

## CORONAVIRUS CRISIS PROTOCOL FOR THE EFFECTIVE HANDLING OF CUSTODY TIME LIMIT CASES IN THE MAGISTRATES' AND THE CROWN COURT

BETWEEN THE SENIOR PRESIDING JUDGE (SPJ), HM COURTS & TRIBUNALS SERVICE, AND THE CROWN PROSECUTION SERVICE

1. The Covid-19 outbreak presents an unprecedented challenge for the Criminal Justice System in England and Wales. The scale and seriousness of the situation presents significant difficulties to the criminal court process and means it cannot operate in the way it does normally.
2. The purpose of this Protocol is to set a temporary framework during the Coronavirus pandemic for the efficient and expeditious handling of cases that involve a Custody Time Limit (CTL). It does not create legal obligations or restrictions on (any) party. Unless stated otherwise this protocol applies to both magistrates' courts and Crown Court cases. The Protocol will be reviewed monthly by the SPJ who will determine when it will cease
3. There is a joint duty on HMCTS and the CPS to ensure that whenever possible cases in which defendants are awaiting trial are dealt with within the Custody Time Limits set out in section 22 Prosecution of Offences Act 1985 and the Prosecution of Offences (Custody Time Limits) Regulations 1987. In the circumstances created by the Coronavirus pandemic it may not be possible for trials to take place within the CTLs and this protocol sets out some of the considerations and processes to be used in such cases.
4. The CPS and HMCTS will share lists of current CTL cases and CTL expiry dates every two weeks/monthly so that CTL cases can be kept under review by all parties to this Protocol.
5. This Protocol does not override independent judicial discretion and every case must be decided on its own merits. The Protocol contains rules of practice only and the relevant law is unaffected. The judge responsible for deciding each application will apply the law.

### **Listing of CTL cases**

6. On any occasion a case with a CTL is listed for mention, a remand hearing, or otherwise, the Custody Time Limit and any extension should be considered even if a written notice has not been served in advance of that hearing
7. No CTL case should be adjourned without a future date and during the period that this Protocol is in operation that date should either be for trial, mention or further remand. Where a trial date is fixed it will generally be prudent to fix a Further Case Management Hearing to review compliance with the PTPH Staged Directions to ensure the overriding objective of a fair trial is met and to ensure that any trial listing will be effective. In any event at any future pre-trial hearing (whether or not it is a FCMH) the case should be reviewed to ensure the PTPH staged process is being complied with so that the case will be trial ready and capable of immediate listing when courts permit.
8. New and current CTL cases where a trial date has yet to be set and current CTL cases where a trial date has been fixed but which has to be vacated because of the present restrictions on jury trial should only be fixed for trial dates when there is a realistic expectation that

those trial dates will be available and an effective trial can take place. CTL extensions should be considered at an early stage in such cases. At every hearing the case must be reviewed and the CTL expiry date must be agreed in open court and recorded on CPS and court records.

9. If listing CTL cases for trial, alternative venues should be considered when necessary including courts in different court circuits, HMCTS regions and CPS areas. Every court centre should also have regard to the possibility other court centres may require their court rooms for CTL trials.
10. In listing trials priority usually should be given to CTL trials over cases in which defendants are on bail save for exceptional cases such as those involving a young witness under the age of ten.
11. Wherever possible live links both audio and video should be considered for defendants, witnesses, parties to the proceedings and the court in CTL trials.
12. In CTL trials all parties will consider, and the court will encourage whenever appropriate, the agreement of evidence under sections 9 and 10 of the Criminal Justice Act 1967, the use of the hearsay provisions of the Criminal Justice Act 2003 and the provisions for expert evidence in absence contained in section 30 of the Criminal Justice Act 1988.

#### **CTL extensions**

13. As set out in section 22(3) Prosecution of Offences Act 1985, the court can only extend the custody time limit if it is satisfied that the need for the extension is due to:
  - a. the illness or absence of the accused, a necessary witness, a judge or a magistrate;
  - b. postponement which is occasioned by the ordering by the court of separate trials in case of two or more accused persons, or two or more charges; or
  - c. some other good and sufficient cause,
  - d. AND in respect of any of the foregoing the prosecution has acted with all due diligence and expedition.
14. When considering the illness or absence of the accused or a necessary witness the court will note the government's advice on self- isolation and avoiding visits to hospitals and medical practices; medical certificates will not be available in most cases and should not be insisted upon unless there is specific information or history to indicate the illness or absence is not genuine. For defendants in custody HM Prisons and Probation Service will provide the court with a written record of the reason for the defendant's absence and where this is due to illness confirm if the defendant has been seen by medical staff.
15. The coronavirus pandemic is an exceptional situation and the adjournment of CTL trials as a consequence of government health advice and of directions made by the Lord Chief Justice amounts to good and sufficient cause to extend the custody time limit. As at the date of the adoption of this Protocol this issue has been judicially determined in this way in a significant number of cases and subject to any decision to the contrary on appeal, the Protocol accurately states the approach of the court.
16. The CPS will be using a CTL application similar to that annexed to this protocol as Annex A. The case chronology to be provided will be short and concise where the sole cause of adjournments and the need for CTL extensions are a consequence of the Coronavirus

pandemic and not a result of prosecution delay. Where it is arguable that the trial would not have been effective, irrespective of the Coronavirus pandemic, because the prosecution has not acted with all due diligence and expedition then the application should be made in the usual format containing the full chronology.

17. In magistrates' courts cases consideration should be given to the likely sentence if convicted ,given that an extended period on remand could exceed that sentence.
18. If a CTL extension is not granted by the Crown Court and the CTL is about to expire, then in accordance with Rule 6(6) the Prosecution of Offences (Custody Time Limits) Regulations 1987 (and subject to section 25 of the Criminal Justice and Public Order Act 1994 exclusion of bail in certain cases of homicide and rape), the court will grant bail with or without conditions in accordance with the Bail Act 1976, as from the expiry of the CTL, subject to a duty to appear before the Crown Court for trial.
19. If a CTL extension is granted the courts will either extend the CTLs (and list the cases for mention) in the first instance to a date after 1 May 2020 (and thereafter to such dates as are agreed by all parties to this protocol), or fix a trial date in accordance with paragraph 7 and 8 above and extend CTLs to an appropriate date after the trial date

#### **CTL extensions -The process**

20. In the Crown Court, the application for the CTL extension should be entered on to the DCS. CPS should then liaise with the local court and Resident Judge regarding any requirements for lodging CTLs. The process will differ, depending on judicial preference.
21. In the magistrates' court, the procedure will differ depending on timing.
  - *Where the application will be made in the course of the regular remand hearing.* No additional action needs to be taken administratively other than ensuring the application is lodged on Court Store .
  - *Where the application must be made before the next remand hearing* the case must be brought forward by the court office and listed in a video-enabled court.

In either case the application must be uploaded to Court Store with the words "CTL EXTENSION APPLICATION" and the date of the next hearing in the filename.

22. CPS must submit applications to **magistrates courts** by emailing to their usual Pre-Court mailbox.

Where the application requires a special hearing to be listed, CPS must head the email: "URGENT: CUSTODY TIME LIMIT EXTENSION APPLICATION FOR IMMEDIATE LISTING".

Where the application is to be heard in the normal remand hearing (see paragraph 21 above) CPS must head the email "URGENT: CUSTODY TIME LIMIT APPLICATION FOR LISTING ON [REMAND HEARING DATE]"

In either case the mail box operator should reply stating "your application has been received and will be listed on [date]."

CPS should escalate failures to respond to applications to the Delivery Manager (or substitute).

23. In the event that a defendant is unable to attend either in person or by live link the hearing at which the application to extend custody time limits is to be made the Court will consider:
  - Whether the defendant has waived their right to attend
  - Whether exercising its discretion to hear the application in the absence of the accused in accordance with Rule 14.2(1)(c) Criminal Procedure Rules (CrimPR) if it would be just to do so in the circumstances.
24. When a defendant is not present either in person or over a live link then they must have been given the opportunity to make representations under CrimPR 14.2(1)(a)(ii).
25. The court may make a decision to extend CTLs at a hearing in public or in private. (CrimPR 14.2(2)). There is no requirement for the parties to attend an unopposed CTL extension application hearing; such applications can be heard in private in the absence of the parties. If however the court requires further information from either party the court should ensure that representations are sought from them.
26. The notice periods for a CTL extension (5 days in the Crown Court and 2 days in the magistrates' courts) can be shortened by the court (CrimPR 14.18(3)).
27. Under the provisions of the Coronavirus Bill/Act the court will be able to conduct a hearing of an application to extend a CTL by live link both audio and video link save for cases in which bail is in dispute or the court is minded to refuse or revoke bail when an audio link may not be used but a video link may be used (sections 57A to 57G of the Crime and Disorder Act 1998 as amended)
28. Following the passing of the Coronavirus Bill the courts will consider dealing with CTL extension applications for the duration of the Coronavirus crisis whenever possible as follows (in order of preference):
  - At a hearing in the absence of the parties and the defendant when the application is unopposed and the defendant has been given the opportunity to make representations;
  - At a hearing in the absence of the defendant using an audio live link for prosecution and defence (save where the defence have indicated they do not oppose);
  - At a hearing in the absence of the defendant using a video live link for prosecution and defence (save where the defence have indicated they do not oppose the application and do not wish to be present);
  - At a hearing at which the defendant is present by video live link and the parties are present by live link (audio or video as directed by the court).
  - When a CTL extension application includes a dispute as to bail such as a bail application then the court cannot use audio live links but can use video live links for the defendant and the parties.
  - Where the court directs that proceedings are to be conducted wholly as video or audio proceedings and it is not practicable for the hearing to be broadcast in a court building, the court may direct that the hearing must take place in private where it is necessary to do so to secure the proper administration of justice. However, any hearing held in private must be recorded, where that is practicable, in a manner directed by the court.



**The Rt. Hon Dame Victoria Sharp DBE**  
**President of the Queen's Bench Division**



**Susan Acland-Hood**  
**Chief Executive, HM Courts & Tribunals Service**



**Kevin Sadler**  
**Deputy Chief Executive and Operations Director**



**Max Hill QC**  
**Director of Public Prosecutions**

7<sup>th</sup> April 2020