



HM Courts &
Tribunals Service



DATED: 1 DECEMBER 2014

**AMENDED PROTOCOL FOR THE EFFECTIVE HANDLING OF
CUSTODY TIME LIMIT CASES IN THE MAGISTRATES' AND THE
CROWN COURT**

*[Incorporating the Criminal Practice Directions amendment no [2014]
EWCA Crim 1569 at CPD XIII Listing F: Custody Time Limits]*

BETWEEN

HM COURTS & TRIBUNALS SERVICE

AND

THE CROWN PROSECUTION SERVICE

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

1. OBJECTIVE OF THIS PROTOCOL

This protocol is an agreement between the Crown Prosecution Service (CPS) and HM Courts & Tribunals Service (HMCTS). Its purpose is to set a framework for co-operation, exchange of information, advance notification and joint working with respect to custody time limits, on terms agreed by both organisations. It does not create legal obligations or restrictions on either party.

It is the CPS, statutory duty to prepare the prosecution diligently and expeditiously. Additionally, the CPS should make timely and appropriate applications to extend custody time limits (CTL) to ensure that bail is not granted in inappropriate cases and public confidence is maintained in the criminal justice system.

HMCTS must ensure that trials involving defendants held in custody take place promptly and within the original CTL period wherever possible and that a person remanded by the court is not detained beyond the expiry of the original CTL period unless it has been properly and appropriately extended.

There is a joint duty on HMCTS and the CPS in finding and making arrangements for an alternative venue for a trial where it is not possible for this to take place within the CTL.

For these reasons HMCTS and the CPS have agreed to the terms of this protocol as a basis for local agreements for the efficient and expeditious handling of cases that involve a CTL at local court centres. It incorporates (referenced by footnotes) the Lord Chief Justice's Practice Direction (Amendment 2) which deals with CTLs at XIII Listing F. This protocol is not intended to disturb existing local arrangements that may cover more than the requirements contained within this protocol.

2. CUSTODY TIME LIMITS

Where a defendant is remanded in custody the CPS advocate at the first hearing and each subsequent hearing will announce to the court the date on which the relevant CTL expires¹. A note of this information will be made on the court file, CPS case file or advocate's computer and as soon as possible after the hearing recorded in CPS case management system (CMS) and the custody time limit diaries. It is anticipated that the Court will if necessary prompt the advocate to announce the CTL expiry date at every hearing where a CTL is running in order that both agencies agree and record the same dates.

The CPS will prioritise the preparation of custody cases with a view to ensuring that the trial can start within the CTL to demonstrate preparation of the case with due diligence and expedition if it becomes necessary to seek an extension of the CTL.

¹ CPD F4 i

The CPS will review the CTL diaries and CMS to monitor the expiry dates. A nominated legal manager and Level D manager will consider any cases identified by these checks at least weekly. In compliance with the statutory period before the limit expires, the CPS will serve notice on the court and the defence if it appears that the case may not be able to start within the time limit so that the court can consider whether to grant an extension. The CPS will provide a detailed application and chronology of events to help the court to decide whether the prosecution has acted with all due diligence and expedition.

However, it is not expected that the CPS will serve an application to extend the CTL if the case is listed for a trial and is expected to proceed in the ordinary course of court business. If such a case has to be adjourned, the court may then exercise its powers under the CTL Regulations to reduce the period of notice required or to waive notice all together where it is satisfied that it is not practical in all the circumstances to give the full or any notice as required. The court may also waive notice if the defence indicates that they it does not require such notice.

CPS managers will check compliance with the systems weekly and provide a written assurance about the systems being operated to the Chief Crown Prosecutor.

3. CALCULATING THE CUSTODY TIME LIMIT

Time periods for the first remand in custody of a defendant must be carefully calculated and double checked by nominated managers after court by reference to the nationally issued calculator or ready reckoner. These have been compiled to take account of all public holidays, weekends and court closure dates bringing expiry dates forward in each case. The statutory discounting of the day of remand has also been taken into account. [Note: CREST does not discount the first day]

A computer generated calculator is available to CPS staff (and is available on the CPS web site at www.cps.gov.uk) and on the CPS Infonet under Applications. The calculator should be used in place of the ready reckoner and enables the first and subsequent remands to be calculated on it. It can be downloaded onto lap top or tablet computers but must be refreshed every January for updates. A word document may be generated from the results screen which can be saved on CMS as an audit trail. The calculator also produces review dates for each case.

A ready reckoner is also available but should be used for the initial remand only. The calculator should always be used in preference to the ready reckoner.

4. LISTING TRIALS

All efforts must be made at the magistrates' court first hearing if the case is to remain in the magistrates' court and at the Preliminary Hearing in the Crown Court to list a case within the CTL. The CTL may only be extended in accordance with section 22 Prosecution of Offences Act 1985 and the Prosecution of Offences (Custody Time Limits) Regulations 1987 (as amended)².

The CPS must inform the court when the CTL elapses. Throughout the duration of the case, the CTL must be kept under continual review by the parties,

² CPD F4 ii

HMCTS and the Resident Judge.³ Its expiry date should be announced at every hearing by prosecution and agreed by the defence.

If the CTL is at risk of being exceeded, an additional hearing should take place and should be listed before the Resident Judge, or trial judge or other judge nominated by the Resident Judge.⁴

The list officer must consider the nature and length of trials listed elsewhere at the court and assess whether any cases where a defendant is on bail could be moved to accommodate the custody trial. If suitable, given priority and listed on a date not less than 2 weeks before the CTL expires, a case may be placed in a warned list.⁵

5. LISTING TRIALS BEYOND THE EXPIRY DATE OF THE CTL

If the above action does not enable the case to be listed within the CTL, enquiries must be made across the cluster with other magistrate's courts or Crown courts. At this stage the local Cluster Manager, Justice's Clerk or Resident Judge will be made aware. If this still does not resolve the problem, enquiries will be made across the Region by the Cluster or Operations Manager. At this stage the Regional Support Unit (RSU), Delivery Director and Presiding Judge will be made aware.

If following all the above a trial slot has not been found enquiries will be made across the neighbouring regions by the local RSU. At this stage all neighbouring Regional Support Units, Delivery Directors and Presiding Judges will be made aware.

Where courtroom or judge availability is not in issue, but all parties and the court agree that the case will not be ready for trial before the expiration of the CTL, a date may be fixed outside the CTL. This may be done without prejudice to any application to extend the CTL or with the express consent of the defence; this must be noted on the papers.⁶

6. LISTING CTL EXTENSIONS

Any application to extend CTLs must be considered as a matter of urgency. The reasons for needing an extension must be ascertained and fully explained to the court.⁷

Written applications by the prosecution to extend CTL must be made in accordance with the Act and Regulations which will allow the court sufficient time in advance of a proposed hearing. The statutory minimum is 2 days for the magistrates' court and 5 days for the Crown court, unless under the Regulations the need to give notice is waived. The periods should be regarded as an absolute minimum and every effort should be made to give the court more notice.

Written applications to extend CTL should include a chronology and written submission providing concise reasons why an extension is necessary and which demonstrates the prosecution's due diligence and expedition in the preparation of the case. A copy must at the same time be served on the defence.

³ CPD F 4 iii

⁴ CPD F 4 v

⁵ CPD F 4 iii

⁶ CPD F 4 ix

⁷ CPD F vii

All applications for an extension should be listed in open court, unless the Court rules otherwise, with advocates (where possible, those instructed in the trial) attending; they should be fully instructed on all aspects relating to timetable, the nature of the case and any other matter relevant to the decision that has to be made.

Any application to extend the CTL in any case listed outside the CTL must be considered by the court whether or not it was listed with the express consent of the defence.⁸

Where courtroom or judge availability is an issue, the court must itself list the case to consider the extension of any CTL. The senior manager/Listing Officer on site must provide the Delivery Director of the circuit with a statement setting out in detail what has been done to try to accommodate the case within the CTL.⁹

The court will inform the parties, via secure email list amendment, of the time, date and place of the hearing of the application to extend the CTL. Once a case has been placed into the court's list for a hearing to determine whether a CTL should be extended, the case will not be removed from the list except by a judicial direction.

Where a CTL is extended by the court, it is anticipated that the Judge/legal adviser will state the new CTL expiry date, and the new date will be noted on the prosecution's and court's file and other monitoring systems.

As legal argument may delay the swearing in of a jury, it is desirable to extend the CTL to a date later than the first day of the trial.¹⁰

7. ACTIONS WHEN A DEFENDANT IS TO BE REMANDED OR BAILED

When a defendant is remanded into custody (including those defendants granted conditional bail but held in custody until a pre-release condition is satisfied), the prosecutor will determine the CTL expiry date and will announce this in court. The court will note this date in the court's papers. It is anticipated that the Court will, if necessary, prompt the advocate to announce the CTL expiry date in court. The defence will be invited to agree this date.

Where a defendant is granted bail but is detained in custody pending compliance with a pre-release condition and either the CPS or the court become aware that the condition has been satisfied and the defendant is released, the party that becomes aware will immediately notify the other via secure email between the listing email box at the Crown Court, the central email box at the CPS and also notify the defence. The number of days that the defendant was held in custody must be announced by the prosecutor in the presence of the defence at the next court hearing and noted on the prosecution's and court's file. It is anticipated that the Court will, if necessary, prompt the advocate to announce the number of days the defendant was held in custody and the defence be invited to agree this figure.

Where a defendant subsequently fails to answer to bail, the court clerk/legal adviser will make a note on the court file of the number of days previously spent in custody (prior to being bailed) when issuing a warrant for arrest. CPS will update CMS and instruct Saturday prosecutors to check this as files are not always available for weekend courts. This will enable any court in front of which the defendant is

⁸ CPD F 4 vi

⁹ CPD F 4viii

¹⁰ CPD F5

subsequently produced after the execution of the warrant to calculate the correct amended CTL expiry date.

8. DEALING WITH DEFENDANTS WHERE THERE IS MORE THAN ONE RELEVANT CTL

Each charge or count including alternative counts attracts its own CTL and must be separately monitored and extended where necessary and appropriate. Where a defendant pleads guilty to one charge or count on an indictment, and that plea is accepted, but does not admit any other charges or counts, any CTL on those matters not admitted remains and may need to be the subject of an application to extend, if the CPS wish to continue to object to bail on that count and wish to continue the prosecution on the unadmitted matters.

Where an application is being made to extend one or more CTL, the prosecutor must make it clear to the court to which charge or count the application relates.

9. FACILITATING AN EFFICIENT AND EFFECTIVE CTL MONITORING PROCESS

Cases with CTLs are registered on the Crown Court's IT system (CREST) and on the CPS's CMS. There will be effective monitoring of CTL expiry dates by regular checks of computerised reports; where that is not available, there will be a manual check.

On the first working day of the month the CPS will send to the magistrates' and Crown Court a computer print-out of a list of cases for that court with a CTL. Similarly on the same date the Crown Court will send to the CPS the letters produced for CTL cases expiring within the next 2 months which are produced when the CREST CTLRP report is run. (There are no computer lists available for the magistrates' court). A nominated person in the prosecution office will cross check the exchanged information against their own list and inform the court in the event of any discrepancy in cases or their accompanying CTL expiry date.

The CPS will locally provide the court with an electronic copy of the CPS national CTL ready reckoner to assist in the calculation of the expiry of a CTL at the first remand. The court may also wish to download the calculator to enable it to benefit from the full functionality of the calculator.

10. DEALING WITH A PROSECUTOR'S APPEAL AGAINST A MAGISTRATES' COURTS' REFUSAL TO EXTEND A CTL

An appeal by the CPS against a refusal by a magistrates' court to extend or further extend a CTL will be made expeditiously and in writing and in accordance with Rule 19.17 Criminal Procedure Rules.

Notice will be served on the Crown Court's listing office and on the magistrates' court that refused the extension and on the defendant.

The notice will give particulars of the defendant in the case, the charge to which the CTL applies and its expiry date, the details of the magistrates' court that refused the

extension and the date of the hearing.

Where a written notice containing the details required for an extension in the Crown Court is served on the magistrates' court a copy will be included with the appeal notice to the Crown Court. Otherwise, such a notice will be prepared and served on the Crown Court as soon as possible and in any event prior to the hearing.

The Crown Court will notify the CPS and defence of the date, time and venue of the appeal hearing as soon as possible.

11. RE-TRIALS ORDERED BY THE COURT OF APPEAL AND VOLUNTARY BILLS

The Crown Court must comply with the Directions of the Court of Appeal and cannot vary those directions without reference to the Court of Appeal.¹¹

In cases where a retrial is ordered by the Court of Appeal, the CTL is 112 days starting from the date that the new indictment is preferred, i.e. from the date that the indictment is delivered to the Crown Court. Court centres should check that CREST has calculated the dates correctly and that it has not used 182 days on cases that have previously been 'sent'.¹²

The draft indictment must in such cases be served on the court within 29 days of the Court's order and the defendant arraigned within 2 months of the order or leave of the Court of Appeal will be required. This may only be granted if satisfied of the prosecution's due diligence and there is good and sufficient cause.

Indictments granted by way of the Voluntary Bill procedure also carry a CTL of 112 days.

12. SERVICE OF DOCUMENTS

Service of any notice and accompanying documents on the court should be by way of secure email. If deemed appropriate, service by hand with a copy being receipted by the court's staff can also be used.

¹¹ CPD F6

¹² CPD F 7

**FOR AND ON BEHALF OF HER MAJESTY'S COURTS & TRIBUNALS
SERVICE**

Guy Tompkins
Director of Crime and Enforcement

A handwritten signature in black ink, appearing to read 'Guy Tompkins', with a horizontal line extending to the right.

FOR AND ON BEHALF OF THE CROWN PROSECUTION SERVICE

Jim Brisbane
Chief Operating Officer

A handwritten signature in black ink, appearing to read 'Jim Brisbane', with a horizontal line extending to the right.