EXPLANATORY MEMORANDUM TO

THE COURT OF APPEAL (RECORDING AND BROADCASTING) ORDER 2013

2013 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument sets out the conditions under which visual and sound recording and broadcast of select proceedings in the Court of Appeal may take place.

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 This is the first use of the power under which this order is made.

3.2 Section 32 of the Crime and Courts Act 2013, under which this instrument is made, is not yet in force. This instrument is laid in draft, but will not be made until after such time as section 32 has been commenced.

4. Legislative Context

4.1 Section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act impose statutory prohibitions on the visual and sound recording and broadcast of court proceedings.

4.2 Section 32 of the Crime and Courts Act 2013 provides that the Lord Chancellor, with the concurrence of the Lord Chief Justice, may make an order to disapply the statutory prohibitions if prescribed conditions are met.

4.3 This instrument prescribes the conditions under which visual and sound recording and broadcast of proceedings in the Court of Appeal are permitted.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Lord Chancellor has made the following statement regarding Human Rights:

In my view the provisions of the Court of Appeal (Recording and Broadcasting) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 The policy, as set out in section 32 of the Crime and Courts Act 2013, aims to increase public engagement with, and understanding of, what happens in courts by allowing judgments to be filmed and broadcast in certain circumstances. The rationale behind broadcasting judicial decisions is that this should help in raising public confidence in this aspect of the Criminal Justice System (CJS), which may lead to benefits to society if the public have greater confidence that the CJS is fair and just.

7.2 There is evidence from the Crime Survey for England and Wales (2011/12) that public confidence in the CJS is low. Fewer than half of those surveyed (44%) thought that the CJS as a whole was effective.[1] Furthermore, research published in 2011, undertaken by Ipsos MORI on behalf of the Sentencing Council, indicates that the public have little confidence in sentencing decisions. 65% of the individuals asked thought that sentences handed down by judges and magistrates were too lenient[2]. Low public confidence levels in the CJS have been linked to a lack of knowledge and understanding of the CJS.

7.3 There are a number of direct reasons for improving public confidence in the Criminal Justice System. Firstly, research suggests that victims and witnesses who are satisfied with their contact with the CJS are more likely to be willing to engage with the CJS again in future[3]. Secondly, trust in the justice system has been found to improve people's willingness to cooperate with legal authorities[4].

7.4 There has been relatively low media coverage of this policy. The Director of Public Prosecutions, Keir Starmer, has been quoted by the media as saying that he supports the policy to broadcast from court, subject to safeguards to protect victims and witnesses[5]. Lord Neuberger, President of the Supreme Court of the Untied Kingdom, has been quoted as saying that broadcasting some cases could boost public engagement in the court process[6]. Some commentators, however,

---

[1] ONS (2012) *Crime in England & Wales Quarterly First Release to March 2012*, http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-march-2012/stb-crime-stats-end-march-2012.html

[2] Ipsos MORI/Sentencing Council (2011) *Attitudes to guilty plea sentence reductions* p.39 http://sentencingcouncil.judiciary.gov.uk/docs/Attitudes_to_Guilty_Plea_Sentence_Reductions_(web).pdf - (To Note: "too lenient" was defined in the survey as either being a "little too lenient" or "much too lenient").

[3] Franklyn, Ministry of Justice (2012) *Satisfaction and willingness to engage with the Criminal Justice System. Findings from the Witness and Victims Experience Survey*, 2009-10, https://www.gov.uk/government/publications/satisfaction-and-willingness-to-engage-with-the-criminal-justice-system

[4] Hough et al (2013) *Attitudes to sentencing and trust in justice, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/203008/Attitudes_to_Sentencing_and_Trust_in_Justice__web_.pdf*

[5] http://www.bbc.co.uk/news/uk-13743013

[6] http://www.bbc.co.uk/news/uk-12775134

have expressed their concern over whether allowing visual and sound recording of proceedings would sensationalise them, comparing the proposals to practices in the United States where filming of full trials is allowed in certain circumstances. Concern has also been raised regarding the impact of visual and sound recording and broadcasting from court on victims and witnesses[7].

7.5 This Order will allow broadcasting of judgments and advocates' arguments in certain hearings in the Court of Appeal. This will allow the public to see what happens in court and to hear decisions in the judges' own words. Appeal cases rarely involve victims or witnesses giving evidence in person, and safeguards are in place to protect their interests. In particular, the Crime & Courts Act 2013 allow discretion for the judge in any case to prevent broadcasting to protect the interests of justice and prevent undue prejudice to anyone involved.

8. Consultation outcome

8.1 The (then) Department of Constitutional Affairs consulted on allowing cameras in court in 2005. The overall response was mixed. While there was no strong support for filming or broadcasting overall, the majority of respondents thought that judges' decisions and sentencing remarks should be allowed, and that broadcasting would educate the public about what happens in court.

8.2 The current proposals support the results of that consultation. We have engaged with a range of stakeholders with a direct interest in these proposals, and continue to do so.

9. Guidance

9.1 The judiciary and court staff will be required to undertake training relating to court broadcasting. This will involve meeting with broadcasters and also some e-learning. HMCTS will provide signage and a small number of leaflets to advise members of the public that filming will be taking place.

10. Impact

10.1 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk

11. Regulating small business

11.1 The legislation does not apply to small business.

---

[7] For example, see http://www.lawgazette.co.uk/news/lord-judge-troubled-court-camera-plan and http://4kbw.net/cameras-in-court-a-good-idea/ . Please see also the Report of the Joint Committee of Human Rights on The Crime and Courts Bill, available at: http://www.publications.parliament.uk/pa/jt201213/jtselect/jtrights/67/6706.htm#a12

12. Monitoring & review

12.1 Establishing whether the introduction of visual and sound recording and broadcasting from court has achieved the policy objective of increased public confidence in the CJS may be difficult. Although it is possible to monitor changes in public confidence in the CJS through the Crime Survey for England and Wales this would not allow any attribution to this policy specifically.

12.2 The policy will be subject to a post implementation review after no fewer than 6 months, and the legislation may be amended accordingly.

13. Contact

Elly Brown at the Ministry of Justice Tel: 0203 334 3221 or email: elly.brown@justice.gsi.gov.uk can answer any queries regarding the instrument.