EXPLANATORY MEMORANDUM TO

The Coronavirus Act 2020 (Extension of Provisions Relating to Live Links for Courts and Tribunals) Order (Northern Ireland) 2025

S.R 2025 No. 61

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 live links (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, tribunals and the Coroner's court 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. Included within Schedule 27 are several additional safeguards to maintain compliance with domestic and international obligations including the European Convention on Human Rights. These include requiring the court or tribunal before determining whether the use of live links is in

the interests of justice to consider all the circumstances within the legislation, particularly that the Judge should consider the views of the person, the parties to the proceedings and public health interests. There is power for the court or tribunal to rescind the order allowing the use of live links should any concern arise that the continued use of the live link is not in the interests of justice. 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 on Human Rights.

3.5. 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. Within Part 2, provision is made to create the offence and to punish any unlawful recording or transmission of any part of proceedings being conducted through the medium of live links.

3.6 These powers would have 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, extended these provisions from 25 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 for Justice on that Statutory Rule – SR 2022 No.24 - with the Northern Ireland Assembly approving the statutory rule on 1 March 2022. The extension was due to expire on 24 September 2022.

3.7. Further Statutory Rules, SR 2022 No.227 (made on 23 September 2022), SR 2023 No.46 (made on 21 March 2023), SR 2023 No.138 (made on 21 September 2023 and 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) provided additional extensions of these provisions on each occasion for a further period of six months. In September 2024 SR 2024 No.173 was made. No objections were received from the Justice Committee on that Statutory Rule which was approved by the Northern Ireland Assembly on 4 November 2024. Statutory Rule, SR 2024 No.173 permits the arrangements introduced under the Act to continue to be used until midnight 23 March 2025.

3.8. It is accepted Covid had a significant impact upon the courts and tribunals. Whilst the justice system in Northern Ireland responded quickly the pandemic resulted in significant backlogs in the system which are taking time to clear. There is evidence that live links continue to be a useful tool in facilitating the efficient management of court time despite the November 2023 guidance from the Lady Chief Justice identifying a wider number of hearings as “more appropriate” for in-person attendance or hearings. There remain approximately 25,000 Sightlink connections per month currently. In contrast before March 2020 there would have been fewer than 100 connections per month. At the height of the pandemic when footfall was restricted in and around the estate of the Northern Ireland Courts and Tribunals Service the number of Sightlink connections averaged 70,000 per month.

3.9. Within the criminal courts, while progress has been made in addressing the identified backlog of cases within the criminal justice system, it is still difficult to provide estimated recovery timescales given the number of factors that impact on caseloads and disposal rates.

In June 2024 management information[1] indicated that despite the considerable efforts made to impact upon the number of active defendants there remained 61% more defendants when compared to pre-Covid rates on 1 March 2020. This equated to approximately 68% more defendants within the Crown Court and approximately 60% more defendants in the magistrates' courts (adult and youth) than there were on 1 March 2020. In November 2024 the current court caseload was still 55% higher (76% in Crown and 52% in magistrates') than pre-Covid. The most recent (January 2025) management information indicates that 10,989 defendants were processing through the criminal court system, compared to 7,269 in March 2020. This remains 51% more defendants when compared to pre-Covid rates. It equates to approximately 70% more defendants within the Crown Court and approximately 48% more defendants in the magistrates' courts (adult and youth) than there were on 1 March 2020. In terms of timeliness, although there has been some improvement, cases are still taking longer to complete. Measuring the median time from an offence is reported to completion in court, the length of time to complete cases is currently 190 days by the end of 2023/24 compared to 149 days pre-Covid.

3.10 There remains approximately a quarter of cases that have been within the Crown Court and magistrates' courts (adult and youth) for more than three years. The facility to use live links for the wider provision of remote evidence, mentions and hearings including for matters such as first appearances and bail applications is seen as a key element of the pathway to reducing caseloads across court tiers even where a general increase in cases entering the magistrates' courts and Crown Courts has a direct impact on end-to-end timeliness.

3.11 In summary, the number of cases across the system remains significantly higher than pre-Covid levels and it will take further time and resources to resolve those cases of over 3 years within the courts. The extension of these powers enables in a proportionate way the continued progression of case throughput accrued during and since the pandemic while making use of available resources including the use of new technologies and digital working.

4. Consultation

4.1. No public consultation occurred in advance of the Coronavirus Act 2020, given it was legislation created to address a public health emergency. Since then, the Department has undertaken an engagement exercise in November 2021, a public consultation exercise in July to September 2022 as well as a further engagement exercise to assess views and support upon the proposed September 2023 extension of these provisions and potential further extensions, while the formation of a Northern Ireland Executive was awaited.

4.2. The July 2022 public consultation commenced by the Department of Justice was titled 'Audio and Video Links (Live Links) for Northern Ireland Court and Tribunal Hearings: A Public Consultation'. This 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 at Audio and Video Links Live Links Consultation Responses | Department of Justice (justice-ni.gov.uk). There were thirty-eight responses received and significant support (89%) was expressed for the continuation of the wider use of

[1] Figures are derived from non-validated data from management information systems and should not be considered official statistics. Figures relate to Stage 5 i.e. first court appearance after PPS prosecution decision to court disposal.

live links. Thirty-four respondents 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. A Way Forward report was subsequently published on the Department's website in late September 2024 at summary report audio and video links for nicts - hearings.pdf.

4.3. A June 2023 engagement exercise with the main users of live links received forty-two responses by 5 July 2023. The context for the exercise was set against the background of the timing for any new legislation being subject to the priorities established by an incoming Executive, an Assembly Committee for Justice and Minister for Justice. 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, including recording support for extension of the provisions beyond March 2024. 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).

4.4. The 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. They are considered a required element of the toolkit if current progress within the criminal courts is to be maintained. Facilitating digital working is part of a wider solution to improve and enhance access to justice in a proportionate way that meets the needs of the Northern Ireland population while work progresses on making provision for the use of live links within Northern Ireland through an Assembly Bill. The objective is to maintain the delivery of public services as sustainably, effectively and efficiently as possible and meet the needs of victims and witnesses. The Department aims to maintain the benefits identified from the significant investment and use made of an enhanced digital court environment to date while maintaining the same quality of access to justice for any party before the courts or tribunals.

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 have been conducted with the Department conducting a screening for equality and rural impact on each time an extension has been considered or made. On each occasion of 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 conducted for the July 2022 public consultation which included reference to the September 2022 Statutory Rule. An updated screening was conducted for the Statutory Rule S.R. 2024 No.173 made in September 2024. The conclusion from the 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 against 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 conducted 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 the 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 the Northern Ireland Courts and Tribunals Service (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, 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 NICTS for data collection or assessments undertaken on the use and impact of audio and visual links in the courts. 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, 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 has 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 to deal with backlogs within the justice system that unavoidably built up during the pandemic.

11. Additional Information

11.1. England and Wales through primary legislation, the Police, Crime, Sentencing and Courts Act 2022, created replacement provisions to those created in the Coronavirus Act 2020. The 2022 provisions are directed essentially for the use of live links within 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. There were some consequential amendments for immigration tribunals or hearings on extradition applications. 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 Act provisions could be commenced.

11.2. The Scottish Government considered there was a case for a longer extension of the temporary justice system measures to deal with backlogs within the justice system that unavoidably built up during the pandemic. They chose to extend through primary legislation certain temporary justice system provisions, including their live link provisions for a maximum period of two years. The first extension of the temporary justice system measures was provided by the Coronavirus (Extension and Expiry) (Scotland) Act 2021 and then followed by the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

11.3 Part 5 and the related Schedule to that 2022 Act continue certain temporary justice system provisions, including the equivalent live link provisions for that jurisdiction. Since then, secondary legislation was made in May 2023, Scottish Statutory Instrument 2023 No 172, to partially expire paragraphs 6, 8 and 9 of the schedule of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 for the purpose of non-criminal proceedings in the Court of Session and those subject to the Ordinary Cause Rules 1993. Some other provisions have been partially replaced with court rules for the Court of Session, namely, Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Attendance at Hearings) 2023, which regulate the modes of attendance in court proceedings in the Court of Session and in the sheriff court. There has been a public consultation regarding the making permanent of several of the temporary justice measures in the Coronavirus Recovery and Reform (Scotland) Act 2022, although the report on the way forward from the consultation has not yet been published. The temporary provisions have been extended until 30 November 2025 by The Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension of Temporary Justice Measures) Regulations 2024.