



Justice Committee

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Rt Hon Robert Buckland QC MP
Lord Chancellor & Secretary of State for Justice
Ministry of Justice
102 Petty France
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16 September 2020

Dear Lord Chancellor

Thank you for your letter dated 7 September concerning the Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020, which were made on 4 September and are due to come into force on 28 September.

The Regulations extend the Custody Time Limits for Crown Court trials set by the Prosecution of Offences (Custody Time Limits) Regulations 1987. They extend the limit from 182 days to 238 days for all triable either-way and indictable only criminal offences awaiting trial on indictment at the Crown Court and from 112 days to 168 days for cases where a voluntary bill of indictment is preferred or where a fresh trial has been ordered by the Court of Appeal.

The Committee recognises that the instrument is subject to a sunset clause of 9 months and that the instrument will not apply retrospectively to any Custody Time Limits that began before the 28 September 2020. The Committee would like to raise a number of points in relation to these regulations.

The first point that the Committee wishes to raise is the Government's assessment of the timescales of returning courts to pre-coronavirus criminal trial capacity. Your letter states that "this recovery work may not happen quickly enough" in order to reduce the risk that existing Custody Time Limits will be breached. The Committee's recent report, Coronavirus (COVID-19): the impact on courts, highlighted various consequences of the limited capacity of the Crown Court to reduce the number of outstanding cases. For example, the effect that delays will have on defendants turning 18. When you appeared before the Committee on 23 June 2020, you told us that you thought the problems caused by outstanding cases in the Crown Court could be resolved by Easter 2021. A Custody Time Limit which begins on the day that these regulations come into force will expire on 23 May 2021. These limits will cease to have effect on 28 June 2021, meaning that a defendant could potentially be subject to the 238-day limit in early 2022.

The Committee appreciates that these are exceptional circumstances and that the criminal justice system is under severe pressure. However, there are reports that the delays in jury trials is causing individuals to suffer delays that have the potential to amount to

injustice. We recognise that the Government is rightly motivated by a concern to protect the public. However, the best way of protecting the public is to ensure that the Crown Court's capacity is dramatically increased. A failure to provide sufficient facilities for trials to be conducted in a reasonable time provides weak justification for lengthy extensions to custody trial limits. As your letter notes, in most cases the custody time limit is being routinely extended due to the exceptional delay cause by coronavirus. In light of this fact, it is worth considering whether these Regulations risk normalising defendants spending over 200 days in custody awaiting trial. The Committee would be grateful if the Government could outline the alternative measures that were considered when developing this policy. We note that Article 5 (3) of the European Convention of Human Rights provides that defendants are "entitled to trial within a reasonable time or to release pending trial".

The custody time limits rules are an important safeguard for accused persons and demand that prosecutors and the court consider with care whether prolonged detention before trial is properly justified. The courts rightly take a narrow view of what constitutes 'good and sufficient cause' to extend custody time limits. If judges are beginning to refuse extensions to custody time limits in specific cases, then it is not necessarily the case that the best solution, in terms of the right of a defendant or victims of crime, or in terms of the cost, is to extend custody time limits. We note that on 28 September, the first High Court Trials using Remote Jury Centres based in selected ODEON cinema complexes are to begin in Edinburgh. Is the Government still considering whether such innovative solutions could offer a way forward in England and Wales?

Finally, the Committee is growing increasingly concerned over the limited opportunity for parliamentary scrutiny afforded by the Government's reliance on instruments subject to the made negative and made affirmative procedures. While it is right to acknowledge that Parliament has entrusted the Government with powers to make such instruments, in the context of this ongoing pandemic there is a case that some adjustments should be made to afford more time to allow Members and Committees to contribute to legislative responses to the current situation. This is especially important now that we have moved to a stage where measures such as these regulations will potentially have a long-term impact on the criminal justice system. On that point, the Committee would like to have your reassurance that if this measure is extended further, the House of Commons and relevant committees will be consulted in good time.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Neill', with a large, stylized initial 'R' and a long, sweeping underline.

Sir Robert Neill MP

Chair
Justice Committee