

Guidance note for HMCTS Operations

Managing Production of Prisoners during COVID-19

PECS do not routinely transfer prisoners from prison to court who are either symptomatic or confirmed positive with COVID-19; or are required to isolate as an identified contact of a person with COVID-19. This is in line with HMCTS guidance that anyone who is either suspected or a confirmed case should not attend court.

Guidance has recently been issued by HMPPS to prison establishments regarding court attendance procedures: <https://hmppsintranet.org.uk/except/2020/06/18/reception-procedures/>

This guidance note is complementary to HMPPS guidance but with a specific focus on HMCTS process and the impact on court proceedings.

Overview of Responsibilities:

It is a judicial decision as to whether a defendant is to be physically produced to court;

It is the responsibility of the prison establishment's Healthcare Professional to declare if a prisoner is fit to travel. This decision will be made on the assumption that HMCTS & PECS will be able to maintain a safe environment;

It is the responsibility of HMPPS PECS to identify any risks and mitigations required to safely manage a defendant whilst at court and in transfer, and to highlight both the risks and required mitigations to the court and prison.

What does this mean in practice?

Each case will likely need to be considered based on its own circumstances, but the following provides a general guide:

Confirmed Covid-19 prisoners:

- The prison should contact the court to advise if a prisoner listed for production has been confirmed Covid-19 positive. They *should* advise that they have been assessed as not fit for travel;
- The court should liaise with the judge & prison to confirm whether a video link is practical (NB A prisoner who has tested positive will be in isolation and may not be permitted to move to the video link area within the prison: this combined with limited availability of prison video links, means that it will often be non-viable);
- Where no video link is available, the court should liaise with the judge to consider options (*NB please also refer to exceptional circumstances section*).

Prisoners Residing in an outbreak site:

Unless the prisoner fits one of the following: *suspected/ confirmed/ close contact isolation*, they will normally be eligible for production. However, it is the responsibility of the prison healthcare practitioner to declare the prisoner fit for travel.

- The prison should contact the court and advise that the prisoner is currently housed in an outbreak site. They should also advise whether the prisoner is fit for travel;
- Prison productions from outbreak sites are still able to go ahead and that residing in an outbreak site is not considered to be sufficient reason not to produce an individual;
- Fitness for travel is based upon an assessment of an individual's health needs and should not be determined by the status of the site in which they reside;
- The same process as set out for shielding prisoners should then be followed.

Suspected Covid-19 prisoners:

This is slightly more complex, as measures in place will need to consider the potential for vexatious claims of symptoms by the prisoner (i.e. claiming to be symptomatic to avoid production).

If a prisoner declares themselves, or is identified as being symptomatic, prison healthcare will carry out a medical assessment to determine whether the individual is 'fit for travel'

**Fit for
travel**

Proceed with production as directed by the judge.
If practical, video link may be considered to further reduce risk.
Where an in-person appearance is required, PECS will ensure necessary measures are in place to effectively manage the risk.

**Not fit for
travel**

The prison should provide the court/judge with the details of the medical assessment and the reasoning as to why the individual is determined not fit for travel.
Courts should liaise with the judge & prison as to whether a video link is practical.
If there are no alternatives to physical production and the case cannot practically be adjourned, the court should escalate to their PECS SCDM.
PECS will complete a risk assessment and advise of any additional safety measures that could be implemented to facilitate an in-person appearance.

NB: HMPPS are currently undertaking a pilot into lateral flow testing of prisoners on release. Assuming the pilot is successful, HMPPS intend to explore a wider roll out, including prisoners being produced to court. Once in place, this should serve to resolve the issue of vexatious claims.

Shielding Prisoners

The prison should contact the court to advise of their shielding status, and whether they have been assessed as 'fit to travel' by prison healthcare.

**Fit for
travel**

Proceed with production as directed by the judge.
If practical, video link may be considered to further reduce risk.
Where an in-person appearance is required, PECS will ensure particular consideration is given to their safety whilst outside of the prison environment.

**Not fit for
travel**

Courts should liaise with the judge & prison as to whether a video link is practical.
If there are no alternatives to physical production and the case cannot practically be adjourned, the court should escalate to their PECS SCDM.
PECS will complete a risk assessment and advise of any additional safety measures that could be implemented to facilitate an in-person appearance.

Prisoners who are required to isolate due to close contact with a confirmed case:

This should follow the same process as a confirmed case:

- The prison should contact the court to advise if a prisoner listed for production has been confirmed Covid-19 positive. They *should* advise that they have been assessed as not fit for travel;
- The court should liaise with the judge & prison to confirm whether a video link is practical (NB A prisoner who has tested positive will be in isolation and therefore may not be permitted to move to the video link area within the prison);
- Where no video link is available, the court should liaise with the judge to consider options (*NB please also refer to exceptional circumstances section*).

Escalation:

If the court is unhappy with any decision taken by the prison, or are unclear as to the most appropriate option, they should escalate to their PECS CDM/SCDM who will liaise with the prison and confirm the position to the courts.

Exceptional circumstances:

The above guidance should be applied in most circumstances. However, if there is an exceptional reason why the defendant needs to appear in person and there is no reasonable alternative, then the court should liaise with their PECS SCDM. PECS will then:

- Assess the associated risks and required mitigations;
- Confirm the required mitigations to the court & seek their approval/ acceptance;
- Confirm the agreed mitigations to prison healthcare and seek their clearance re fitness to travel.

NB: The disruption caused to other court business is likely to be quite significant. In some cases, the custody suite may need to be taken out of use for all other custodies and/or closed for a deep clean following production. The dock will also require a deep clean before reuse, which will likely mean the closure of the court room. This disruption will need to be considered against the necessity for production of a suspected or confirmed case.

Impact of Length of time since a positive Covid test on court production:

The Healthcare assessment includes compliance with government guidelines determining the duration of self-isolation required.

Within the community there is no requirement for confirmation of a negative test to end periods of self-isolation period and therefore there would be no expectation of HMPPS to adopt such an approach.