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Live Link Proceedings Bill 2022.

Live Link Proceedings Bill 2022

(ORDINANCE No. OF 2022)

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Live Link Proceedings Bill 2022

(assented to: 2022)
(commencement: on publication)
(published: 2022)

A BILL

for

AN ORDINANCE

To make provision for participation in courts and tribunal proceedings by live video and audio link and connected matters.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 - Introductory

1. Title

This Ordinance is the Live Link Proceedings Ordinance 2022.

2. Commencement

This Ordinance comes into force on publication in the *Gazette*.

3. Interpretation

In this Ordinance —

“**court**” means —

- (a) the Supreme Court established under the Constitution; or
- (b) the Magistrate’s Court, the Summary Court or the Coroner’s Court established under the Administration of Justice Ordinance 1949;

“**live audio link**” means a live telephone link or other arrangement which —

- (a) enables a person to hear all other persons taking part in the proceedings who are not in the same location as that person;
- (b) enables all other persons taking part in the proceedings who are not in the same location to hear the proceedings;

“**live link**” means a live audio link or a live video link as the context requires;

“**live link direction**” means a direction under section 5;

“**live video link**” means a live television link or other arrangement which —

- (a) enables a person to see and hear all other persons taking part in the proceedings who are not in the same location as that person; and
- (b) enables all other persons taking part in the proceedings who are not in the same location to see and hear the proceedings; and

“**tribunal**” means any tribunal established by law in the Falkland Islands and includes the Fisheries Disputes Commission.

PART 2 - Live link proceedings

4. Place of sittings of the courts

(1) A judge, justice of the peace or tribunal member who appears by live link from outside the Falkland Islands is deemed to be sitting in the Falkland Islands.

(2) A court or tribunal may receive evidence or representations by live link from outside the Falkland Islands.

5. Live link directions

(1) A court or tribunal may direct that any proceedings must be conducted wholly or partly by live link where it is in the interests of justice to do so (“**a live link direction**”).

(2) A live link direction may provide for —

- (a) live video link in any proceedings involving the giving of evidence; or
- (b) live audio link or live video link in any proceedings not involving the giving of evidence.

(3) This section does not prevent a court from hearing evidence in accordance with Part 21 (“Live Link Evidence”) or Part 22 (“Vulnerable Witnesses”) of the Criminal Procedure and Evidence Ordinance 2014.

6. Persons to be directed

(1) The power to give a live link direction includes the power to direct that —

- (a) a judge, justice of the peace or tribunal member may conduct the proceedings through a live link; or
- (b) all or any of the following persons take part in proceedings through a live link —
 - (i) a party to the proceedings;
 - (ii) a person providing legal advice to the justices of the peace;

- (iii) the clerk or registrar to the court or tribunal;
- (iv) a witness in the proceedings;
- (v) a legal representative acting in the proceedings;
- (vi) an interpreter or other person appointed by the court or tribunal to assist in the proceedings; and
- (vii) subject to subsection (2), any other person the court or tribunal considers it appropriate to give such a direction to.

(2) A juror must not appear by live link in a trial on indictment by a judge and jury under Part 18 of the Criminal Procedure and Evidence Ordinance 2014.

7. Procedure for live link direction

(1) A live link direction may be given or rescinded —

- (a) of the court or tribunal's own motion; or
- (b) on application by a party to the proceedings.

(2) A live link direction may only be given after the court or tribunal has given the parties to the proceedings an opportunity to make representations about the matter.

(3) The requirement in subsection (2) does not apply if —

- (a) it has not been possible (despite reasonable efforts in all the circumstances) to contact any party; and
- (b) the urgency of the matter is such that the power to give a live link direction must be exercised without further delay.

(4) A court or tribunal may, in the interests of justice, rescind a live link direction but this does not prevent a further direction being given.

(5) A court or tribunal must give reasons for —

- (a) refusing an application for a live link direction or to rescind such a direction; or
- (b) rescinding a direction on its own motion.

8. Providing access to proceedings by live link for members of the public

(1) A person in the Falkland Islands may request access to any public proceedings by live video link.

(2) A request under subsection (1) must be made to the court or tribunal where the proceedings are to be heard in writing.

(3) The clerk or registrar to the court or tribunal must provide such access where it is in the interests of justice and reasonably practicable to do so.

(4) If access is not provided the person making the request must be given the reasons for not doing so in writing.

9. Offences of recording or transmitting participation through live link

(1) It is an offence for a person to make, or attempt to make —

(a) an unauthorised recording, or

(b) an unauthorised transmission,

of an image or sound which is being transmitted through a live video link or transmitted through a live audio link.

(2) It is an offence for a person (“P”) to make, or attempt to make —

(a) an unauthorised recording, or

(b) an unauthorised transmission,

of an image of, or sound made by, any person (whether P or another person) while that person is participating in, viewing or listening to proceedings through a live video link or a live audio link.

Penalty: A fine not exceeding level 3 on the standard scale.

(3) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that, at the time of the actual or attempted recording or transmission, they did not know, and could not reasonably have known, that the image or sound concerned —

(a) was being transmitted through a live video link or through a live audio link (in the case of an offence under subsection (1)), or

(b) was an image of, or sound made by, a person while that person was participating in, viewing or listening to proceedings through a live video link or a live audio link (in the case of an offence under subsection (2)).

(4) For the purposes of this section it does not matter whether a person making, or attempting to make, a recording or transmission intends the recording or transmission, or anything comprised in it, to be seen or heard by any other person.

(5) For the purposes of this section a recording or transmission is unauthorised unless it is authorised (generally or specifically) by the court or tribunal in which the proceedings concerned are being conducted.

[UK Courts Act 2003 section 85C]

PART 3 – Consequential amendments

10. Administration of Justice Ordinance 1949 amended

In the Administration of Justice Ordinance 1949, after section 61 insert —

“61A. Electronic signature and service of documents

A court or tribunal may direct that a document may be signed or served electronically despite any other provision to the contrary in any law.”.

11. Criminal Procedure and Evidence Ordinance 2014 amended

In the Criminal Procedure and Evidence Ordinance 2014 —

- (a) repeal section 183(4) to (7); and
- (b) replace section 435A (observing proceedings by live link) with —

“435A. Observing proceedings by live link

A court may, if it considers it is in the interests of justice to do so, give a direction providing that a witness may, after giving evidence, observe the remainder of the proceedings by live link.”.

12. Coronavirus (Live Link Proceedings and other matters) Ordinance 2020 amended

In the Coronavirus (Live Link Proceedings and other matters) Ordinance 2020 —

- (a) in section 2, omit the definition of “**court**” and the definitions of “**live audio link**” to “**tribunal**”;
- (b) repeal Part 2 (live link proceedings); and
- (c) replace section 12(1) with —

“(1) This Ordinance expires on 4 May 2023.”.

OBJECTS AND REASONS

This Bill is putting on a permanent footing emergency measures introduced during the COVID-19 pandemic by Part 2 of the Coronavirus (Live Link Proceedings and other matters) Ordinance 2020.

Part 1 (clauses 1 to 3) provides for preliminary matters of title, commencement and interpretation.

Clause 4 provides that a judge who appears by live video or audio link from outside the Falkland Islands is deemed for these purposes to be sitting in the Falkland Islands, but the court may receive evidence or representations from outside the Falkland Islands.

Clause 5 provides that a court or tribunal may direct all or any part of its proceedings to be conducted wholly or partly by live link, if it is in the interest of justice. If the proceedings involve

giving evidence, the transmission must be by video link, otherwise the proceedings may be transmitted by video or audio link.

Clause 6 provides for the persons who may participate in proceedings by live link. An important exception is that jurors are not allowed to participate remotely.

Clause 7 sets out the procedure to be followed before a live link direction is made. The court has power to make a direction of its own motion or on application by either party. Before making a direction it must consider the views of the parties to the proceedings, unless the matter is urgent and reasonable attempts to contact any party have failed.

Clause 8 provides that a person who is in the Falkland Islands may request live link access to the proceedings if the proceedings are public proceedings. The request must be made in writing and the clerk or registrar to the court or tribunal must make the necessary arrangements where it is in the interests of justice (for example because the person making the request cannot attend the hearing in person) and reasonably practicable to do so. If a request is refused, written reasons must be given.

Clause 9 provides for offences of making unauthorised recordings of or transmitting live link proceedings or recordings of or an unauthorised recording of or transmission of a sound or image or any persons who is participating in, viewing or listening to live link proceedings. The offence carries a maximum penalty of a fine of £1,000.

Clause 10 also inserts new *section 61A* in the Administration of Justice Ordinance 1949, enabling courts and tribunals to direct that documents should be signed or served electronically.

Clause 11 makes consequential amendments to the Criminal Procedure and Evidence Ordinance 2014.

Clause 12 amends the Coronavirus (Live Link Proceedings and other matters) Ordinance 2020. In addition to repealing Part 2 of that Ordinance, which is replaced by *Part 2* of this Bill, section 12(1) of that Ordinance is amended to extend the indemnity period for medical professionals involved in treating patients with coronavirus to 4 May 2023, the date on which other emergency legislation for the pandemic also expires.

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