

## **Prisons and Courts Bill**

### **Open Justice**

#### **Introduction**

1. As we increase the use of digital channels we need to ensure that we maintain the principle of open justice, particularly where matters are taken out of the physical courtroom altogether. In the case of 'virtual hearings', where all parties attend using telephone or video conferencing facilities, no courtroom is used and there is therefore no public gallery for observers to sit in.
2. The open justice measures enable the court to direct for a fully virtual hearing to be live streamed, to enable members of the public to observe proceedings. We are developing solutions to enable members of the public to view virtual hearings using a screen located in a court building.
3. In order to safeguard virtual hearings against unauthorised recording of proceedings, the measures create offences similar to current prohibitions on court photography and sound recording, in the context of virtual hearings and live links. The measures will extend to all courts (civil, criminal and family) and tribunals.

#### **What is the current position?**

4. At present, open hearings are held in a court room, and if a member of the public wishes to observe a hearing they would need to attend the court where it is taking place. Public gallery capacity is restricted (on average around 12 spaces per court room) and available on a first-come first-served basis. Photography and sound recording are expressly prohibited in the courts:
  - Section 41 of the Criminal Justice Act 1925 (CJA 1925) provides an absolute prohibition on photography in courts, other than the Supreme Court; and
  - Section 9 of the Contempt of Court Act 1981 (CCA 1981) prohibits the making of unauthorised the sound recordings.

#### **What are the proposed changes?**

5. We will need to provide the members of the public with real-time access to any virtual hearing which the court determines should be held publically. The measures would enable the court to direct that a video or telephone hearing should be live streamed to enable observers to see or hear proceedings. In the future, members of the public will be able to travel to a local court building to view a virtual hearing using a dedicated terminal. However the existing restrictions on public access to proceedings in the Youth Court will continue to apply, and therefore such proceedings may not be observed unless the judge directs otherwise.
6. We want to protect the solemnity of the court as well as victims and witnesses, defendants and other members of the court by ensuring that the current prohibitions on photography and sound recording in courts will also extend to observers watching a live stream of a virtual hearing. The legislation will make it an offence for a person to make, or attempt to make, an unauthorised recording or transmission of a virtual hearing live stream or a person observing that live stream. We will also make it an offence for a person to make an unauthorised recording or transmission of a person participating in court proceedings via live audio or video link.

7. A member of court staff will be available in the area where the viewing terminals are located, partly to facilitate access, but also to ensure compliance with recording restrictions. The consequences of breaching the prohibitions will be clearly displayed.
8. The key provisions in the Bill will:
  - Enable the court to direct that a video or telephone hearing should be live streamed to enable observers to see or hear criminal proceedings.
  - Make it an offence for a person to make, or attempt to make, an unauthorised recording or transmission of a virtual hearing live stream.
  - Make it an offence for a person to make, or attempt to make, an unauthorised recording or transmission of a person observing a virtual hearing live stream.
  - Make it an offence for a person to make, or attempt to make, an unauthorised recording or transmission of a person participating in court proceedings via live audio or video link.

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