

Prisons and Courts Bill

Video-links and virtual hearings

Introduction

1. Fully virtual hearings are hearings where no parties are present in the physical courtroom, and instead join the hearing via telephone or video conference (this may also be referred to as a 'wholly audio hearing' or 'wholly video hearing'). The virtual hearings measures will also give the court greater powers to direct for certain matters to be dealt with using a 'virtual-enabled' hearing, where one or more of the parties appear before the court in a physical courtroom via a live audio or video link.
2. Video-enabled and virtual hearings will mean that people will only need to physically attend court when justice requires. This reduces the burden on parties who may have to travel long distances for a short, straightforward, hearing which could just as easily be dealt with using telephone or video conferencing, or even online channels.
3. Increasing the number of decisions which can be made outside of the traditional courtroom has enormous potential to increase the efficiency and effectiveness of the criminal justice process. It will also reduce inconvenience and increase efficiency for not just the courts, but criminal justice partners like probation, prisons and the police, and also legal professionals. Victims and witnesses may also benefit from not having to travel to court unnecessarily.

What is the current position?

4. At present, hearings are usually held in person in a court building, with all parties physically present. The law allows for certain criminal proceedings by electronic means, whether live link, telephone conference or email. Live video links into the court room are most commonly used for vulnerable or intimidated witnesses, to avoid the need for them to give evidence in the court room, and for defendants in custody, where it is more efficient for the justice system to have them attend certain proceedings via live link rather than in person. The circumstances where this can be used are limited and we now want to extend them to allow victims to take part without having to meet the alleged perpetrator face-to-face.
5. The court has, in some circumstances, used its inherent jurisdiction to allow the use of video link in circumstances other than those specified in this legislation. The Criminal Procedure Rules on live links and telephones for pre-trial hearings place an obligation on the court to make use of the technology when it is appropriate, and broadens the scope to include defendants who are not in custody, but who "want to attend by video link".

What are the proposed changes?

6. The court may use its inherent powers to direct for basic administrative decisions (such as an uncontested variation of bail terms) to be made without a hearing 'on the papers' (preferably using the digital platform). Where a hearing is deemed necessary by the court, this may not always require all parties to be present in the physical court room. The court may direct for the use of live audio or video link, or a fully virtual hearing, if the court is satisfied that it is in the interests of justice to do so, having considered any representations from the parties (and youth offending teams where a young defendant is concerned). For example, in the past the defendant, their representative and the prosecution may have had to travel long distances to take part in a straightforward case

management hearing, in the future they may be able to participate in a video or telephone conference from a more convenient location, such as their offices.

7. The Bill sets out limits as to when video or telephone technology can be used. For example, save for the existing single justice procedure, trials and sentencing must be decided at a hearing and cannot be heard by wholly audio hearing or with attendance through live audio link. Disputed bail applications must be determined at a hearing. This cannot be heard by wholly audio hearing or with attendance through live audio link where there is a dispute as to whether to grant bail.
8. There will also be safeguards in place to ensure that virtual hearings and other electronic channels are only used under appropriate circumstances and that the defendant is afforded a fair hearing. The court will always have the final say on whether it is appropriate to conduct a hearing in a certain way, and must be satisfied that it is in the interests of justice to do so. Factors which might render it contrary to the interests of justice for a matter to be determined by a certain means will be set out in Criminal Procedure Rules and Criminal Practice Directions as appropriate.
9. The key provisions in the Bill will have the effect of:
 - The court being permitted to deal with pre-trial and enforcement issues via wholly audio or wholly video hearing or with the use of live audio or video link, regardless of whether the defendant is in custody.
 - Where the grant of bail is in dispute, the court will be able to make its decision in a wholly video hearing or will be able to make use of live video link. Where the conditions of bail are in dispute, the court will in addition be able to make its decision in a wholly audio hearing or will be able to make use of live audio link.
 - In suitable cases, the court will be able to direct that the hearing at which a defendant is convicted and sentenced be conducted by a wholly video hearing or enabled using a live video link (because young defendants are not eligible for the SJP, they are also not eligible for sentencing by wholly video hearing in such circumstances).
 - Trials in the magistrates' court for summary only, non-imprisonable offences (such as TV Licence evasion and speeding) may be conducted by wholly video hearing or using live video link. This would be where a trial by a single justice on the papers was proposed but could not take place, and the parties agree to the trial being conducted wholly as video proceedings. All other trials, including youth cases, will be conducted in the physical court room.
 - In all trials there will be additional provision for witnesses (including the accused) to attend and give evidence by live video link. There will also be provision for witnesses to give evidence by live audio link where there are no suitable live video link facilities and the parties agree.