

LIBERTY



Howard League for Penal Reform

1 Ardleigh Road
London N1 4HS
Tel: 020 7249 7373
Fax: 020 7249 7788
Email: info@howardleague.org
Web: www.howardleague.org

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Rt Hon Robert Buckland QC MP
Secretary of State and Lord Chancellor
Ministry of Justice
Queen Anne's Gate
London SW1H 9AJ

Dear Robert Buckland

Changes to custody time limits in the crown court

We are writing to you jointly to request that you withdraw the revised custody time limits. As three leading national organisations with considerable expertise in penal matters and the justice system, we hope that this letter will assist you in considering the implications of the changes.

The *Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020* ("the Regulations") are due to come into force on 28 September 2020 and will extend the custody time limits in the crown court by two months. The Regulations appear to attempt to deal with delays by permitting, even facilitating, further delay which is not good for victims, witnesses, people remanded to prison or prisons that have to hold people on remand during the on-going pandemic.

We have serious concerns as to the lawfulness of the Regulations and the impact they will have on those remanded into custody. We write in good faith in the hope that unnecessary litigation can be avoided.

The potential consequences of the amendment

The Explanatory Note at the end of the Regulations states:

"A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen."

It is difficult to see how this conclusion can be justified. This amendment could result in: individuals charged with both either-way offences and indictable-only offences being remanded in custody for a period of up to nearly eight months; victims waiting longer to

know the outcome of cases; people spending longer in prison at great cost to the state and compounding existing concerns about discrimination in the criminal justice system. Concerns about discrimination are acute in respect of children, women and people from ethnic minorities remanded to prison. We provide evidence in respect of these concerns that we hope will be of assistance to you.

These concerns also need to be considered in light of the purpose of custody time limits, which is to “*protect the liberty of the citizen, assumed at the present stage not to be guilty*” (*R v Manchester Crown Court Ex p McDonald* [1999] 1 WLR 841, §848). A significant proportion of those remanded do not go on to receive prison sentences: in 2019, some 3000 individuals were acquitted in the crown court having spent time in prison on remand (MoJ 2020).¹ Forty-eight per cent of the children remanded in custody who were subsequently convicted in the crown court did not receive an immediate sentence of imprisonment (MoJ 2020). In other words, many remanded individuals spend time in custody only to be acquitted (i.e. found not guilty), or convicted but deemed not deserving of a custodial sentence. To increase the period of remand in such cases - by any amount, let alone almost a third - is manifestly unfair and plainly contrary to the purpose of the custody time limits.

Additionally, it has long been acknowledged that the remand cohort is particularly vulnerable, for instance in terms of the impact of detention on mental health, and this vulnerability is likely to be exacerbated by the heavier impact of imprisonment under Covid-19 restrictions - acknowledged by the Lord Chief Justice in *R v Manning (Christopher)* [2020] 4 WLR 77 at [41] – including, for instance, increased periods of cell confinement and isolation coupled with restrictions on visits.

You will of course know that Article 5(3) of the European Convention on Human Rights (ECHR) requires that an individual be tried at court within a reasonable time, or to be released pending trial. Where a person is remanded into custody, the state must conduct criminal proceedings with particular expedition and diligence, regardless of any resources issues, to reflect this cohort’s vulnerability and the fact that they are deprived of their liberty in circumstances where guilt has yet to be established.

Impact on prisons and people in prison

The remand prison population in crown court cases is already large: In 2019 there were 31,680 remands to custody, an increase from the previous year (MoJ 2020).²

People remanded to prison are particularly vulnerable to suicide. In 2019 the rate of self-inflicted death was approximately three deaths per 1,000 remand prisoners (MOJ 2020).³

¹ MoJ (2020) *Criminal Justice System Statistics publication: Remands at the Crown Court: Pivot Table Analytical Tool for England and Wales, December 2015-December 2019*, <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>

² Ibid.

³ Ministry of Justice, (2020) *Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to June 2020 Assaults and Self-harm to March 2020*, Published 30 July 2020.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/905064/safety-in-custody-q1-2020.pdf

Women on remand are especially vulnerable.⁴ The number of incidents of self-injury by female remand prisoners in 2019 stood at its highest yearly level since 2011 (MoJ 2020).⁵

Children

It is undisputed that prison can be damaging for children. Despite a range of independent inquiries that followed the Panorama coverage of Medway Secure Training Centre in 2016, there is still cause for rising concern about the safety of children in prison. The latest safety data shows that there was a 66% increase in the self-harm rate per 1,000 young people in the 12 months to March 2020 (MoJ 2020).⁶

Although the number of children in prison has dropped in recent years, the proportion of children on remand at any one time has increased. The latest published statistics show that 37 per cent of children in prison were on remand as of July 2020 (a rise from 28 per cent in July 2019) (HMPPS 2020).⁷

In a report to the United Kingdom Government by the 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment', published in April 2020, concerns were raised about the use of remand for children:

"In the year ending in March 2018, the majority of detained children (58%) had spent less than three months in custody. It is interesting to note that over the same period, children remanded in custody accounted for 24% of the average monthly population of juveniles in custody, and that a majority of them (63%) did not subsequently receive a custodial outcome. Given the high numbers of juveniles remanded in custody who are subsequently discharged without being sentenced, the CPT would like to be informed about the measures being taken to ensure that young persons are only ever placed in detention as a last resort."⁸

The Government responded to this concern:

"We are clear that custody should be used only as a last resort for children. That is why we have a separate remand framework for children that ensures all the alternative options are considered first.

...

In July 2019, in response to recommendations made by the Independent Inquiry into Child Sexual Abuse, we committed to consider the use of custodial remand for children in greater detail. We aim to develop options by summer 2020 to reduce the number of children remanded to custody where it is appropriate to do so and while ensuring victims and the public are protected."

⁴ Howard League (2020) *Reset: rethinking remand for women*, <https://howardleague.org/publications/reset-rethinking-remand-for-women/>

⁵ MoJ (2020), *Safety in Custody Statistics, England and Wales: Quarterly Update to December 2019*, table 2.6, published 30 April 2020.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/893374/safety-in-custody-q4-2019.pdf

⁶ See fn 3 p.6.

⁷ Her Majesty's Prison and Probation Service (HMPPS) (2020) *Youth Custody Report: July 2020* <https://www.gov.uk/government/statistics/youth-custody-data>

⁸ *Report to the United Kingdom Government on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 May 2019*, p54. <https://rm.coe.int/16809e4404>

We are not aware that these options have been developed.

Where children are affected by a “significant policy change” it will be irrational not to consult the Children’s Commissioner (*R (C) v Secretary of State for Justice* [2008] EWHC 171, §35). The extension of custody time limits to a period approaching eight months is a significant policy change, particularly where it involves children. The failure to consult, and considering it unnecessary to consult, the Children’s Commissioner is plainly irrational.

Further, you will also be aware of the Government’s public commitment to have “due consideration” to the UN Convention on the Rights of the Child in the making of new policy and legislation,⁹ which should be done by carrying out a Child Rights Impact Assessment, a template for which has been developed by the Department for Education.

Black and ethnic minority people remanded to prison (crown court)

The Regulations will have a disproportionate effect on the Black and minority ethnic population, and in particular Black and minority ethnic children, a disproportionate number of whom are remanded to prison.¹⁰

Ministry of Justice data¹¹ shows that the proportion of Black and ethnic minority people of all ages in crown court matters who are remanded to prison is high – at around 20 percent. In the case of children, that percentage rises dramatically to over a third of all children remanded. It is also noticeable that almost a third of young adults in the crown court who are remanded to custody are from ethnic minorities.

Year	2015	2016	2017	2018	2019
Total RIC	39,138	35,216	32,938	31,138	31,680
Of whom BAME	8,561 (22%)	7693 (22%)	7044 (21%)	6426 (21%)	6408 (20%)
Children	576	455	509	512	526
BAME children	219 (38%)	192 (42%)	186 (37%)	191 (37%)	170 (32%)
Young adults	3,972	3,389	3,177	3,067	2,897
BAME Young adults	1,214 (31%)	1,065 (31%)	1,073 (34%)	988 (32%)	928 (32%)

Given the cross-government commitment to tackling discrimination in the criminal justice system it is imperative that the impact of this measure is fully explored before it is implemented.

Any prejudicial effects of this measure that disproportionately impact on children and/or women and/or Black and ethnic minority people will breach Article 14 ECHR (in conjunction with Article 5) unless they can be objectively justified. The absence of any kind of impact assessment suggests no consideration has been given to this.

Our request

In light of the above matters, and the state’s obligations to protect liberty and avoid discrimination, we respectfully ask that you urgently withdraw the Regulations.

⁹ HC Deb, 6 December 2010, col 7WS; see also HC Deb, 24 June 2019, col 448.

¹⁰ Lammy, David. "The Lammy review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System." HM Government (2017); Uhrig, Noah. *Black, Asian and minority ethnic disproportionality in the criminal justice system in England and Wales*. London: Ministry of Justice (2016).

¹¹ See fn 1.

If any changes are to be made to the custody time limits, we ask that you first conduct the relevant impact assessments and consult with relevant stakeholders, including the Children's Commissioner. Additionally, given that extending the custody time limits will essentially facilitate delay to the criminal justice process, including the time it takes for cases to reach trial, we ask that you also consult with victims organisations about the possible impact on victims.

In view of the urgency of the issues involved, please respond within seven days.

Given the importance of the issues raised in this letter, we will publish this letter on our websites this afternoon.

Your sincerely



Frances Crook
Howard League for Penal Reform



Enver Solomon
Just for Kids Law



Martha Spurrier
Liberty