

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fifth Delegated Legislation Committee

REMOTE OBSERVATION AND RECORDING
(COURTS AND TRIBUNALS) REGULATIONS 2022

Tuesday 19 July 2022

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The Committee consisted of the following Members:

Chair: GERAINT DAVIES

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| † Argar, Edward (<i>Charnwood</i>) (Con) | † Jarvis, Dan (<i>Barnsley Central</i>) (Lab) |
| † Cunningham, Alex (<i>Stockton North</i>) (Lab) | Lavery, Ian (<i>Wansbeck</i>) (Lab) |
| † Dines, Miss Sarah (<i>Parliamentary Under-Secretary of State for Justice</i>) | Leadbeater, Kim (<i>Batley and Spen</i>) (Lab) |
| † Djanogly, Mr Jonathan (<i>Huntingdon</i>) (Con) | † Richardson, Angela (<i>Guildford</i>) (Con) |
| † Duddridge, James (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † Simmonds, David (<i>Ruislip, Northwood and Pinner</i>) (Con) |
| † Greenwood, Lilian (<i>Nottingham South</i>) (Lab) | † Vaz, Valerie (<i>Walsall South</i>) (Lab) |
| † Griffiths, Kate (<i>Burton</i>) (Con) | † Walker, Mr Robin (<i>Worcester</i>) (Con) |
| † Hall, Luke (<i>Thornbury and Yate</i>) (Con) | † Wood, Mike (<i>Dudley South</i>) (Con) |
| † Hillier, Dame Meg (<i>Hackney South and Shoreditch</i>) (Lab/Co-op) | Nicholas Taylor, <i>Committee Clerk</i> |
| | † attended the Committee |

Fifth Delegated Legislation Committee

Tuesday 19 July 2022

[GERAINT DAVIES *in the Chair*]

Remote Observation and Recording (Courts and Tribunals) Regulations 2022

9.25 am

The Chair: Members are free to remove their jackets and ties, but we will leave it there for the time being.

The Parliamentary Under-Secretary of State for Justice (Miss Sarah Dines): I beg to move,

That the Committee has considered the Remote Observation and Recording (Courts and Tribunals) Regulations 2022 (S.I., 2022, No. 705).

It is a pleasure to serve under your chairmanship, Mr Davies. The statutory instrument regulates the ability of our courts and tribunals to allow the remote observation of proceedings across our justice system, subject to judicial discretion. The instrument provides the initial regulations for the power contained in the new section 85A of the Courts Act 2003, as inserted into the Act—together with new section 85B—by section 198 of the Police, Crime, Sentencing and Courts Act 2022. It was made using the made affirmative procedure on 28 June 2022 by the Lord Chancellor, with the concurrence of the Lord Chief Justice and the Senior President of Tribunals. I will come on to why the use of the made affirmative procedure was appropriate.

New sections 85A and 85B of the Courts Act 2003 replace the legislation contained in section 55 and schedule 25 of the Coronavirus Act 2020. That coronavirus legislation was repealed on 28 June 2022, save for a very minor purpose relating to three measures in tribunal rules, in order to give the tribunals in question time to amend or replace the measures, which will expire on or before 24 December 2022. The new legislation became effective on the same date as today's instrument was made.

For Members who are not familiar with it, I will briefly outline the history of the legislation. At the outset of the pandemic, our courts and tribunals moved swiftly to temporarily hold all hearings remotely, using audio and video technology. To ensure that legal proceedings remained appropriately public and transparent, temporary and emergency legislation in the Coronavirus Act allowed most courts and tribunals to transmit audio or video footage of their proceedings to remote observers who had specifically requested access. Thus our courts were able to satisfy their obligations for publicity under the common law principle of open justice and article 6 of the European convention on human rights.

The legislation was very well received, especially by court reporters and legal bloggers, who do valiant work reporting what happens in our justice system to the wider public. It allowed courts and tribunals to offer a digital equivalent to the public gallery where they saw fit, thereby improving the transparency of our justice system, while maintaining the necessary safeguards for court users and controls on privacy. Consequently, the

Government decided to make the option for remote observation a permanent feature of our justice system. The necessary primary legislation was enacted as part of the Police, Crime, Sentencing and Courts Act, and initial regulations for that legislation are contained in today's instrument.

The regulations, which have been scrutinised and approved by the Lord Chief Justice and the Senior President of Tribunals, allow the recently enacted remote observation powers to be utilised by our judiciary when they see fit in a far wider set of scenarios than before. It allows the powers to be used with judicial discretion in all of our courts and tribunals, and any bodies that exercise the judicial power of the state, except for the Supreme Court and devolved courts and tribunals.

Mr Jonathan Djanogly (Huntingdon) (Con): Will the Minister explain the wider purpose? She gave a good reason why the powers are needed for the administration of the court process, but am I right in thinking that they could also be used to, in effect, have more US-type show trials, such as the OJ Simpson trial, whereby the public could look at the trial conducted, as well as the people involved in the trial itself?

Miss Dines: That is a very useful point, which shows some misunderstanding by the public, not by my hon. Friend, regarding what the SI is about. Remote observation is distinct from broadcasting. It certainly would not be US-style broadcasting; this is remote observation only, following an application by somebody who would ordinarily be able to watch the proceedings physically in a gallery. There needs to be a prior application with name and address supplied. It is not open broadcasting. If I can make a little progress—

Mr Djanogly: If the public gallery has 20 members, is the Minister saying that 20 people would be given remote access?

Miss Dines: Those who apply for remote access would need to apply before the hearing in the normal way to ask for permission and a link would be sent. It is certainly very distinct from broadcasting.

Valerie Vaz (Walsall South) (Lab): If I heard the Minister correctly, she said “name and address”, but the regulations state “name and email address”. I would say that it is important for someone to give their address. Who will do due diligence on who applies? I know that the admin staff at the court—if there are any left—are overworked, so will there be any due diligence on the email addresses, which could be out of the jurisdiction?

Miss Dines: In the usual way, there is a prior application. Each application is considered properly by the court and the judiciary. It is not the case that there will be a blanket allowing of everyone who applies to have that observation. However, the right hon. Lady is right: it is “name and email address”, and there will be sufficient time for proper research to look into that. I am sure that, as time goes on, due diligence will be put in place. Extra funding has been made available to facilitate that, and it is open to the judge, as in the normal situation, to refuse any application if there is uncertainty.

Lilian Greenwood (Nottingham South) (Lab): I do not think that the Minister has properly addressed the questions asked by the hon. Member for Huntingdon (Mr Djanogly) and my right hon. Friend the Member for Walsall South (Valerie Vaz). If there is a trial of significant public interest, what is to prevent large numbers of the public, who would be entitled to be in the public gallery, asking for observer status? How can she be certain that there are sufficient resources to undertake the due diligence that my right hon. Friend mentioned?

Miss Dines: It is little different from what would happen under the old system, where people present themselves at court and try to get in the public gallery. There might be a limit of 20, 30 or 50 people, depending on the size of the court. There needs to be a prior application so that the court system would not be surprised by it, and there would be sufficient time. Funds are being set aside to implement it. If there is an unusual administrative burden, it is open to the court, as it always has been, to refuse an application or physical entry. It is exactly the same principle, and there will be time for that to be considered. I am grateful for the intervention, but I will move on.

Importantly, the regulations ensure that the powers to admit remote observers may be used in jurisdictions that were previously not within the scope of the Coronavirus Act, such as the Court of Protection, coroner's proceedings, and all tribunals outside the unified system, such as employment tribunals. Making the legislation permanent and expanding it in two important ways will strengthen open justice and the transparency and accessibility of our justice system. It supports the recommendations of the Cairncross review on the future of journalism, and report by the Digital, Culture, Media and Sport Committee in November 2020 on the same topic, by offering modern digital solutions to facilitate journalists' access to court. It will improve court access for members of the public who are perhaps less physically able to attend court hearings and buildings to observe the proceedings, as well as those who might feel intimidated or uncomfortable in a physical public gallery.

Public galleries will continue to be available in our courtrooms, as they are now. The enabling provisions, new sections 85A and 85B of the Courts Act 2003, inserted by the Police, Crime, Sentencing and Courts Act, contain the necessary safeguards to ensure that remote observers and participants in a hearing cannot make an unauthorised recording or transmission of the proceedings. Transgressors would be subject on conviction to a £1,000 fine or, if found in contempt of court, they would face up to two years in prison. Those safeguards replicate in a digital sense existing prohibitions that have long applied to traditional courtrooms.

It is important to note that the provisions retain at their heart the principle of judicial discretion. It will be for judges, magistrates, coroners and tribunal panel members to decide on a case-by-case basis whether to provide transmissions of proceedings to members of the public.

Valerie Vaz: I thank the Minister for giving way. We understand that this is her first outing and we wish her well. It is right to explain what judges need to take into account, as set out in regulation 4. Given the policy behind the regulation, will there be a practice direction,

and will she encourage the Lord Chancellor to issue a practice direction so that there is consistency across all the courts and tribunals?

Miss Dines: The Lord Chief Justice and Senior President of Tribunals have issued joint guidance already on how the remote observation should be facilitated across our courts and tribunals. The President of the Queen's Bench Division has issued specific guidance in relation to criminal proceedings. The Chief Coroner has issued guidance for coroners courts, which are very different, of course. Her Majesty's Courts and Tribunals Service has issued guidance to all its staff on how to implement the regulations, and its gov.uk pages have been updated so that the general public and media may better understand the regulations.

The policy of allowing remote observers at court and tribunal hearings is often confused with the use of remote hearings more generally. To be clear, how a hearing is to be heard—in-person, remote or hybrid—is a matter for the judge, magistrate, coroner or tribunal panel to decide on a case-by-case basis. They are best placed to decide in each case how a hearing is to be heard, whether it should be in public or private, and whether remote observation is permissible.

I should also make it clear that the legislation does not allow indiscriminate broadcasting. It will only allow the transmission of proceedings to made either to individuals who have identified themselves to the court or to designated live-streaming premises. The regulations prescribe that, when deciding to allow remote observation, the court must be satisfied that that is in the interests of justice, and that doing so does not create an unreasonable administrative burden on judges and court staff. For example, judges will be under no obligation to allow transmissions to be made to remote observers during a traditional in-party hearing where a public gallery is available if the necessary technology or staff are not readily obtainable.

Finally, I said I would outline why it is appropriate to use the affirmative procedure for this instrument. I fully understand that the procedure should be used only with good reason, and the Government considered it to be appropriate so that the temporary and emergency coronavirus legislation which the regulations replace could be removed from the statute book as soon as possible. The slow progress of the Police, Crime Sentencing and Courts Act through Parliament necessitated the extension of those temporary powers beyond their original term.

It was also vital to enable this new remote observation framework expeditiously to resolve some known issues within the emergency Coronavirus Act powers. That will ensure that several important jurisdictions that were neglected in the previous legislation—notably the Court of Protection, coroners courts, and tribunals outside the unified structure, including employment tribunals—are now explicitly legislated for. Those jurisdictions may now allow remote observation proceedings safely and efficiently and within the appropriate safeguards in the new legislation.

As of June 2022, around 7,000 hearings a week rely on audio and video technology. The use of such technologies is an important component of our court recovery efforts, and remote observation helps to ensure that open justice is maintained.

Valerie Vaz: The Minister is being generous with her time. She mentions the interests of justice and transparency, so I wonder whether she has considered the publication of the names of remote observers at the time a direction is made. How will Parliament know how many people have applied for remote observer status? For example, who are these legal bloggers who are entitled to be part of youth court proceedings? Could she name one of them?

Miss Dines: The Department will consider the publication of names in due course. From my own experience, I can say that it is not usual, and the regulations bring in a way of observing digitally, continuing the system as it has evolved.

In relation to youth courts, there has always been and will continue to be applications in the public interest for various observers to observe. They may be relatively small in number—I do not have the numbers to hand—but it is not perceived to be in any way an opening up or broadcasting of any proceedings that are inappropriate. We must not forget that the discretion remains with the trial judge or head of tribunal who is intimately experienced with that particular matter.

These remote observation regulations ensure that all our courts and tribunals can rely on audio and video technology to hear cases wherever it is determined to be in the interests of justice to do so. Given the considerations I have mentioned, the Government consider the use of affirmative procedures appropriate. In this instance, it has ensured that our courts and tribunals have an expanded, permanent and reliable legislative framework that more closely fits its needs during a critical time as we work hard to deliver justice and recover from the negative impacts of the pandemic. This instrument will therefore support and strengthen the principle of open justice and increase the accessibility and transparency of our justice system as the Government seek to modernise it.

9.41 am

Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship again, Mr Davies, and I will not detain the Committee long. What a Committee it is, littered with former Ministers who will doubtless demonstrate their considerable expertise. In fact, the hon. Member for Huntingdon (Mr Djanogly) has already done so, asking some searching questions of the Minister.

I welcome the Minister to her role. We have been on a couple of Bill Committees together, and I serve notice that I have seen off two of her predecessors, and we politicians just love a hat trick. I do wish her well, though, and she has picked up probably the heaviest bag in the Ministry of Justice with the ongoing crisis in the courts. When she responds to my comments, can she give us a little insight into how she will drive the change needed to deliver timely justice for victims and defendants and secure the much-needed resources to do so?

In fact, as I believe this is the Minister's first parliamentary engagement in her new role, I am sure we would all welcome a serious commitment from her to supporting all victims of crime. There has been some serious reservation and concern among parliamentarians at her elevation to this role, given her alleged handling of the assault claims against the former Tory deputy Chief Whip.

It has been reported that the Minister asked one of the victims in the aftermath of the assault whether or not he was gay, as if that would have some bearing on the relevant accountability processes that followed.

The Chair: Order. Can I ask the shadow Minister to stay within the scope of the debate?

Alex Cunningham: I accept what you say, Mr Davies; I was just hoping to seek a commitment from the Minister that she will give full support to LGBT+ victims and perhaps apologise for how she dealt with matters previously, but I will move on to the statutory instrument before us today.

Given some of the recent legislation to restrict people in so many ways, it is good to work on something that is positive. The Minister will be pleased to know that Labour supports these provisions, which as she outlined will replace and extend the temporary emergency provisions included in the Coronavirus Act 2020, which allows for certain proceedings to be observed remotely and recorded. Labour firmly believes in the principle of open justice and that the public should have a right to witness proceedings taking place, unless it is in the interests of justice not to do so. However, legal proceedings often cover sensitive and painful topics, and attending court or tribunal can be a difficult experience. For that reason, decisions regarding which types of proceedings should be broadcast should not be taken lightly. These provisions are still novel to our justice system, so it is important that they are monitored and assessed to ensure they have no adverse impact on the privacy of court users and wider justice outcomes.

During the Committee sittings of the Bill that gave birth to these provisions, I expressed concerns about the decision-making process for determining what can and cannot be open for recording and broadcast. I moved an amendment to seek some expert input into that decision-making process, suggesting that the regulations should not be introduced before discussion with the existing senior data governance panel, the SDGP. It was useful when the former Minister before last, the hon. Member for Croydon South (Chris Philp) outlined how it would all work and what he saw as protections. He said:

“It is important to stress that at all times the judge retains control of the proceedings and it is ultimately for the judge in any particular hearing or trial to decide what is appropriate. Nothing in the provisions fetters that important judicial discretion and safeguard over the management of any individual hearing or proceeding.”

The Minister has reiterated some of those comments today.

Later in the Committee, in response to an amendment, the then Minister acknowledged the need for wider consultation when decisions are made in this area:

“Of course, in the formulation of regulations of this nature, informal consultation will take place with a number of bodies, including the SDGP, the judiciary, court practitioners, Her Majesty's Courts and Tribunals Service and other interested parties.”—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee*, 17 June 2021; c. 629-630.]

I therefore ask the Minister what informal or other consultation took place with the various organisations outlined by her former colleague before the draft regulations came before the Committee today? Is she satisfied that the pledge made by the previous Minister during the

Bill Committee has been delivered and that the regulations are as robust as they need to be? Will she also confirm that she is personally satisfied that all the necessary protections are in place, and that witnesses and victims in particular will not suffer additional anxiety nor fear as a result of the regulations?

My right hon. Friend the Member for Walsall South and my hon. Friend the Member for Nottingham South talked about that, and the Minister talked about extra funding being made available. I would like to understand what that extra funding is, and how much money is being brought to the table.

Finally—others have raised this issue as well—will the Minister tell me what measures she plans to put in place to monitor the practical outcomes from the draft regulations and whether she will report to Parliament on their operation? As I said at the outset, we do not oppose the regulations—we see them as a step towards more open justice—but I look forward to the Minister's response.

9.47 am

Miss Dines: In relation to the finances, a great deal of money has been put aside by the Government to fund the infrastructure and technology generally, and for the draft regulations. In 2021, we spent £15.8 million on audio and video technology in our courtrooms. The Government are investing more than £1.3 billion to transform HM Courts and Tribunals Service, and invested a further £142 million during the pandemic to upgrade court buildings to ensure that they are digitally enabled. On the specific costs, digitally enabling Crown courtrooms costs £90,000 and magistrates courtrooms £70,000. About 70% of courts and tribunals have audio and video technology in place, and for Crown courts the figure jumps to more than 90%.

There have been extensive informal consultations. Judges and tribunal leaders have discussed implementation regularly. I stress that we do not in any way find that the draft regulations impose any fettering of the already wide discretion of every judge to have control of his or her court. There is nothing new here.

In relation to the protection of witnesses and other participants, exactly the same principles are in place. Judges, being in charge of their courts, look very carefully at each and every application for somebody to observe, whether it is remote or in person. The general nature of the draft regulations is to make observation more transparent and to make it more possible, including for those whom I mentioned earlier who might not find it

physically easy to attend. I hope that responds to most of the points made by the hon. Member for Stockton North.

Dame Meg Hillier (Hackney South and Shoreditch) (Lab/Co-op): I welcome the Minister to her position. I have two questions. First, when we looked at the issue in the Public Accounts Committee—at all issues around remote proceedings—no proper evaluation was planned by the Ministry of Justice for the impacts on how justice is done, in particular with regards to witnesses. Secondly, while people have to give their name, address and details to the judge before any agreement for them to watch something remotely, what safeguards are in place to ensure that they are not doing so in an open environment? That might be against the law, but it is very easy for someone, whether a journalist or another, to be watching, or for someone even just to wander through the space in which it is being watched. There are sanctions in law, but what safeguards are in place to prevent that happening inadvertently or deliberately?

Miss Dines: As I mentioned earlier, under section 199 of the Police, Crime, Sentencing and Courts Act, it is an offence punishable by a fine of £1,000 and up to two years in prison if found to be a contempt. That is a high level of punishment for any unexpected forward transmission, which would be against the law. The courts take this extremely seriously. The hon. Member will probably recall from newspapers and the media that contempt of court has been dealt with extremely seriously by judges. I have no doubt that this would be dealt with in the same way. I emphasise that the measure is to create more open justice, but in a safe way, where there has been proper evaluation.

Alex Cunningham: May I invite the Minister to address the question about whether or what consultations took place with the various organisations outlined by her predecessor?

Miss Dines: I do not have chapter and verse on the consultations, but I am advised that there have been substantive consultation, including at a very high level. The judiciary and the chairmen of tribunals have been very much involved. We have seen from how things worked during coronavirus, it is possible and appropriate to police the arrangements as set out in the draft regulations.

Question put and agreed to.

9.51 am

Committee rose.

