EXPLANATORY MEMORANDUM TO

The Coronavirus Act 2020 (Extension of Provisions Relating to Live Links for Courts and Tribunals) (No. 2) Order (Northern Ireland) 2025

SR 2025 No. 151

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the powers conferred by section 90(2) of the Coronavirus Act 2020 ("the 2020 Act") and is subject to the confirmatory resolution procedure.

2. Purpose

2.1. The Statutory Rule will further extend the provisions in the 2020 Act for a period of six months provided the Statutory Rule is approved by resolution of the Northern Ireland Assembly within the period specified in section 96(7) of the 2020 Act. The provisions in this Statutory Rule allow courts and statutory tribunals in Northern Ireland to conduct their business, wholly or in part, through the medium of audio or video conferencing systems (commonly referred to as live links).

3. Background

3.1. Section 57 and Schedule 27 of the 2020 Act introduced a number of provisions to enable the justice system to continue to operate the throughput of cases in courts including the coroner's court and tribunals while maintaining compliance with Covid regulations and guidance. The aim was to maintain the throughput of cases while minimising the risk of exposure to ill health for all users.

3.2. While these provisions were initiated by the public health emergency, the 2020 Act included a specific order making power that allows these provisions to be extended beyond an initial two-year period set down within that Act. Part 2 of the 2020 Act allows each of the Devolved Authorities to make secondary legislation to extend any provisions which fell within their remit and did not require the consent of the relevant Secretary of State.

3.3. The regulation making powers within the Coronavirus Act were designed to enable decisions to be made quickly and then approved by resolution of the Assembly at a later date. The Act anticipated that Devolved Authorities may have differing requirements or needs as they recovered from any impact resulting from the pandemic.

3.4. Part 1 of Schedule 27 of the 2020 Act includes provision enabling any court or tribunal in this jurisdiction to allow any hearing it deems fit or necessary to proceed by way of live link so long as it is satisfied that it is in the interests of justice to do so. The provisions in Part 2 of Schedule 27 permit a court or tribunal to make arrangements for all or any part of a

hearing, being conducted wholly by video or audio live link, to be broadcast or for a recording of the proceedings to be made as well as provision to punish any unlawful recording or transmission of any part of proceedings being conducted through the medium of live links. Included within Schedule 27 are several additional safeguards to maintain compliance with domestic and international obligations including the European Convention of Human Rights. The court or tribunal have an obligation to ensure, in accordance with section 6 of the Human Rights Act 1998, the parties have a fair hearing within the requirements of Articles 5, 6 and 7 of the European Convention of Human Rights.

3.5. These powers would have initially automatically expired on 24 March 2022 as provided by section 89(1) of the Coronavirus Act 2020 save for the fact they were extended in accordance with section 90 of the 2020 Act, in particular sub-sections (2), (11), (13) and (15). A Statutory Rule, SR 2022 No.24 (made 27 January 2022) extended these provisions from 25th March 2022 for a period just short of the six-month maximum period allowed under the 2020 Act. No objections were received from the Committee on that Statutory Rule – SR 2022 No.24 - with the Northern Ireland Assembly approving the statutory rule on 1 March 2022. That first extension was due to expire on the 24 September 2022.

3.6. Further Statutory Rules made include SR 2022 No.227 (made on 23 September 2022), SR 2023 No.46 (made 21 March 2023) and SR 2023 No.138 (made on 21 September 2023, approved by the Northern Ireland Assembly on 11 March 2024), SR 2024 No.72 (made on 21 March 2024 and approved by the Northern Ireland Assembly on 14 May 2024), SR 2024 No.173 was made 21 September 2024 and approved by the Northern Ireland Assembly on 4 November 2024). All provided sequential additional extensions of these provisions. The preceding Statutory Rule to this Statutory Rule, SR 2025 No.61, was made on the 19 March 2025 and approved by the Northern Ireland Assembly on 6 May 2025. It permits the arrangements introduced under the Act to continue to be used until 24 September 2025.

3.7. Northern Ireland, similar to the other jurisdictions within the United Kingdom, have since the pandemic suffered a persistent backlog within their criminal court system as that was the area of case progression most affected given the difficult balancing exercise between the Article 6 right to a fair trial and the precautionary measures adopted to protect public health during the pandemic and imposed in the interest of public safety, including for those individuals working within the courts and tribunals. During the pandemic more cases were received than disposed within the criminal courts, which meant that the number of outstanding cases (the backlog) rose.

3.8. The Department's analysis of live cases numbers at any stage and of processing times for cases completed at courts in the years 2019/20 – 2024/25 indicates the pandemic not only had an impact and continues to do so. The figures for live cases are based on management information as opposed to official statistics. Figures for completed cases are based on official statistics up to the end of 2023/24. The figures quoted for any

period after that are based on management information and not official statistics. These figures relate to cases brought on behalf of the PSNI, Harbour and Airport police in Northern Ireland that resulted in a court disposal. They do not include cases resulting from a breach of a court order, appeals or where the case was dismissed but an alternative disposal occurred such as a caution being administered, fixed penalty registrations, penalty notices for disorder. Successful youth engagement cases are also excluded. They reflect those cases brought on behalf of the PSNI, NCA, Harbour, Airport police and other Governmental bodies in Northern Ireland. For example, the total number of live Crown Court cases from the point at which a person is charged or informed has risen as a result of the pandemic, from 940 cases at 1 March 2020, to a peak of 1,642 cases on 1 April 2022 and remains high, at 1,591 on 1 April 2025 (up 69.3% from the figure on 1 March 2020). For adult magistrates' court cases, from the point at which a person is charged or informed, has risen as a result of the pandemic, from 25,604 cases at 1 March 2020, to a peak of 30,556 cases at 1 April 2021 and remains high, at 29,854 on 1 April 2025 (up 16.6% from the figure at 1 March 2020). There have also been percentage increases for the same periods for live cases in Crown Court or adult magistrates' court. From the first court date after the Public Prosecution Service decision to prosecute for Crown Court cases the level of 898 cases at 1 March 2020 rose to a peak of 1,612 cases on 1 April 2022 and remains high, at 1,585 on 1 April 2025 (up 76.5% for Crown Court from the figure on 1 March 2020). Within the adult magistrates' court cases, from the first court date after Public Prosecution Service decision to prosecute the number has risen as a result of the pandemic, from 6,081 cases on 1 March 2020, to a peak of 10,545 cases on 1 April 2022 and remains high, at 9,346 on 1 April 2025 (up 53.7% from the figure on 1 March 2020). The median number of days taken for a case to be completed in all courts, from the date an offence was reported until dealt with, was 189 days in 2024/25, up 26.8% from 149 days in 2019/20. It reached a high of 226 days for cases dealt with in 2021/22.

3.9. There have been similar impacts reported as having occurred within both England and Wales as well as Scotland. Within England and Wales as of December 2024, 75,000 cases were pending in the Crown Court, more than double the number from 2019, with cases being listed for trial as far away as 2029, having had 140 million provided to aid recovery of the justice system. In October 2024 the Cabinet Secretary for Justice and Home Affairs reported that they continue to see the impact of the pandemic on criminal court backlogs, and although progress is being made on reducing those backlogs modelling by the Scottish Courts and Tribunals Service predicts that backlogs of solemn trials will persist above the target baseline until 2026-27. Scotland invested £180 million on recovery post pandemic.

3.10. While the reduction achieved by April 2023 in the number of Crown Court cases which were over 3 years in the court system from the first court date after PPS decision to prosecute from the height at April 2022, it subsequently increased slightly in the following two years. The Department considers while progress is being made there remains a

substantial percentage of cases that have been within the Crown Court and magistrates' courts (adult and youth) for more than three years. While the pandemic is not the sole factor playing a role in the level of the backlog, it is considered a significant material factor. Other factors playing a role in the level of the backlog include limited options for increasing case throughput by stakeholders, industrial action by other players within the criminal justice system against a persistent shortfall in meeting exceptional pressures of £227 million as of October 2024.

3.11. Maintaining access to these wider provisions has been identified as an essential element of the toolkit for addressing the caseload backlog, particularly within the criminal courts and continues to be a useful tool in facilitating the efficient management of court time. The Northern Ireland Courts and Tribunal Service report the current number of Sightlink connections average consistently approximately 23,000 per month. Sightlink is to be replaced by the end of 2025 with a bespoke Justice Video Platform based on Webex (provided by NICS IT Assist) While there is no guarantee, based on current disposal rates an optimistic timescale is the Crown Court and magistrates' court would be expected to recover between mid to late 2026.

4. Consultation

4.1. No public consultation occurred in advance of the Coronavirus Act 2020, given it was legislation created in Westminster to address a public health emergency. A separate consultation on this instrument was not considered necessary as there have already been several consultation or targeted engagement exercises on the use of s. 90(2) of the 2020 Act to maintain access to these wider provisions for conducting hearings or other court and tribunal business remotely pending the enactment of new primary legislation. A public consultation commenced July 2022 by the Department of Justice and titled 'Audio and Video Links (Live Links) for Northern Ireland Court and Tribunal Hearings: A Public Consultation' closed on the 30 September 2022. A report summarising the responses received was published on 13 March 2023 and can be found at the Department's website under Publications. Thirty-eight responses were received, and significant support (89%) was expressed for the continuation of the wider use of live links. Thirty-four favoured that the judiciary continue to be able to determine whether the use of live links was in the interests of justice for any particular case or participant. The outworking of that consultation is reflected in the September 2024 'Way Forward' report also on the Department's website as well as within the proposed clauses on live links for courts and tribunals intended for inclusion within the current Justice Bill introduced into the Northern Ireland Assembly in [October] 2024.

4.2. There have been two engagement exercises with the main users of live links, the more recent occurring in June 2023 and the preceding occurred in November 2021. In the 2023 engagement exercise views were sought on the Department making further extension orders or not to make extension orders. Ninety-seven percent of respondents indicated support for the September 2023 extension order and the responses displayed a recognition

of the need for retention of these provisions to aid recovery of the justice system. Many supported extension of the provisions beyond March 2024 to retain the benefits they perceived of this wider availability for attending court remotely. A report upon the responses received to the 2023 exercise was published in November 2023 and can be found at the Department's website at Report on extending the use of live links in courts and tribunals in Northern Ireland | Department of Justice (justice-ni.gov.uk).

4.3. The primary aim of this Statutory Rule is to retain the wider availability the Coronavirus Act 2020 provisions offer not only for remote evidence but for disposing of court business such as mentions, hearings, first appearances in the criminal courts as well as bail applications while the backlog of cases that accrued during and since the pandemic is addressed. This Statutory Rule will support and facilitate the continuation of the work of the judiciary in addressing any backlog of cases accrued within the courts and tribunals while maintaining the delivery of public services as sustainably, effectively and efficiently as possible and meeting the needs of victims and witnesses as alternative legislative provisions for the use of live links within Northern Ireland courts and tribunals progresses through the Northern Ireland Assembly.

5. Equality Impact

5.1. The Department had the opportunity to contribute to the equality analysis undertaken by Whitehall departments during the development of the 2020 Act which concluded that no adverse equality impacts were anticipated as a result of these provisions.

5.2. The provisions of the Statutory Rule are technical in their nature and are not identified as requiring the conduct of an equality impact assessment. No new policy is being implemented but several reviews of the screening assessments for equality and rural impact have been conducted by the Department on each time an extension has been considered or made. On each occasion when considering an extension of these provisions the Department's updated equality impact screening draws upon feedback from operational colleagues as well as responses received from the main users of live links. An Equality Impact Screening was also conducted for the July 2022 public consultation which included reference to the September 2022 Statutory Rule. Updated screening was conducted for the Statutory Rule S.R. 2023 No.138 made in September 2023, S.R. 2024 No.72 made in March 2024, S.R. 2024 No. 173 made in September 2024 and S.R. 2025 No. 61 made 19 March 2025. The conclusion on each screening is that the extension of these legislative provisions will not have a significant differential effect on the needs, experiences and priorities of any of the relevant categories. Although no adverse impact has been identified or reported since that screening, an updated screening was conducted for this Statutory Rule and determined no changes were required.

5.3. The Department considers these provisions will not result in any direct or indirect discrimination of court users with protected characteristics although there is awareness they could affect some groups with protected characteristics more than the general population because of their

overrepresentation within the courts system. The relevant legislative provisions include a number of mitigations in particular requiring the judiciary be satisfied, in any case, that receiving evidence by live link is "in the interests of justice". This facilitates the court or tribunal making any adjustment identified as relevant to the circumstances or needs of an individual participant or a party to proceedings when the use of live links is proposed. The relevant judge is already required to be satisfied a 'fair' hearing can be provided. The use of the legislation is permissive and under the control of the judiciary taking account of the guidance issued by the Lady Chief Justice. The November 2023 "Guidance on Physical (In-Person), Remote & Hybrid Attendance" identifies a wider range of hearings which may be more appropriate for in-person attendance.

5.4. The Department has noted equality concerns expressed or suggested from surveys conducted outside Northern Ireland and considers concerns highlighted from research and judicial experience is reflected or addressed on page one of the November 2023 Lady Chief Justice Guidance. The Northern Ireland Statistics and Research Agency (NISRA) conducted an independent review in 2022, at the request of NICTS, resulting in a report "A qualitative analysis of Remote and Hybrid Hearings". This report identified that vulnerable people and/or those with a disability may find it easier to be in a familiar environment or a solicitor's office where they can feel more comfortable. For face-to-face hearings the logistics of travelling to a court building, finding parking and attending a court can cause difficulties. Comment included that consideration should be given to those people with caring responsibilities attending remotely, again ensuring they have access to justice that best suits their needs.

5.5. To date, no adverse impacts for any of the nine categories in section 75 of the Northern Ireland Act 1998 were identified as having occurred through the various methods utilised by the Northern Ireland Courts and Tribunal Service (NICTS) for data collection or assessments undertaken on the use and impact of audio and visual links in the courts. These provisions are simply permissive. All indications are where language or another barrier, such as visual or hearing impairments or learning difficulties, may mean specific support is required such as an interpreter or some support, there is flexibility within the legislation for the judge to consider whether live link is suitable for that specific person. These needs have always existed within the justice system and arrangements are in place for the provision of interpreting services, registered intermediaries and reasonable adjustments to assist individuals when these needs are brought to the attention of the judiciary or Tribunal Chair. The legislation recognises this technology may not be suitable for all and provision is made which allows their views to be heard and taken into consideration in any decision on the use of live links.

5.6. The Department remains of the view, and as evidenced by the report from NISRA, that the safeguards which allow adjustments to be made 'in the interests of justice' address the needs of participants and any concerns appropriately. The Department through operational colleagues within NICTS continue to keep these areas of concern under review.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment is not considered necessary. There will be no impact on businesses, charities or voluntary bodies.

7. Financial Implications

7.1. None.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998 and is satisfied that the Statutory Rule is not incompatible with the Convention rights, is not incompatible with Article 2(1) of the Protocol on Ireland/ Northern Ireland in the EU withdrawal agreement (rights of individuals); does not discriminate against a person or class of person on the grounds of religious belief or political opinion; and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. None.

10. Parity or Replicatory Measure

10.1. The live links provisions of section 57 and Parts 1 and 2 of Schedule 27 of the 2020 Act and the Statutory Rule are not necessary for parity elsewhere but are modelled upon similar arrangements in existence across England, Wales and Scotland. England and Wales have made through primary legislation replacement provisions to the provisions initially created in 2020 in response to the pandemic. Scotland chose to extend through primary legislation certain temporary justice system provisions, including the equivalent live link provisions for Scotland, for a maximum period of two years with the final extension made in October 2024 through the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension of Temporary Justice Measures) Regulations 2024.

11. Additional Information

11.1. The Police, Crime, Sentencing and Courts Act 2022 introduced provisions for the criminal courts in England and Wales to allow remote working of courts when the relevant judicial post-holder is satisfied it is required in the interests of justice. The 2022 Act sets out ‘matters to have regard to’ when determining whether the use of live links is ‘in the interests of justice’, which reflects earlier provisions for remote hearings in the civil and family courts within that jurisdiction. A single extension of the 2020 Act provisions occurred in March 2022 to cover the limited period until the 2022 Police, Crime, Sentencing and Courts Act provisions could be commenced. The 2022 Act also included provisions concerning the use of live links in certain courts or tribunals operating in Northern Ireland when dealing with ‘excepted’ matters as defined by Schedule 3 of the Northern Ireland Act 1998. [The relevant provisions which appear in Part 5 of the Extradition Act 2003 Act were initially inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), ss. 78, 116; S.I. 2009/3096, art. 3(u) and s 206A was recently amended by virtue of Police, Crime, Sentencing and

Courts Act 2022 (c. 32), s. 208(5)(y), Sch. 20 para. 2(2)(a), 2(2)(b)(i), 2(2)(b)(ii), 2(2)(c)(i), 2(2)(c)(ii), 2(2)(d), 2(2)(e) and 2(2)(f). There is a specific procedure in our County Court Rules - CC Rules O.52 rr.27-29 [added SR (NI) 2010/115] concerning proceedings under the Extradition Act 2003, namely s 206A. The relevant County Court will determine the most appropriate provision for directing a live link in these cases.

11.2. The Scottish Government considered there was a case for a longer extension of the temporary justice system measures introduced for their courts and retained those measures to deal with backlogs within their justice system. Those temporary measures, including the equivalent live link provisions for remote hearings within that jurisdiction were provided initially by the Coronavirus (Extension and Expiry) (Scotland) Act 2021, followed by the Coronavirus (Recovery and Reform) (Scotland) Act 2022. There have been two extensions under the 2022 Act, namely, Scottish Statutory Instrument (SSI) 2023 No 172 and more recently SSI 2024 No 322, extending to November 2025 those temporary justice provisions within Part 5 and the related Schedule to that 2022 Act identified in that Statutory Instrument.

11.3. In regard to remote attendance in the civil courts other provisions have been provided through court rules for the Court of Session to regulate the modes of attendance in court proceedings in the Court of Session and in the sheriff court. Having completed a public consultation by Feb 2024 regarding the making permanent of several of the temporary justice measures in the Coronavirus Recovery and Reform (Scotland) Act 2022, the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill was introduced late 2024 into the Scottish Parliament and is likely to have a third and final reading during the Scottish Parliamentary session which resumes in September 2025.