



# Police and Justice Act 2006

## 2006 CHAPTER 48

### PART 5

#### MISCELLANEOUS

##### *Live links*

#### **45 Attendance by accused at certain preliminary or sentencing hearings**

For section 57 of the Crime and Disorder Act 1998 (c. 37) (use of live television links at preliminary hearings) there is substituted—

#### **“PART 3A**

#### LIVE LINKS FOR ACCUSED’S ATTENDANCE AT CERTAIN PRELIMINARY AND SENTENCING HEARINGS

##### **57A Introductory**

- (1) This Part—
  - (a) applies to preliminary hearings and sentencing hearings in the course of proceedings for an offence; and
  - (b) enables the court in the circumstances provided for in sections 57B, 57C and 57E to direct the use of a live link for securing the accused’s attendance at a hearing to which this Part applies.
- (2) The accused is to be treated as present in court when, by virtue of a live link direction under this Part, he attends a hearing through a live link.
- (3) In this Part—

“custody”—

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*Status: This is the original version (as it was originally enacted).*

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(a) includes local authority accommodation to which a person is remanded or committed by virtue of section 23 of the Children and Young Persons Act 1969; but

(b) does not include police detention;

“live link” means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during a hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);

“police detention” has the meaning given by section 118(2) of the Police and Criminal Evidence Act 1984;

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

(a) proceedings relating to the giving or rescinding of a direction under section 57E;

(b) proceedings (in a magistrates' court) relating to committal to the Crown Court for sentencing; or

(c) sentencing the offender or determining how the court should deal with him in respect of the offence.

### **57B Use of live link at preliminary hearings where accused is in custody**

- (1) This section applies in relation to a preliminary hearing in a magistrates' court or the Crown Court.
- (2) Where it appears to the court before which the preliminary hearing is to take place that the accused is likely to be held in custody during the hearing, the court may give a live link direction under this section in relation to the attendance of the accused at the hearing.
- (3) A live link direction under this section is a direction requiring the accused, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.
- (4) If a hearing takes place in relation to the giving or rescinding of such a direction, the court may require or permit a person attending the hearing to do so through a live link.
- (5) The court shall not give or rescind such a direction (whether at a hearing or otherwise) unless the parties to the proceedings have been given the opportunity to make representations.
- (6) If in a case where it has power to do so a magistrates' court decides not to give a live link direction under this section, it must—
  - (a) state in open court its reasons for not doing so; and

- (b) cause those reasons to be entered in the register of its proceedings.

### **57C Use of live link at preliminary hearings where accused is at police station**

- (1) This section applies in relation to a preliminary hearing in a magistrates' court.
- (2) Where subsection (3) or (4) applies to the accused, the court may give a live link direction in relation to his attendance at the preliminary hearing.
- (3) This subsection applies to the accused if—
  - (a) he is in police detention at a police station in connection with the offence; and
  - (b) it appears to the court that he is likely to remain at that station in police detention until the beginning of the preliminary hearing.
- (4) This subsection applies to the accused if he is at a police station in answer to live link bail in connection with the offence.
- (5) A live link direction under this section is a direction requiring the accused to attend the preliminary hearing through a live link from the police station.
- (6) But a direction given in relation to an accused to whom subsection (3) applies has no effect if he does not remain in police detention at the police station until the beginning of the preliminary hearing.
- (7) A live link direction under this section may not be given unless the accused has given his consent to the court.
- (8) A magistrates' court may rescind a live link direction under this section at any time before or during a hearing to which it relates.
- (9) A magistrates' court may require or permit—
  - (a) the accused to give or withhold consent under subsection (7) through a live link; and
  - (b) any party to the proceedings who wishes to make representations in relation to the giving or rescission of a live link direction under this section to do so through a live link.
- (10) Where a live link direction under this section is given in relation to an accused person who is answering to live link bail he is to be treated as having surrendered to the custody of the court (as from the time when the direction is given).
- (11) In this section, “live link bail” means bail granted under Part 4 of the Police and Criminal Evidence Act 1984 subject to the duty mentioned in section 47(3)(b) of that Act.”

### **57D Continued use of live link for sentencing hearing following a preliminary hearing**

- (1) Subsection (2) applies where—
  - (a) a live link direction under section 57B or 57C is in force;
  - (b) the accused is attending a preliminary hearing through a live link by virtue of the direction;

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- (c) the court convicts him of the offence in the course of that hearing (whether by virtue of a guilty plea or an indication of an intention to plead guilty); and
  - (d) the court proposes to continue the hearing as a sentencing hearing in relation to the offence.
- (2) The accused may continue to attend through the live link by virtue of the direction if—
- (a) the hearing is continued as a sentencing hearing in relation to the offence;
  - (b) the accused consents to his continuing to attend through the live link; and
  - (c) the court is satisfied that it is not contrary to the interests of justice for him to do so.
- (3) But the accused may not give oral evidence through the live link during a continued hearing under subsection (2) unless—
- (a) he consents to give evidence in that way; and
  - (b) the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.

#### **57E Use of live link in sentencing hearings**

- (1) This section applies where the accused is convicted of the offence.
- (2) If it appears to the court by or before which the accused is convicted that it is likely that he will be held in custody during any sentencing hearing for the offence, the court may give a live link direction under this section in relation to that hearing.
- (3) A live link direction under this section is a direction requiring the accused, if he is being held in custody during the hearing, to attend it through a live link from the place at which he is being held.
- (4) Such a direction—
- (a) may be given by the court of its own motion or on an application by a party; and
  - (b) may be given in relation to all subsequent sentencing hearings before the court or to such hearing or hearings as may be specified or described in the direction.
- (5) The court may not give such a direction unless—
- (a) the offender has given his consent to the direction; and
  - (b) the court is satisfied that it is not contrary to the interests of justice to give the direction.
- (6) The court may rescind such a direction at any time before or during a hearing to which it relates if it appears to the court to be in the interests of justice to do so (but this does not affect the court’s power to give a further live link direction in relation to the offender).

The court may exercise this power of its own motion or on an application by a party.

- (7) The offender may not give oral evidence while attending a hearing through a live link by virtue of this section unless—
- (a) he consents to give evidence in that way; and
  - (b) the court is satisfied that it is not contrary to the interests of justice for him to give it in that way.
- (8) The court must—
- (a) state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this section; and
  - (b) if it is a magistrates’ court, cause those reasons to be entered in the register of its proceedings.”

#### **46 Live link bail**

- (1) The Police and Criminal Evidence Act 1984 (c. 60) is amended as follows.
- (2) After section 34(7) (persons who are to be treated as arrested) there is inserted—
- “(8) Subsection (7) does not apply in relation to a person who is granted bail subject to the duty mentioned in section 47(3)(b) and who either—
- (a) attends a police station to answer to such bail, or
  - (b) is arrested under section 46A for failing to do so,
- (provision as to the treatment of such persons for the purposes of this Part being made by section 46ZA).”
- (3) After section 46 (detention after charge) there is inserted—

##### **“46ZA Persons granted live link bail**

- (1) This section applies in relation to bail granted under this Part subject to the duty mentioned in section 47(3)(b) (“live link bail”).
- (2) An accused person who attends a police station to answer to live link bail is not to be treated as in police detention for the purposes of this Act.
- (3) Subsection (2) does not apply in relation to an accused person if—
  - (a) at any time before the beginning of proceedings in relation to a live link direction under section 57C of the Crime and Disorder Act 1998 in relation to him, he informs a constable that he does not intend to give his consent to the direction;
  - (b) at any such time, a constable informs him that a live link will not be available for his use for the purposes of that section;
  - (c) proceedings in relation to a live link direction under that section have begun but he does not give his consent to the direction; or
  - (d) the court determines for any other reason not to give such a direction.
- (4) If any of paragraphs (a) to (d) of subsection (3) apply in relation to a person, he is to be treated for the purposes of this Part—
  - (a) as if he had been arrested for and charged with the offence in connection with which he was granted bail, and
  - (b) as if he had been so charged at the time when that paragraph first applied in relation to him.

- (5) An accused person who is arrested under section 46A for failing to attend at a police station to answer to live link bail, and who is brought to a police station in accordance with that section, is to be treated for the purposes of this Part—
- (a) as if he had been arrested for and charged with the offence in connection with which he was granted bail, and
  - (b) as if he had been so charged at the time when he is brought to the station.
- (6) Nothing in subsection (4) or (5) affects the operation of section 47(6).”
- (4) In section 46A (power of arrest for failure to answer to police bail) after subsection (1) there is inserted—
- “(1ZA) The reference in subsection (1) to a person who fails to attend at a police station at the time appointed for him to do so includes a reference to a person who—
- (a) attends at a police station to answer to bail granted subject to the duty mentioned in section 47(3)(b), but
  - (b) leaves the police station at any time before the beginning of proceedings in relation to a live link direction under section 57C of the Crime and Disorder Act 1998 in relation to him, without informing a constable that he does not intend to give his consent to the direction.”

(5) In section 47 (bail after arrest) —

    - (a) in subsection (3), for paragraphs (a) and (b) and the words following them there is substituted—
      - “(a) to appear before a magistrates' court at such time and such place as the custody officer may appoint;
      - (b) to attend at such police station as the custody officer may appoint at such time as he may appoint for the purposes of—
        - (i) proceedings in relation to a live link direction under section 57C of the Crime and Disorder Act 1998 (use of live link direction at preliminary hearings where accused is at police station); and
        - (ii) any preliminary hearing in relation to which such a direction is given; or
      - (c) to attend at such police station as the custody officer may appoint at such time as he may appoint for purposes other than those mentioned in paragraph (b).”;
    - (b) in subsection (7), at the end there is inserted “or to a person to whom section 46ZA(4) or (5) applies”.

(6) In section 54 (searches of detained persons), in subsection (1)(b), after “37 above” there is inserted “or as a person to whom section 46ZA(4) or (5) applies”.

#### **47 Evidence of vulnerable accused**

After section 33 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (interpretation etc of Chapter 1 of Part 2) there is inserted—

## “CHAPTER 1A

### USE OF LIVE LINK FOR EVIDENCE OF CERTAIN ACCUSED PERSONS

#### **33A Live link directions**

- (1) This section applies to any proceedings (whether in a magistrates' court or before the Crown Court) against a person for an offence.
- (2) The court may, on the application of the accused, give a live link direction if it is satisfied—
  - (a) that the conditions in subsection (4) or, as the case may be, subsection (5) are met in relation to the accused, and
  - (b) that it is in the interests of justice for the accused to give evidence through a live link.
- (3) A live link direction is a direction that any oral evidence to be given before the court by the accused is to be given through a live link.
- (4) Where the accused is aged under 18 when the application is made, the conditions are that—
  - (a) his ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by his level of intellectual ability or social functioning, and
  - (b) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).
- (5) Where the accused has attained the age of 18 at that time, the conditions are that—
  - (a) he suffers from a mental disorder (within the meaning of the Mental Health Act 1983) or otherwise has a significant impairment of intelligence and social function,
  - (b) he is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court, and
  - (c) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).
- (6) While a live link direction has effect the accused may not give oral evidence before the court in the proceedings otherwise than through a live link.
- (7) The court may discharge a live link direction at any time before or during any hearing to which it applies if it appears to the court to be in the interests of justice to do so (but this does not affect the power to give a further live link direction in relation to the accused).

The court may exercise this power of its own motion or on an application by a party.
- (8) The court must state in open court its reasons for—
  - (a) giving or discharging a live link direction, or

(b) refusing an application for or for the discharge of a live link direction, and, if it is a magistrates' court, it must cause those reasons to be entered in the register of its proceedings.

**33B Section 33A: meaning of “live link”**

- (1) In section 33A “live link” means an arrangement by which the accused, while absent from the place where the proceedings are being held, is able—
- (a) to see and hear a person there, and
  - (b) to be seen and heard by the persons mentioned in subsection (2),
- and for this purpose any impairment of eyesight or hearing is to be disregarded.
- (2) The persons are—
- (a) the judge or justices (or both) and the jury (if there is one),
  - (b) where there are two or more accused in the proceedings, each of the other accused,
  - (c) legal representatives acting in the proceedings, and
  - (d) any interpreter or other person appointed by the court to assist the accused.

**33C Saving**

Nothing in this Chapter affects—

- (a) any power of a court to make an order, give directions or give leave of any description in relation to any witness (including an accused), or
- (b) the operation of any rule of law relating to evidence in criminal proceedings.”

**48 Appeals under Part 1 of the Criminal Appeal Act 1968**

- (1) In section 22 of the Criminal Appeal Act 1968 (c. 19) (right of appellant to be present at criminal appeal hearings in Court of Appeal), after subsection (3) there is inserted—
- “(4) The Court of Appeal may give a live link direction in relation to a hearing at which the appellant is expected to be in custody but is entitled to be present (by virtue of subsection (1) or leave given under subsection (2)) at any time before the beginning of that hearing.
- (5) For this purpose—
- (a) a “live link direction” is a direction that the appellant (if he is being held in custody at the time of the hearing) is to attend the hearing through a live link from the place at which he is held; and
  - (b) “live link” means an arrangement by which the appellant is able to see and hear, and to be seen and heard by, the Court of Appeal (and for this purpose any impairment of eyesight or hearing is to be disregarded).
- (6) The Court of Appeal—
- (a) must not give a live link direction unless the parties to the appeal have had the opportunity to make representations about the giving of such a direction; and



- (b) may rescind a live link direction at any time before or during any hearing to which it applies (whether of its own motion or on the application of a party).”

(2) In section 23 of that Act (giving of evidence), after subsection (4) there is inserted—

“(5) A live link direction under section 22(4) does not apply to the giving of oral evidence by the appellant at any hearing unless that direction, or any subsequent direction of the court, provides expressly for the giving of such evidence through a live link.”

(3) In section 31(2) of that Act (powers exercisable by single judge), after paragraph (c) there is inserted—

“(ca) to give a live link direction under section 22(4);”.