EXPLANATORY MEMORANDUM TO

THE ADMINISTRATIVE COURT (RECORDING AND BROADCASTING) AND COURT OF APPEAL (RECORDING AND BROADCASTING) (AMENDMENT) ORDER 2026

2026 No. [XXXX]

AND

THE MAGISTRATES' COURTS (RECORDING AND BROADCASTING) ORDER 2026

2026 No. [XXXX]

1. Introduction

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

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

2. Declaration

2.1 Minister Sarah Sackman KC MP, Minister of State for Courts and Legal Services at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 John Wallis, Deputy Director for Judicial Policy at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Maxine Monks at the Ministry of Justice, telephone: 07581 021 382, or email: judicialengagement@justice.gov.uk, can be contacted with any queries regarding this instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instruments

What does the legislation do?

4.1 This is a joint memorandum for two Orders. These instruments set out the conditions under which visual and sound recording and broadcasting of specified proceedings in the Administrative Court and magistrates' courts may take place, and amend the conditions for recording and broadcasting in the Court of Appeal. The Administrative Court (Recording and Broadcasting) and Court of Appeal (Recording and Broadcasting) (Amendment) Order 2026 establishes a framework under which specified proceedings in the Administrative Court may be recorded and broadcast, subject to the permission of the court and to conditions governing who may record proceedings, what may be recorded and how recordings may be used. It also amends the Court of Appeal (Recording and Broadcasting) Order 2013 (S.I. 2013/2786) to permit the recording and broadcasting of submissions made by litigants in person, as

well as exchanges with the court arising during those submissions, subject to the existing permission-based framework. As a result, litigants in person in both the Administrative Court and the Court of Appeal fall within the same permission-based recording and broadcasting framework as legally represented parties, subject to the applicable statutory conditions. The Magistrates' Courts (Recording and Broadcasting) Order 2026 establishes a framework under which sentencing remarks delivered in open court by the Senior District Judge (Chief Magistrate) may be recorded and broadcast, subject to the permission of the judge and to conditions governing who may record proceedings and how recordings may be used.

Where does the legislation extend to, and apply?

4.2 The extent of these instruments (that is, the jurisdiction(s) which these instruments form part of the law of) is England and Wales.

4.3 The territorial application of these instruments (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 These Orders expand the existing framework for recording and broadcasting in courts to encompass the Administrative Court and magistrates' courts, and amend the conditions for recording and broadcasting in the Court of Appeal.

5.2 The principal changes introduced by the Administrative Court (Recording and Broadcasting) and Court of Appeal (Recording and Broadcasting) (Amendment) Order 2026 are twofold. Primarily, the Order permits the recording and broadcasting of proceedings in the Administrative Court, which is part of the King's Bench Division of the High Court. Additionally, the Order lifts prohibitions on recording and broadcasting legal arguments and exchanges with the court in proceedings involving litigants in person appearing before the Court of Appeal, which are contained in the Court of Appeal (Recording and Broadcasting) Order 2013 (S.I. 2013/2786).

5.3 In relation to the first objective, the Order disapplies the statutory prohibitions on filming and sound recording in the Administrative Court, contained in section 41 of the Criminal Justice Act 1925 and in section 9 of the Contempt of Court Act 1981, where the conditions prescribed by the Order are met. It will thus allow recording and broadcasting of open proceedings in the Administrative Court across all locations, including the Royal Courts of Justice in London and regional centres, such as Birmingham, Cardiff, Leeds and Manchester. The Order applies to specified judges, legal representatives or litigants in person during designated elements of proceedings, including legal submissions to and exchanges with the judge during the course of proceedings, and delivery of the judgment or a summary thereof. Evidence from witnesses is not included. Such recording or live broadcast can only be done by persons who have been given specific permission by the Lord Chancellor. Furthermore, the judge retains full discretion to determine whether broadcasting is appropriate in any individual case and may refuse permission or impose conditions where necessary to ensure the proper administration of justice. This Order only applies to proceedings held in open court and any reporting restrictions will continue to apply. Media broadcasts are generally live, but subject to a ten-second delay as an additional safeguard for any unforeseen events. Footage captured may be used by a pool of agreed media organisations who agree to comply with the terms set out in the agreement with the Lord Chancellor. The Order will also allow for livestreaming by

HMCTS, as in the UK Supreme Court and the Court of Appeal, though this is not the expected delivery model at this time.

5.4 The policy rationale for this change is to increase public access to proceedings in a court that frequently determines matters of significant public importance, including challenges to decisions of public authorities. The judicial-led Transparency and Open Justice Board recommended the extension of recording and broadcasting to the Administrative Court.[1] The Ministry of Justice also considers that the Administrative Court is particularly suitable for broadcasting because proceedings only infrequently involve oral evidence from witnesses and therefore present a comparatively low risk to vulnerable participants. The reforms will enhance transparency and public understanding of proceedings in the Administrative Court, enabling more people to observe judicial review and other Administrative Court proceedings, while preserving judicial control and protecting the proper administration of justice.

5.5 Apropos the second objective, this Order also removes the prohibitions on recording litigants in person appearing in the Court of Appeal. The current legal framework prevents any part of a hearing involving a litigant in person from being broadcast, except for the delivery of the judgment. This restriction was originally introduced to protect litigants in person from scrutiny, and to avoid presenting an incomplete or unbalanced account of proceedings by recording only the legally represented party. However, experience has shown that the prohibition can unnecessarily limit transparency and has, on occasion, led to increased demand for remote observation of hearings. The Department considers that the existing blanket restriction is no longer necessary given the safeguards contained in the statutory framework, including the conditions governing the recording and broadcasting of hearings in the Court of Appeal. This instrument removes the blanket prohibition on legal arguments as part of proceedings involving litigants in person and, as a result, submissions from both sides, and exchanges with the court, may be recorded subject to judicial discretion.

5.6 Similarly, the new Administrative Court regime does not distinguish between legally represented parties and litigants in person, allowing submissions and exchanges with the court to be recorded and broadcast irrespective of representation status, subject to the applicable safeguards and the court's permission.

5.7 The second Order allows recording and broadcasting of sentencing remarks in the magistrates' courts and sets the conditions under which these activities can take place. The Order limits recording and broadcasting to sentencing remarks made by the Senior District Judge (Chief Magistrate). Such recording or live broadcast can only be done by persons who have been given specific permission by the Lord Chancellor. No other persons in court will be recorded or broadcast. Recording remains subject to judicial discretion, with the Chief Magistrate granting permission and setting any conditions on a case-by-case basis. Any reporting restrictions will continue to apply, to protect victims or witnesses and preserve the safe and effective administration of justice.

5.8 The policy objective is to increase public understanding of the criminal justice system by enabling the public to see and hear sentencing decisions being explained in court. The measure builds on the success of the existing regime of recording and broadcasting sentencing remarks in the Crown Court and is intended to bring some of the most high-profile cases before the magistrates' court into public view. Limiting

[1] https://www.judiciary.uk/wp-content/uploads/2024/12/Transparency-and-Open-Justice-Board-Key-Objectives-Engagement-explanatory-notes-1.pdf

recording to sentencing remarks given by the Chief Magistrate provides a proportionate and measured expansion into the magistrates' courts.

5.9 These policy changes require the making of statutory instruments under section 32 of the Crime and Courts Act 2013 to disapply the prohibitions on visual and sound recording contained in section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981.

5.10 Together, these instruments will achieve a measured expansion of court broadcasting. They enable greater public access to court proceedings while preserving judicial discretion, protecting the interests of court users and ensuring that the effective administration of justice and the dignity of the court are upheld. They support the longstanding principle of open justice by making court proceedings more accessible to the public. They will increase transparency of the justice system and thereby support public engagement and greater public understanding of the justice system. In doing so, they will help to reinforce public confidence in the administration of justice and support the rule of law.

What was the previous policy, how is this different?

5.11 There is an established practice of recording, broadcasting and livestreaming in courts, upon which these two instruments will build.

5.12 The UK Supreme Court has allowed the recording and broadcast of its proceedings since it was established in 2009. The arrangements governing broadcasting and livestreaming are reflected in the Supreme Court's Rules and Practice Directions.[2] Routine livestreaming and broadcasting of proceedings in the Court of Appeal in specified circumstances has taken place since 2013 under the Court of Appeal (Recording and Broadcasting) Order 2013 (S.I. 2013/2788). Recording and broadcasting of sentencing remarks in the Crown Courts, which are filmed upon media request, has been possible since 2020 under the Crown Court (Recording and Broadcasting) Order 2020 (S.I. 2020/637), with the first sentencing remarks broadcast in July 2022.

5.13 These two Orders take broadly the same legislative approach as preceding instruments made under section 32(1) of the Crime and Courts Act 2013; we have continued previous practice of having one separate Order per court, but grouped them together for the purposes of Parliamentary scrutiny. One significant development, informed by practical experience in the Court of Appeal, is the change to allow the filming of litigants in person in the Court of Appeal, which we have mirrored in the Administrative Court Order. Litigants in person will be notified of filming and will have the right to request not to be filmed. We have retained guardrails preventing the filming of victims, witnesses and others in the court, while continuing to require formal permission from the Lord Chancellor to film and preserving the court's discretion to ensure the proper administration of justice and the dignity of the court.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981 impose statutory prohibitions on the visual and sound recording and broadcasting of court proceedings. Section 32 of the Crime and Courts Act 2013 provides that the Lord Chancellor, with the concurrence of the Lord Chief Justice,

[2] Under the current https://www.legislation.gov.uk/uksi/2024/949/pdfs/uksi_20240949_en.pdf, live-streaming and video are addressed in https://supremecourt.uk/how-to-appeal/practice-directions.

may make an order to disapply the statutory prohibitions if prescribed conditions are met.

6.2 Previous instruments have been made under s.32 Crime and Courts Act 2013, including the Court of Appeal (Recording and Broadcasting) Order 2013 (S.I. 2013/2786), the Crown Court (Recording and Broadcasting) Order 2020 (S.I. 2020/637) and the Competition Appeal Tribunal (Recording and Broadcasting) Order 2022 (S.I. 2022/156). The Orders described in this explanatory memorandum prescribe the conditions under which visual and sound recording and broadcasting of proceedings in the Administrative Court and magistrates' courts are permitted, and amend the conditions under which visual and sound recording and broadcasting of proceedings are permitted in the Court of Appeal. The Orders do not create a general right to film court proceedings. Rather, they create limited exceptions to the existing statutory prohibitions where specified conditions are met. Additionally, the Administrative Court and Court of Appeal Orde will amend article 6(1) and revoke article 6(2) of the Court of Appeal (Recording and Broadcasting) Order 2013 and will in future allow recording and broadcasting of proceedings involving litigants in person, subject to judicial discretion. In the Administrative Court a new recording and broadcasting framework that applies equally to legally represented parties and litigants in person is established.

Why was this approach taken to change the law?

6.3 These changes can only be made by statutory instrument under section 32(1) of the Crime and Courts Act 2013, which specifically provides for the statutory prohibitions on recording and broadcasting court proceedings to be disapplied subject to prescribed conditions.

6.4 The instruments come into force on the day after the day on which they are made. This approach is considered appropriate because the instruments do not impose new duties or obligations on any person, nor do they require affected persons to adopt different patterns of behaviour. Rather, they establish permissive frameworks under which recording and broadcasting may take place in specified circumstances, subject to judicial permission and the conditions set out in the instruments.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department's 2023 Open Justice Call for Evidence[3] ran for almost four months and found broad support for the careful expansion of court broadcasting as a means of improving transparency, public scrutiny and understanding of the justice system. Of the 131 respondents to the Call for Evidence, 57 (43%) answered the question about which proceedings should and should not be broadcast. Respondents considered that broadcasting can help ensure that justice is seen to be done, increase public confidence in the courts and support public legal education, while also enabling greater access to proceedings for those unable to attend in person. Respondents emphasised the need for appropriate safeguards to protect the fairness and integrity of proceedings, including measures to protect vulnerable individuals, prevent misuse of recordings and avoid any chilling effect on participation in the justice process. A summary of responses has been published.[4] The current proposals are consistent with the results of that consultation.

[3] https://www.gov.uk/government/consultations/open-justice-the-way-forward
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7.2 We have engaged with a range of stakeholders with a direct interest in these proposals and continue to do so. The judiciary supports these policy changes, with the extension to the Administrative Court being recommended by the judicial-led Transparency and Open Justice Board. The Lady Chief Justice has concurred in the making of these Orders, as required by section 32 of the Crime and Courts Act 2013.

8. Applicable Guidance

8.1 An internal operational protocol has been developed for HMCTS staff, the judiciary and broadcasters. Affected court staff and judges will receive training and new supporting guidance before filming and broadcasting commence in the respective courts. HMCTS will provide appropriate signage in courts to advise members of the public that filming will be taking place.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for these instruments because they are principally concerned with expanding the ability to record and broadcast specified court proceedings and do not regulate or impose costs on businesses, charities or voluntary bodies.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these instruments do not apply to activities undertaken by those bodies, aside from media organisations applying for permission to carry out filming.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because implementation of this policy will be delivered with existing resources.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The operation of this legislation will be monitored in several ways, including through management of the associated agreement between the Lord Chancellor and broadcasters, and through regular discussions with the judiciary and interested stakeholders. A pilot will run for the first month following the coming into force of the Orders, after which the operation of the agreement with broadcasters will be reviewed at the end of the first year and at regular intervals thereafter.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 We are laying two Orders to continue the previous practice of having one separate Order per court, but we have grouped them together for the purposes of Parliamentary scrutiny.

12. European Convention on Human Rights

12.1 The Minister for Courts and Legal Services, Sarah Sackman KC MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Administrative Court (Recording and Broadcasting) and Court of Appeal (Recording and Broadcasting) (Amendment) Order 2026, and the Magistrates' Courts (Recording and Broadcasting) Order 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 These instruments are not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").