

Coronavirus and the Crown Court

An analysis of the legislative changes effected by the
Coronavirus Act 2020 insofar as they affect the Crown Court

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Harrow Crown Court

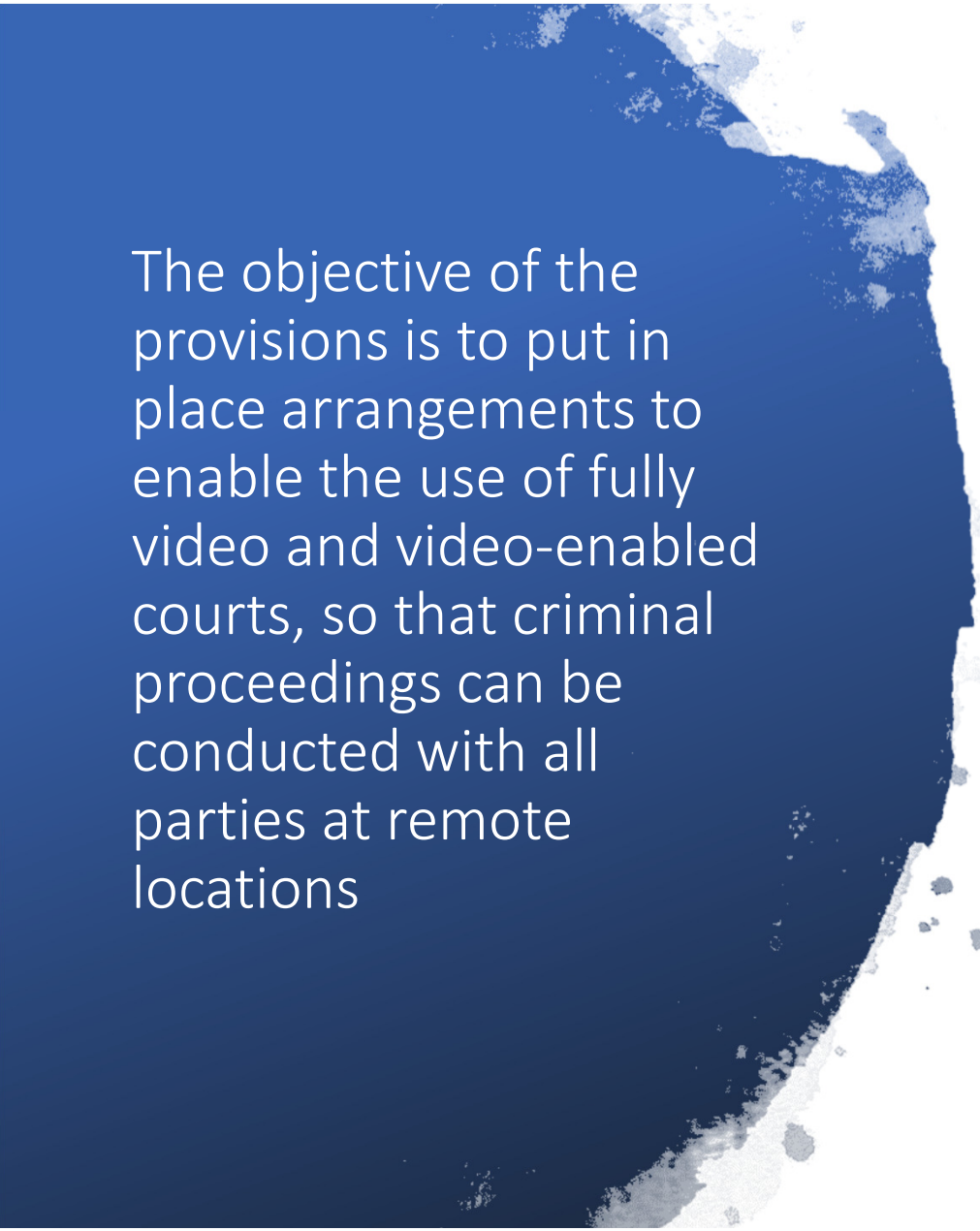
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The Coronavirus Act 2020

The [Coronavirus Act 2020](#) makes amendments to:

- The Crime and Disorder Act 1998
- The Criminal Justice Act 2003
- The Courts Act 2003
- The Mental Health Act 1983

These provisions came into force on 25th March 2020



The objective of the provisions is to put in place arrangements to enable the use of fully video and video-enabled courts, so that criminal proceedings can be conducted with all parties at remote locations

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- There is power to conduct proceedings in whole or in part by video or telephone in many more circumstances than was previously allowed, and also power in certain circumstances to conduct hearings entirely by video and or telephone
 - Eligibility for attendance by live link is extended to those on bail
 - The circumstances in which a live link direction can be made in respect of witnesses are extended
 - Provision is made for public participation in fully video hearings to ensure that the principle of open justice is protected

The scheme of the legislation

- Provision in relation to preliminary hearings and sentencing hearings is made by amendments to Sections 57A-G and new Schedule 3A to the Crime and Disorder Act 1998
- Provision in relation to “eligible criminal proceedings” is made by amendments to Sections 51-56 and new Schedule 3A to the Criminal Justice Act 2003
- Provision in relation to public participation and offences of recording etc is made by inserted new Sections 85A-D of the Courts Act 2003
- Additional provisions disapply certain requirements under the Mental Health Act 1983



Key concepts

- Preliminary hearing – defined in section 57A CDA 1998
- Sentencing hearing – defined in section 57A CDA 1998
- Eligible criminal proceedings – defined in section 51(2) CJA 2003

Note

- There is no overlap between eligible criminal proceedings and preliminary and sentencing hearings: hearings to which Part 3A of the CDA 1998 applies are not eligible criminal proceedings: section 51(2) CJA 2003

Preliminary hearing

“preliminary hearing” means a hearing in the proceedings held before the start of the trial (within the meaning of subsection (11A) or (11B) of section 22 of the 1985 Act) including, in the case of proceedings in the Crown Court, a preparatory hearing held under—

- (a) section 7 of the Criminal Justice Act 1987 (cases of serious or complex fraud); or
- (b) section 29 of the Criminal Procedure and Investigations Act 1996 (other serious, complex or lengthy cases)

Sentencing hearing

“**sentencing hearing**” means any hearing following conviction which is held for the purpose of—

- proceedings (in a magistrates' court) relating to committal to the Crown Court for sentencing; or
- sentencing the offender or determining how the court should deal with him in respect of the offence (including reviewing, amending or revoking such a sentence or determination); or
- determining—
 - (i) how the offender has complied with a sentence given in respect of the offence, or
 - (ii) how the offender should be dealt with in respect of compliance with such a sentence;

and here “sentence” includes any way in which a court has determined that the offender should be dealt with in respect of the offence.

Eligible criminal proceedings

“eligible criminal proceedings” means—

- a summary trial,
- a criminal appeal to the Crown Court and any proceedings that are preliminary or incidental to such an appeal
- a trial on indictment or any other trial in the Crown Court for an offence
- proceedings under section 4A or 5 of the Criminal Procedure (Insanity) Act 1964
- proceedings under Part 3 of the Mental Health Act 1983
- proceedings under—
 - (i) section 11 of the Powers of the Criminal Courts (Sentencing) Act 2000
 - (ii) section 81(1)(g) of the Senior Courts Act 1981 or section 16 of CJA 2003 in respect of a person who has been remanded by a magistrates’ court on adjourning a case under s.11 PCC(S)A 2000

Eligible criminal proceedings (continued)

- an appeal to the criminal division of the Court of Appeal and any proceedings that are preliminary or incidental to such an appeal
- a reference to the Court of Appeal by the Attorney General under Part 4 of the Criminal Justice Act 1988 and any proceedings that are preliminary or incidental to such a reference
- the hearing of a reference under section 9 or 11 of the Criminal Appeal Act 1995 and any proceedings that are preliminary or incidental to such a hearing
- a hearing before a magistrates' court or the Crown Court which is held after the defendant has entered a plea of guilty
- a hearing under section 142(1) or (2) of the Magistrates' Courts Act 1980 or under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000
- a hearing before the Court of Appeal under section 80 of this Act and any proceedings that are preliminary or incidental to such a hearing
- any hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted

but hearings to which Part 3A of the Crime and Disorder Act 1998 applies (see section 57A(1) of that Act) are not eligible criminal proceedings



Key concepts

The definitions of the following terms are identical in the two Acts:

- Live audio link
- Hearing conducted wholly as an audio hearing
- Live video link
- Hearing conducted wholly as a video hearing

These definitions are contained in section 57A CDA 1998 and section 56 CJA 2003

“Live audio link” “Hearing conducted wholly as an audio hearing”

A “live audio link”, in relation to a person (P) taking part in a hearing, is a live telephone link or other arrangement which—

- (a) enables P to hear all other persons taking part in the hearing who are not in the same location as P, and
- (b) enables all other persons taking part in the hearing who are not in the same location as P to hear P

A hearing is conducted wholly as an audio hearing if—

- (a) directions have been given, whether under section 57B, 57E or 57F or any other power, for all of the persons taking part in the hearing to do so through a live audio link, and
- (b) all of those persons take part in the hearing in accordance with those directions

“Live video link”

“Hearing conducted wholly as a video hearing”

A “live video link”, in relation to a person (P) taking part in a hearing, is a live television link or other arrangement which—

- (a) enables P to see and hear all other persons taking part in the hearing who are not in the same location as P, and
- (b) enables all other persons taking part in the hearing who are not in the same location as P to see and hear P

A hearing is conducted wholly as a video hearing if—

- (a) directions have been given, whether under section 57B, 57E or 57F or any other power, for all of the persons taking part in the hearing to do so through a live video link, and
- (b) all of those persons take part in the hearing in accordance with those directions



Arrangements for audio and video links: disregards

When considering whether any arrangement satisfies the definition of live audio link or live video link, the following matters fall to be disregarded:

- the extent (if any) to which a person is unable to see or hear by reason of any impairment of eyesight or hearing
- the effect of any direction or order which provides for one person taking part in a hearing to be prevented by means of a screen or other arrangement from seeing another person taking part in the hearing



Making a direction

Directions in relation to preliminary hearings and sentencing hearings

- The court has power to give a live link direction for any participant in a preliminary hearing to participate by audio or video link: section 57B Crime and Disorder Act 1998
- The direction may be made of the court's own motion or on application
- A hearing may be held at which the decision whether or not to give a direction (and the scope of that direction) is made; if a hearing is held, the court may require or permit a person to take part in that hearing through audio or video link
- The parties (plus any relevant YOT) must be given the opportunity to make representations before a direction is given

Directions in relation to preliminary hearings and sentencing hearings

In deciding whether to give a direction the court must consider all the circumstances of the case, including in particular—

- in the case of a direction relating to a witness:
 - (i) the importance of the witness's evidence to the hearing
 - (ii) whether a direction might tend to inhibit any party from effectively testing the witness's evidence
- in the case of a direction relating to any participant in the hearing:
 - (i) the availability of the person
 - (ii) the need for the person to attend in person
 - (iii) the views of the person
 - (iv) the suitability of the facilities at the place where the person would take part in the hearing in accordance with the direction
 - (v) whether the person will be able to take part in the hearing effectively if he or she takes part in accordance with the direction

Directions in relation to preliminary hearings and sentencing hearings

- The direction may apply to any or all of the participants, including participants outside England and Wales and in respect of any or all aspects of the proceedings
- A direction may not be given unless the court is satisfied that it is in the interests of justice for the person concerned to take part in the preliminary hearing in accordance with the direction through the live audio link or through the live video link
- If the court decides not to give a live link direction in relation to a sentencing hearing, it must state in open court its reasons for not doing so
- The court may also give directions in relation to broadcast and recording of the proceedings: s.85A Courts Act 2003

Prohibitions and limitations on use of live links in preliminary hearings

Part 1 of new Schedule 3A to the Crime and Disorder Act 1998 contains prohibitions and limitations on use of live links in preliminary hearings

The following limitations apply to all preliminary hearings:

- Schedule 3A, paragraph 2(1): D may not take part in a preliminary hearing through a live audio link for the purpose of giving evidence
- Schedule 3A, paragraph 2(2): A person other than D may not take part in a preliminary hearing through a live audio link for the purpose of giving evidence unless
 - there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - the parties agree to that person giving evidence through a live audio link.

Specific limitations and prohibitions apply to particular types of hearings: [disputed bail hearings](#), [contempt of court](#), [unfitness to plead](#), [acceptance of a guilty plea](#). You can follow the links to these slides now, if you wish.

Prohibitions and limitations on use of live links in sentencing hearings

Part 2 of new Schedule 3A to the Crime and Disorder Act 1998 contains prohibitions and limitations on use of live links in sentencing hearings

The following limitations apply to sentencing hearings:

- Schedule 3A, paragraph 9(1): D may not take part in a sentencing hearing through a live audio link
- Schedule 3A, paragraph 9(2)(a): A person other than D may not take part in a sentencing hearing through a live audio link unless that person's participation is only for the purpose of giving evidence
- Schedule 3A, para 9(2)(b) and (c): a person other than D may not take part in a preliminary hearing through a live audio link for the purpose of giving evidence unless
 - there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - the parties agree to that person giving evidence through a live audio link

Directions in relation to eligible criminal proceedings

- The court has power to give a live link direction for any participant in eligible criminal proceedings to participate by audio or video link: section 51 Criminal Justice Act 2003
- Section 55 CJA2003 gives the Criminal Procedure Rules Committee power to make such provision as appears necessary or expedient for the purposes of the new provisions, and in particular to make provision for the procedure to be followed in connection with applications under section 51 and as to the arrangements or safeguards to be put in place in connection with the operation of live audio links and live video links
- The direction may be made of the court's own motion or on application
- A hearing may be held at which the decision whether or not to give a direction (and the scope of that direction) is made; if a hearing is held, the court may require or permit a person to take part in that hearing through audio or video link
- The parties (plus any relevant YOT) must be given the opportunity to make representations before a direction is given

Directions in relation to eligible criminal proceedings

In deciding whether to give a direction the court must consider all the circumstances of the case, including in particular—

- in the case of a direction relating to a witness:
 - (i) the importance of the witness's evidence to the hearing
 - (ii) whether a direction might tend to inhibit any party from effectively testing the witness's evidence
- in the case of a direction relating to any participant in the hearing:
 - (i) the availability of the person
 - (ii) the need for the person to attend in person
 - (iii) the views of the person
 - (iv) the suitability of the facilities at the place where the person would take part in the hearing in accordance with the direction
 - (v) whether the person will be able to take part in the hearing effectively if he or she takes part in accordance with the direction

Directions in relation to eligible criminal proceedings


- The direction may apply to any or all of the participants, including participants outside England and Wales and in respect of any or all aspects of the proceedings
- A direction may not be given unless the court is satisfied that it is in the interests of justice for the person concerned to take part in the eligible criminal proceedings in accordance with the direction through the live audio link or through the live video link
- The court must state in open court its reasons for refusing an application for a direction
- The court may also give directions in relation to broadcast and recording of the proceedings: s.85A Courts Act 2003

Prohibitions and limitations on use of live links in eligible criminal proceedings

New Schedule 3A to the Criminal Justice Act 2003 contains prohibitions and limitations on use of live links in eligible criminal proceedings

- Proceedings may be conducted wholly as audio proceedings only if they meet the conditions set out in paragraph 1
- Proceedings may be conducted wholly as video proceedings only if they meet the conditions set out in paragraph 2
- Paragraph 3 contains additional restrictions on use of audio links in proceedings which meet the conditions set out in paragraph 1
- Paragraph 4 contains additional restrictions on use of audio links in other eligible criminal proceedings

The restrictions applicable to particular types of proceedings are considered below



Enabling the public to see and hear proceedings: s.85A of the Courts Act 2003

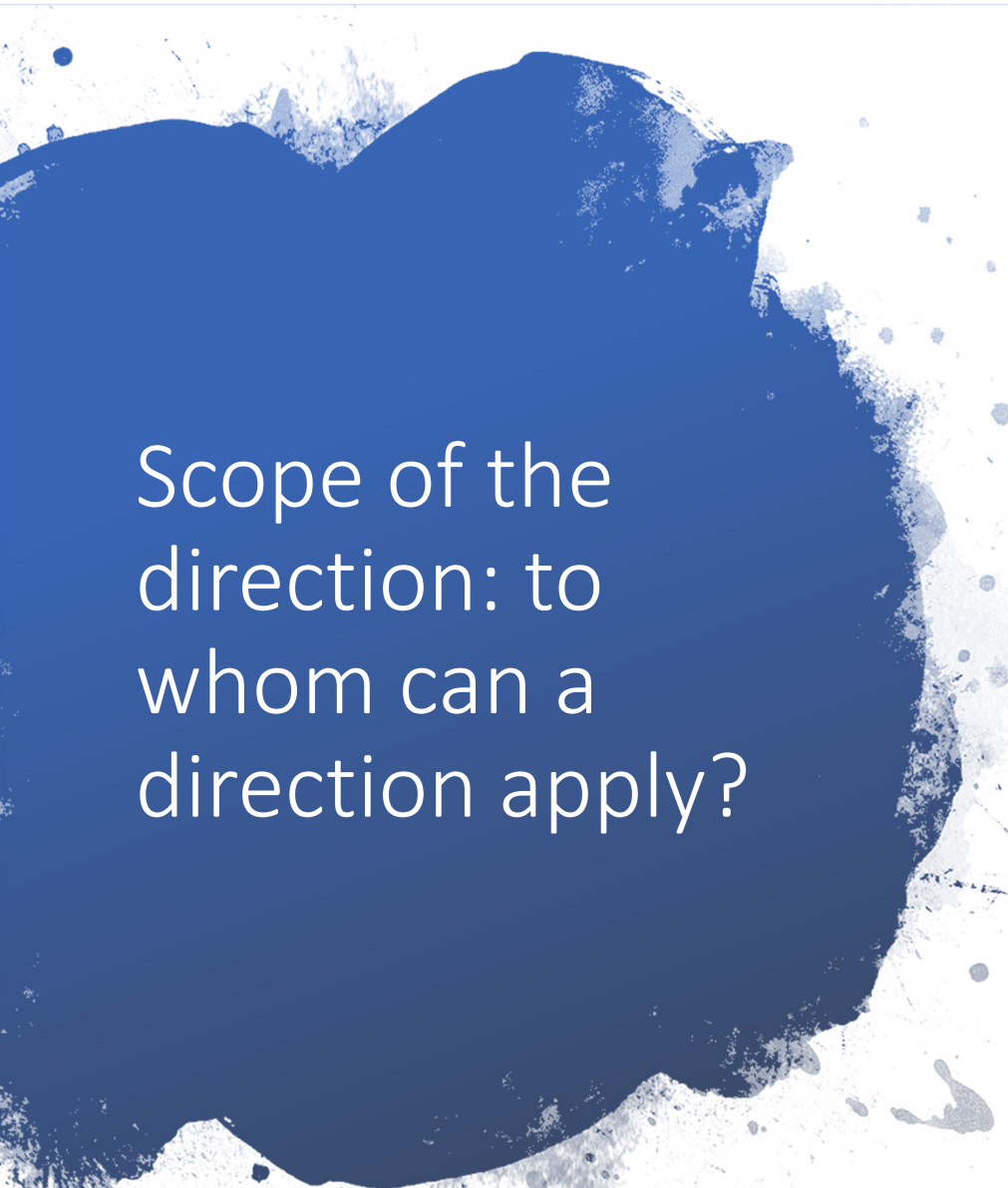
Directions in relation to wholly video proceedings

- If the court directs that proceedings are to be conducted wholly as video proceedings, the court—
 - (a) may direct that the proceedings are to be broadcast (in the manner specified in the direction) for the purpose of enabling members of the public to see and hear the proceedings;
 - (b) may direct that a recording of the proceedings is to be made (in the manner specified in the direction) for the purpose of enabling the court to keep an audio-visual record of the proceedings.
- The direction given may relate to the whole, or to part, of the proceedings concerned.

Directions in relation to wholly audio proceedings

- If the court directs that proceedings are to be conducted wholly as audio proceedings, the court—
 - (a) may direct that the proceedings are to be broadcast (in the manner specified in the direction) for the purpose of enabling members of the public to hear the proceedings;
 - (b) may direct that a recording of the proceedings is to be made (in the manner specified in the direction) for the purpose of enabling the court to keep an audio record of the proceedings.
- The direction given may relate to the whole, or to part, of the proceedings concerned.

Sections 85B and 85C create offences in relation to recording or transmitting such broadcasts or transmissions



Scope of the direction: to whom can a direction apply?

- A judge or justice
- A person outside England and Wales
- Several or all of the persons participating in a particular hearing
- A direction may be made in relation to a particular person in respect of only some aspects of a particular hearing (e.g. giving evidence or attending the hearing when not giving evidence)
- You should consider making a direction in relation to each of:
 - Judge
 - Lay Justices
 - Legal representatives
 - Witnesses
 - Expert witnesses
 - Defendant(s)
 - Probation officers
 - Police officers
 - Potential sureties
 - Interpreters
 - Intermediaries
 - Any other person appointed by the court to assist in the proceedings



Particular
preliminary
hearings

Preliminary hearings

The following restrictions apply to all preliminary hearings:

- Schedule 3A, paragraph 2(1): D may not take part in a preliminary hearing through a live audio link for the purpose of giving evidence
- Schedule 3A, paragraph 2(2): A person other than D may not take part in a preliminary hearing through a live audio link for the purpose of giving evidence unless
 - there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - the parties agree to that person giving evidence through a live audio link.

PTPH – not guilty plea

No restrictions in addition to those applicable to all preliminary hearings

PTPH – guilty plea

Additional restrictions

- Section 57B(9)(a): if any person takes part in a preliminary hearing – other than for the purpose of giving evidence - through a live audio link, the court may not accept a guilty plea
- Schedule 3A, para 6(2): D may not participate a hearing at which he is expected to plead guilty through a live audio link
- Schedule 3A, para 6(3): A person other than D may not take part in a preliminary hearing through a live audio link for the purpose of giving evidence unless
 - there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - the parties agree to that person giving evidence through a live audio link.

Hearing to determine fitness to plead

Additional restrictions:

- Schedule 3A, paragraph 5(2): a hearing under s.4 of the Criminal Procedure (Insanity) Act 1964 may not be conducted wholly as a video hearing
- Schedule 3A, paragraph 5(3): D may not participate in a hearing under s.4 of the CP(I)A 1964 through a live audio link
- Schedule 3A, para 5(4): a person other than D may not take part in the hearing through a live audio link unless that person's participation is only for the purpose of giving evidence at the hearing
- Schedule 3A, para 5(4)(b) and (c): a person other than D may not take part in a hearing under s.4 of the CP(I)A 1964 through a live audio link for the purpose of giving evidence unless
 - there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - the parties agree to that person giving evidence through a live audio link.

Newton hearing

No restrictions in addition to those applicable to all preliminary hearings

But note that D may not take part in a preliminary hearing through live audio link for the purpose of giving evidence: Schedule 3A, paragraph 2(1)

Bail applications - uncontested

No restrictions in addition to those applicable to all preliminary hearings

Bail applications - contested


If the decision as to whether to grant or continue bail is disputed (including where the court is minded to refuse or revoke bail of its own motion) the following additional restrictions apply:

- Schedule 3A, paragraph 3(2): D may not participate in a preliminary hearing at which the court is deciding whether to grant or continue bail, if the making of the decision is disputed (including where the court is minded to refuse or revoke bail of its own motion) through a live audio link
- Schedule 3A, para 3(3)(a): a person other than D may not take part in the hearing through a live audio link unless that person's participation is only for the purpose of giving evidence
- Schedule 3A, para 3(3)(b) and (c): a person other than D may not take part in a preliminary hearing through a live audio link for the purpose of giving evidence unless
 - there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - the parties agree to that person giving evidence through a live audio link.

CTL extension applications

No restrictions in addition to those applicable to all preliminary hearings

But note if a bail application is also to be heard at the hearing, then the rules for contested bail hearings are likely to apply



Particular hearings:
eligible criminal
proceedings

Trial on indictment or any other trial in the Crown Court for an offence

Restrictions

Section 51(1B): no direction may be given for any member of a jury to take part in eligible criminal proceedings through a live audio or live video link

Additional restrictions

The following restrictions apply to a wholly video, partial video or attended hearing:

- The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.
- A person (other than D) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
 - (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (b) the parties agree to that person giving evidence through a live audio link.

Proceedings under s.4A or 5 of the Criminal Procedure (Insanity) Act 1964

Restrictions

Section 51(1B): no direction may be given for any member of a jury to take part in eligible criminal proceedings through audio or video link

Additional restrictions

The following restrictions apply to a wholly video, partial video or attended hearing:

- The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.
- A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
 - (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (b) the parties agree to that person giving evidence through a live audio link.

In the case of proceedings under section 4A or 5 of the Criminal Procedure (Insanity) Act 1964, it is for the person appointed by the court to put the case for the defence (if such a representative has been appointed), rather than the defendant, to agree.

Proceedings under Part 3 of the Mental Health Act 1983

Restrictions

Consider whether the hearing is a hearing within Part 3A of CDA 1998: if so, it is not eligible criminal proceedings

If the hearing is eligible criminal proceedings (i.e. not a hearing within Part 3A of CDA 1998) holding the hearing as a wholly audio or wholly video hearing is not permitted: these hearings do not meet any of the conditions in paragraph 1 or 2 of Schedule 3A CJA 2003

Additional restrictions

The following restrictions apply to a wholly video, partial video or attended hearing:

- The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.
- A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
 - (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (b) the parties agree to that person giving evidence through a live audio link.

In the case of proceedings under section 4A or 5 of the Criminal Procedure (Insanity) Act 1964, it is for the person appointed by the court to put the case for the defence (if such a representative has been appointed), rather than the defendant, to agree.

Proceedings under s.11 PCC(S)A 2000, s.81(1)(g) SCA 1981 or s.16 CJA 2003
in respect of a person who has been remanded by a magistrates' court
on adjourning a case under s.11 PCC(S)A 2000

Restrictions

Consider whether the hearing is a hearing within Part 3A of CDA 1998: if so, it is not eligible criminal proceedings

If the hearing is eligible criminal proceedings (i.e. not a hearing within Part 3A of CDA 1998) holding the hearing as a wholly audio or wholly video hearing is not permitted: these hearings do not meet any of the conditions in paragraph 1 or 2 of Schedule 3A CJA 2003

Additional restrictions

The following restrictions apply to a wholly video, partial video or attended hearing:

- The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence
- A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
 - (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (b) the parties agree to that person giving evidence through a live audio link

Hearings held after D has entered a plea of guilty

Restrictions

Consider whether the hearing is a hearing within Part 3A of CDA 1998: if so, it is not eligible criminal proceedings

If the hearing is eligible criminal proceedings (i.e. not a hearing within Part 3A of CDA 1998) holding the hearing as a wholly audio or wholly video hearing is not permitted: these hearings do not meet any of the conditions in paragraph 1 or 2 of Schedule 3A CJA 2003

Additional restrictions

The following restrictions apply to a wholly video, partial video or attended hearing:

- The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.
- A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
 - (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (b) the parties agree to that person giving evidence through a live audio link.

In the case of proceedings under section 4A or 5 of the Criminal Procedure (Insanity) Act 1964, it is for the person appointed by the court to put the case for the defence (if such a representative has been appointed), rather than the defendant, to agree.

Any hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted

Wholly audio hearing is permissible if either of the following conditions are met:

Condition E: The proceedings are a hearing following conviction held for the purpose of making a decision about whether to impose or vary conditions of bail in respect of the person convicted

Condition F: The proceedings are a hearing following conviction held for the purpose of deciding whether to grant or continue bail in respect of the person convicted, and either—

- (i) section 4 of the Bail Act 1976 does not apply to the person, or
- (ii) the making of the decision is not disputed (including where the court is minded to refuse or revoke bail of its own motion)

Restrictions:

The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.

A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless— (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and (b) the parties agree to that person giving evidence through a live audio link.

Restriction on partial audio hearings

Section 51(10) and (11):

(10) A court may not refuse or revoke bail for a person (P) at eligible criminal proceedings if—

(a) any person takes part in the proceedings— other than for the purpose of giving evidence — through a live audio link, and (b) P objects to the refusal or revocation.

(11) But subsection (10) does not apply if section 4 of the Bail Act 1976 does not apply to P.

Any hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted (continued)

Wholly video hearing is permissible if the following condition is met:

Condition F: the proceedings are a hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted.

Additional restrictions

The following restrictions apply to a wholly video, partial video or attended hearing:

- The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.
- A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
 - (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (b) the parties agree to that person giving evidence through a live audio link.

Criminal appeal to Crown Court

Wholly audio hearing is permissible if the following condition is met:

Condition A: The proceedings are preliminary or incidental to a criminal appeal to the Crown Court

Restrictions:

- The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.
- A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
 - (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (b) the parties agree to that person giving evidence through a live audio link.

Criminal appeal to Crown Court (continued)

Wholly video hearing is permissible if the following condition is met

Condition A: the proceedings are

- (a) an appeal to the Crown Court which is an appeal only against sentence,
- (b) an appeal to the Crown Court arising out of a summary trial—
 - (i) which is an appeal arising out of a summary trial which was itself conducted wholly as video proceedings, and
 - (ii) which the parties agree may be conducted wholly as video proceedings, or
- (c) preliminary or incidental to any criminal appeal to the Crown Court.

Additional restrictions

The following restrictions apply to a wholly video, partial video or attended hearing:

- The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.
- A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
 - (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (b) the parties agree to that person giving evidence through a live audio link.

Hearing under s.155 of the Powers of Criminal Courts (Sentencing) Act 2000

Wholly video hearing is permissible because the following condition is met:

Condition H: the proceedings are a hearing under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000

Additional restrictions

The following restrictions apply to a wholly video, partial video or attended hearing:


- The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.
- A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
 - (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (b) the parties agree to that person giving evidence through a live audio link.



Contempt of Court

Restrictions applicable to contempt of court

- Preliminary hearings: if any person takes part in a preliminary hearing – other than for the purpose of giving evidence – through a live audio link, the court may not deal with a person for contempt of court, including enquiring into conduct and imposing punishment: section 57B(9) CDA 1998
- Eligible criminal proceedings: a court may not deal with a person for contempt of court, including enquiring into conduct and imposing punishment at eligible criminal proceedings in which any person takes part – other than for the purpose of giving evidence – through a live audio link: section 51(12) CJA 2003




Varying or
revoking live
link directions

Varying or rescinding a direction in relation to preliminary hearing or sentencing hearing

- Powers to vary and revoke are contained in section 57B(3D) and (3E) CDA 1998 for preliminary hearings and section 57E(4C) and (5) CDA 1998 for sentencing hearings
- A direction may be rescinded by the court of its own motion or on an application by a party
- The parties plus any relevant YOT must be given the opportunity to make representations before a direction is revoked
- A hearing may be held at which the decision whether or not to revoke a direction is made: if a hearing is held, the court may require or permit a person to take part in that hearing through audio or video link
- A decision to revoke a live link direction does not affect the court's power to give a further live link direction in relation to the hearing
- A live link direction in relation to a preliminary hearing or a sentencing hearing may not be rescinded unless the court is satisfied that it is in the interests of justice for the direction to be rescinded

Varying or rescinding a direction: eligible criminal proceedings

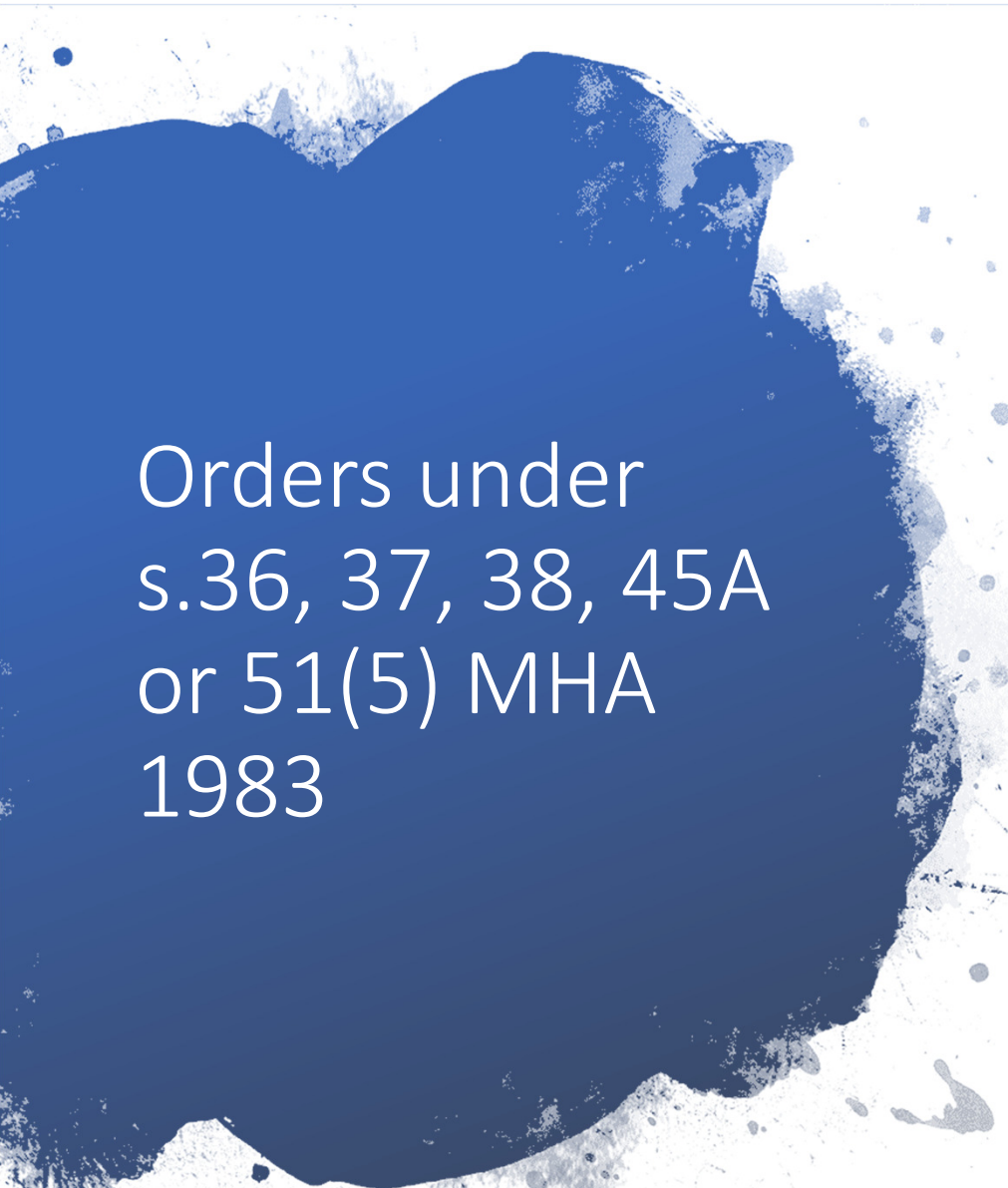
- If a court gives a live link direction under section 51 for a person to take part in proceedings by giving evidence through a live audio link or a live video link, the person may not give evidence except in accordance with the direction: section 51(4D)
- Power to rescind a direction relating to eligible criminal proceedings is contained in section 51(4E): it may be exercised at any time before or during the eligible criminal proceedings to which the direction relates
- A direction may be rescinded by the court of its own motion or on an application by a party
- The parties plus any relevant YOT must be given the opportunity to make representations before a direction is revoked
- A hearing may be held at which the decision whether or not to revoke a direction is made: if a hearing is held, the court may require or permit a person to take part in that hearing through audio or video link
- The same principles apply on a decision to rescind as on a decision to give a direction
- The court may not rescind the direction unless it is satisfied that it is in the interests of justice for the direction to be rescinded
- A decision to revoke a live link direction does not affect the court's power to give a further live link direction in relation to the proceedings



Changes to
Mental Health
Act 1983

Temporary amendments to MHA 1983

- The Coronavirus Act effects a number of temporary amendments to the Mental Health Act 1983. These include requiring fewer health care professionals to undertake certain functions; and extension or removal of time limits relating to detention and transfer of patients. The amendments will mean that an approved mental health professional may decide to detain a person on the advice of one doctor approved under section 12 of the Act.
- For prisoners, the purpose of the amendments is to help to ensure that defendants and prisoners with a mental health condition can be admitted to hospital for treatment during a time of staff shortages and disruption to services. The flexibilities change the number of doctors' opinions and time limits required for detention and movement between court, prison and hospital.
- The Act makes no changes to the requirements for Community Treatment Orders.




Orders under s.36, 37, 38, 45A or 51(5) MHA 1983

The powers of the Court under sections 36(1), 37(1), 38(1), 45A(3) and 51(5) of the MHA 1983 may be exercised if the court—

- is satisfied that complying with the requirement applying to that provision for the evidence of two registered medical practitioners is impractical or would involve undesirable delay, and
- is satisfied on the evidence of a single registered medical practitioner of the matters of which it would (but for this paragraph) have to be satisfied on the evidence of two practitioners,

and any other conditions for the exercise of the power are met.

The power in section 45A(3) may only be exercised where the evidence of a single practitioner is relied upon if the practitioner has given evidence orally before the court (and section 45A(4) accordingly does not apply).



When should
the powers be
used?

Principles to apply in making decisions

- Decisions as to whether to make directions must be made on a case by case, participant by participant basis
- Courts and tribunals: use of video and audio technology: the government's impact summary states that these measures will be used to deal with defendants on bail, witnesses and victims who do not need special measures, and other parties for urgent business during the outbreak. Other arrangements will be used to manage the non-urgent business of the courts
- Mental health: the government's impact summary states that there is likely to be local variation in the impact of the coronavirus outbreak across the country and a clear understanding of when to utilise the flexibilities the Coronavirus Act provides will be important

Summary table: maximum permissible live link directions for different types of hearing

Hearings in the Crown Court under the Coronavirus Act 2020	What is the minimum required physical attendance in a courtroom?	If D attends hearing, what is D's minimum level of participation? Audio / Video/ in courtroom	Can the proceedings be heard wholly by audio link?	Can the proceedings be heard wholly by video link?
Preliminary hearings				
PTPH – not guilty plea to be entered	None	Audio ¹	Yes ^{1,2}	Yes ²
PTPH – guilty plea to be entered	None	Video	No	Yes ²
Hearing to determine fitness to plead	One participant ³	Video	No	No ³
CTL extensions	None	Audio ¹	Yes ^{1,2}	Yes ²
Bail applications – uncontested	None	Audio ¹	Yes ^{1,2}	Yes ²
Bail applications - contested	None	Video	No	Yes ²
General pre-trial hearings (e.g. mention, PTR)	None	Audio ¹	Yes ^{1,2}	Yes ²
Newton hearing ⁴	None	Audio ^{1,4}	Possibly ^{1,2}	Yes ²
Sentencing hearings				
Sentence, reviews or breaches, including orders under s.37 or s45A MHA 1983 ⁵	None	Video	No	Yes ²
Additional 'eligible proceedings', including Crown Court trial, Appeals, Contempt, Interim mental health and others				
Crown Court Trial	Jury	Video	No	No
s.4A or 5 CP(1)A 1964 ("Did D do the act?")	Jury	Video	No	No
Slip Rule hearing: s.155 PCC(S)A 2000	None	Video	No	Yes ²
Hearings after plea of guilty other than sentence e.g. vacate plea, POCA	One participant ³	Video	No	No ³
Proceedings under Part 3 MHA 1983, e.g ss.35 & 36 remands, s.38 interim hospital orders ⁵	One participant ³	Video	No	No ³
Bail appeal after mags court remand for medical report or grant of conditional bail ⁶	One participant ³	Video	No	No ³
Post-conviction bail variation: s.4 BA 1976 does not apply; uncontested; or impose or vary conditions only	None	Audio ¹	Yes ^{1,2}	Yes ²
Post-conviction bail hearing: contested and s.4 BA 1976 applies	None	Video	No	Yes ²
Contempt of Court ⁷	None	Video	No	Yes ^{2,3}
Criminal appeal to Crown Court: preliminary or incidental proceedings	None	Audio ¹	Yes ^{1,2}	Yes ²
Criminal appeal against sentence	None	Video	No	Yes ²
Criminal appeal against conviction: summary trial not held by video	One participant ³	Video	No	No ³
Criminal appeal against conviction: summary trial was held by video	One participant ^{3,8}	Video	No	No ³ , unless agreed ²

1. But note that D cannot give evidence by audio.
2. Evidence from witnesses other than D may be received by audio if there is no other suitable method and the parties agree (or in the case of a trial of the act, D's appointed advocate agrees).
3. At least one participant is required in court - perhaps most obviously the judge or D, but it could be any participant.
4. NB consider the restriction on D giving evidence by audio
5. Note power to dispense with the usual requirement for a second report (Sch 8 para 6 CA 2020)
6. Under s.81(1)(g) SCA 1981 or s.16 CIA 2003
7. Note only witnesses other than D may appear via audiolink at such a hearing – no other participant may appear via audiolink.
8. One participant unless the parties agree to fully video hearing.

This table is the work of HHJ Lana Wood, HHJ Jonathan Cooper and HHJ Silas Reid

Stay safe

HHJ Lana Wood
Harrow Crown Court
29th March 2020

With thanks to HHJ Silas Reid for his careful checking of the slides. We do not anticipate any further revisions. Any remaining errors are my responsibility.

If you do spot an error, please email me
HHJ.Lana.Wood@ejudiciary.net
Subject line: Coronavirus slide errors
Thank you!