (if such a representative has been appointed), rather than the defendant, to give any agreement under sub-paragraph (3)(c).

(6) In this paragraph "defendant's representative" means the person appointed by the court to put the case for the defence.

Other limitations to apply also

5 The limitations imposed under this Schedule are in addition to any others (such as those in section 51(4)) which apply to the exercise of the power to give a direction under section 51.

Consequential amendment to Criminal Justice Act 1988

Section 32: Evidence given by persons abroad through television links

Now omitted

Amendments to the Mental Health Act 1983
effected by Schedule 8 of the Coronavirus Act 2020

Period of remand to hospital

- 5 Sections 35(7) (period of remand to hospital for report on mental condition) and 36(6) (period of remand to hospital for treatment) have effect as if the words “or for more than 12 weeks in all” were omitted.

Court orders for the detention of accused or convicted persons in hospital

- 6 (1) Any power of a court under a provision listed in sub-paragraph (2) may be exercised if the court—

(a) is satisfied that complying with the requirement applying to that provision for the evidence of two registered medical practitioners is impractical or would involve undesirable delay, and

(b) is satisfied on the evidence of a single registered medical practitioner of the matters of which it would (but for this paragraph) have to be satisfied on the evidence of two practitioners,

and any other conditions for the exercise of the power are met.

(2) Those provisions are—

(a) section 36(1) (power to remand accused person to hospital for treatment);

(b) section 37(1) (power to order detention in hospital, or guardianship, of convicted person);

(c) section 38(1) (power to order interim detention of convicted person in hospital pending final hospital order or other disposal);

(d) section 45A(3) (power to direct that a person sentenced to imprisonment be detained in hospital instead of prison);

(e) section 51(5) (power to order detention of a person in hospital in the absence of the person).

(3) The power in section 45A(3) may only be exercised by virtue of subparagraph (1) if the practitioner has given evidence orally before the court (and section 45A(4) accordingly does not apply).

Directions for the transfer of prisoners to hospital

7 A transfer direction may be given under section 47(1) or 48(1) (removal of prisoners to hospital) if the Secretary of State—

(a) is satisfied that complying with the requirement under that provision for reports from at least two registered medical practitioners is impractical or would involve undesirable delay, and

(b) is satisfied of the matters mentioned in paragraphs (a) to (c) of that provision by a report from one registered medical practitioner,

and any other conditions for the exercise of the power are met.

Conveyance of accused or convicted persons to hospital

8 (1) The provisions listed in sub-paragraph (2) have effect as if references to conveying or admitting a person to hospital within a specified period were references to doing so within that period or as soon as practicable after the end of that period.

(2) Those provisions are—

(a) section 35(9) (including as applied by section 36(8)) (remand in hospital);

(b) section 40(1) and (3) (effect of hospital orders and interim hospital orders);

(c) section 45B(1) (effect of hospital directions and limitation directions).

(3) Section 47(2) (period within which person subject to transfer direction must be received into hospital) has effect as if for “14 days” there were substituted “28 days”.

(4) This paragraph applies, during a period for which it has effect, only in relation to a person in respect of whom an order or direction is made after the beginning of that period.

PRACTICE DIRECTION 51Y – VIDEO OR AUDIO HEARINGS DURING CORONAVIRUS PANDEMIC

This Practice Direction supplements Part 51

1. This practice direction, made under rule 51.2 of the Civil Procedure Rules (“CPR”), makes provision in relation to audio or video hearings. It ceases to have effect on the date on which the Coronavirus Act 2020 ceases to have effect in accordance with section 75 of that Act.
2. During the period in which this Direction is in force, where the court directs that proceedings are to be conducted wholly as video or audio proceedings and it is not practicable for the hearing to be broadcast in a court building, the court may direct that the hearing must take place in private where it is necessary to do so to secure the proper administration of justice.
3. Where a media representative is able to access proceedings remotely while they are taking place, they will be public proceedings. In such circumstances it will not be necessary to make an order under paragraph 2 and such an order may not be made.
4. Any hearing held in private under paragraph 2 must be recorded, where that is practicable, in a manner directed by the court. Where authorised under s.32 of the Crime and Courts Act 2013 or s.85A of the Courts Act 2003 (as inserted by the Coronavirus Act 2020), the court may direct the hearing to be video recorded, otherwise the hearing must be audio recorded. On the application of any person, any recording so made is to be accessed in a court building, with the consent of the court.