

SFO OPERATIONAL HANDBOOK

The SFO Operational Handbook is provided "as is" and should not be used to provide legal advice or as a base for decision making in any respect.

Some of the content of this document may have been redacted.

Custody Time Limits

If a defendant is remanded in custody then it is the duty of the SFO (as prosecutor) to ensure that the custody time limit is not breached. It is therefore vital that the Custody Time Limit is noted and carefully managed in accordance with the system set out below.

Introduction

Custody time limit provisions (CTLs) prescribe the maximum period of time a defendant may be held in custody during the pre-trial stage of criminal proceedings. It is the responsibility of the prosecution to calculate, monitor and apply for extensions as necessary. Within the SFO, this responsibility lies with the case controller, or the prosecutor if the case controller is not the prosecutor on a case.

The law relating to CTLs is set out in Section 22 of the Prosecution of Offences Act 1985 ("POA"), and the Prosecution of Offences (Custody Time Limits) Regulations 1987 as amended (the "Regulations"), and relevant case law.

Expiry of the CTL in a case entitles a defendant to release on bail^[1]. It is therefore necessary, in cases where defendants are remanded in custody by a court, to:

- calculate immediately the date on which the CTL expires
- monitor the time limit period expiry date, and the need for action as it approaches
- make an application to extend the time limits where necessary.

Calculation of the CTL Expiry Date

The calculation of the CTL expiry date depends on whether the trial is due to be heard in magistrates' court or in the Crown Court.

Summary trial

For summary only offences, the maximum period the Defendant can be held in custody is 56 days from the date after the first appearance in court to the date that the trial starts (reg. 4(4A)).

For either way offences which the magistrates' decide to try summarily, the maximum period in custody is 70 days from the date after the first appearance to the date of the trial, unless the mode of trial decision (to retain jurisdiction)

Version OGW 1, Published May 2017 © Crown Copyright, 2017.

OGL This information is licensed under the Open Government Licence v3.0. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey, TW9 4DU.

Any enquiries regarding this publication should be sent to the Serious Fraud Office, 2-4 Cockspur Street SW1Y 5BS email: information.officer@sfo.gsi.gov.uk

SFO OPERATIONAL HANDBOOK

The SFO Operational Handbook is provided "as is" and should not be used to provide legal advice or as a base for decision making in any respect.

Some of the content of this document may have been redacted.

is taken within 56 days, in which case the time limit is reduced to 56 days (reg. 4(2) and (3)).

Crown Court Trial

For indictable (including either way) offences which the magistrates send to the Crown Court, the maximum custody time limit is 182 days from the date of the sending to the date that the trial starts, less any time that the defendant has already spent in custody before sending or transfer (reg. 5(6B)).

Summary Trial– Summary Offence	Summary Trial – Either Way Offence	Crown Court Trial
56 days from the date after the first appearance to start of the trial	56 days from the day after the first appearance to the date of the trial. UNLESS the mode of trial is not determined within 56 days of the day after the first appearance, in which case the time limit is 70 days.	182 days from the date after the first appearance to the start of the trial/preparatory hearing.

CTLs cease to apply at the start of a trial. A trial on indictment starts once the jury has been sworn, or when the court accepts a guilty plea, or when a Preparatory Hearing begins. See the relevant Operational Handbook Chapter on Pre-trial Hearings for the definition of Preparatory Hearing.

In the magistrates' courts, summary trial begins once the court begins to hear evidence for the prosecution at trial or accepts a guilty plea. Once a case has been sent to the Crown Court, the CTL in the magistrates' court ceases and the Crown Court CTL applies.

The time period runs from the day following the defendant's first court hearing remanding them in custody until midnight on the date of expiry (reg. 2(4)). Particular care is required where the expiry date falls on weekends and public holidays, as the expiry is deemed to take place on the next **earlier** working day.

Days are calculated by calendar, and therefore include weekends and public holidays (although note the position where the expiry date falls on the weekend/public holiday). SFO staff should calculate days using the computerised CTL national ready reckoner [**See "CPS CTL Calculator & Ready Reckoner"**], and must check it manually using a calendar. The date
Version OGW 1, Published May 2017 © Crown Copyright, 2017.

OGI This information is licensed under the Open Government Licence v3.0. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey, TW9 4DU.

Any enquiries regarding this publication should be sent to the Serious Fraud Office, 2-4 Cockspur Street SW1Y 5BS email: information.officer@sfo.gsi.gov.uk

SFO OPERATIONAL HANDBOOK

The SFO Operational Handbook is provided "as is" and should not be used to provide legal advice or as a base for decision making in any respect.

Some of the content of this document may have been redacted.

should be agreed with the clerk at every hearing where the defendant is remanded or further remanded in custody.

If the defendant is released on bail, the CTL is suspended. At the hearing where bail is granted, the number of days already spent in custody should be agreed with the clerk, noted on the court file and SFO hearing record, and announced in court. This will help if at a later date the defendant is remanded in custody again. If the defendant is subsequently remanded in custody, the new revised date is calculated by adding the number of days spent on bail to the original expiry date. The date on which the defendant is re-remanded is included in the count. Recalculation should be done manually, and the automatic calculator must not be used. The total number of days on bail is calculated from the day of release on bail to the day before a remand back into custody. Any uncertainty in the number of days should be resolved in the favour of the defendant, and agreed with the clerk of the court, noted on the court file and SFO hearing record.

Separate CTLs for separate charges.

CTLs relate to the charge and not the defendant. A separate CTL will apply to each charge. Charges added at a later stage will attract a fresh CTL expiry date so long as they do not represent a restatement of the offence already charged and they comprise a different offence in law. The bringing of a fresh charge solely for the purpose of establishing a fresh custody time limit would be an abuse of process. (*R (Wardle) v Leeds Crown Court [2001] 2 All ER 1*). In SFO cases, multiple defendants may be charged on different dates. The CTLs must be calculated from the date after each individual's first appearance and charge.

When the indictment is preferred and it contains new charges (counts) on which the defendant was not sent to the Crown Court, or if new charges are added during the course of the proceedings the CTL for each new count will be 182 days less any periods of custody in the magistrates' court or the Crown Court already served by the defendant in the proceedings. The effect of this is that the CTL cannot be extended by adding new counts to an indictment (reg. 5(6D)).

Voluntary bill of indictment

When after a defendant has been sent to the Crown Court, he is further charged by way of a voluntary bill of indictment which contains new charges, the custody time limit should be regarded as 182 days less any period spent in the custody of both the magistrates' court and the Crown Court in the proceedings. (reg. 5(6C))[2].

Version OGW 1, Published May 2017 © Crown Copyright, 2017.

OGI This information is licensed under the Open Government Licence v3.0. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey, TW9 4DU.

Any enquiries regarding this publication should be sent to the Serious Fraud Office, 2-4 Cockspur Street SW1Y 5BS email: information.officer@sfo.gsi.gov.uk

SFO OPERATIONAL HANDBOOK

The SFO Operational Handbook is provided "as is" and should not be used to provide legal advice or as a base for decision making in any respect.

Some of the content of this document may have been redacted.

Discontinuance of proceedings

Discontinuance of proceedings necessitates the release of the defendant from the time the decision to discontinue is made unless the defendant is remanded in custody in respect of other charges.

For further information on CTLs see relevant sections of Blackstone's and Archbold [**See "Further Reading" in the Information Section**].

Where the Crown appeals a terminating ruling under Part 9 CJA 2003, the CTL is suspended once the case is adjourned and resumes when the original hearing resumes. It should be noted that special rules apply in relation to appeals/retrials/absconding defendants/pre-release on conditional bail [**See "Further Reading" in the Information Section**].

Monitoring of Time Limit Period

As soon as a defendant is remanded in custody, the SFO case decision log must be endorsed with the agreed expiry date and a review date 28 days in advance.

On the review date, the case should be considered in light of the approaching CTL expiry date. This is to

- re-check the expiry date,
- check that the trial is still expected to start before the expiry date, and if not,
- consider whether it would be appropriate to apply to extend.

It is the responsibility of the case controller/ prosecutor to oversee and approve this work.

Any calculations must be double-checked and approved by another lawyer, who must endorse the SFO file or decision log to this effect. The Head of Division and General Counsel should also be informed if there are any CTLs. Counsel should also be made aware of the key dates at all stages, although responsibility for compliance with the CTL systems described in this chapter remains at all times with the case controller/prosecutor.

Extension of CTL – the Law

The requirements for an extension, or further extension of the CTL, are set out in section 22(3) POA 1985, according to which the court may extend the CTL but shall not do so unless it is satisfied:

1. that the need for the extension is due to-
 - the illness or absence of the accused, a necessary witness, a judge or a magistrate

Version OGW 1, Published May 2017 © Crown Copyright, 2017.

OGI This information is licensed under the Open Government Licence v3.0. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey, TW9 4DU.

Any enquiries regarding this publication should be sent to the Serious Fraud Office, 2-4 Cockspur Street SW1Y 5BS email: information.officer@sfo.gsi.gov.uk

SFO OPERATIONAL HANDBOOK

The SFO Operational Handbook is provided "as is" and should not be used to provide legal advice or as a base for decision making in any respect.

Some of the content of this document may have been redacted.

- a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more accused or of two or more offences; or
 - some other good and sufficient cause; and
2. that the Crown has acted with all due diligence and expedition.

Good and Sufficient cause

What amounts to good and sufficient cause will depend on the facts of the case.

An authoritative explanation of what it means was given by Lord Bingham C.J in the case of *R v Manchester Crown Court ex parte McDonald (and consolidated applications)* [1999] 1 Cr App.R. 409, in the following terms: "Under s 22(3)(a) the court must be satisfied that there is good and sufficient cause for extending or further extending the maximum period of custody specified in the regulations. The seriousness of the offence with which the Defendant is charged cannot of itself be good and sufficient cause within the section... Nor can the need to protect the public ... Nor can it be a good cause that the extension is only for a short period.

While it is possible to rule that some matters, such as those we have just mentioned, are incapable in law of amounting to good and sufficient cause for granting an extension, there is an almost infinite variety of matters which may, depending on the facts of a particular case, be capable of amounting to good and sufficient cause. ...it would be facile to propose any test which would be applicable in all cases. All must depend on the judgment of the court called upon to make a decision, which will be made on the peculiar facts and circumstances of the case in question, always having regard to the over-riding purposes to which we have made reference above".

Due Diligence and Expedition

As regards the approach the court should take to this issue, again, there is no better explanation than that offered by Lord Bingham in the same case: "The condition in s 22(3)(b) that the prosecution should have acted with all due expedition poses little difficulty of interpretation. The condition looks to the conduct of the prosecuting authority (police, solicitors, counsel). To satisfy the court that this condition is met the prosecution need not show that every stage of preparation of the case has been accomplished as quickly and efficiently as humanly possible. That would be an impossible standard to meet, particularly when the court which reviews the history of the case enjoys the immeasurable benefit of hindsight. Nor should the history be approached on the unreal assumption that all involved on the prosecution side have been able to give the case in question their undivided attention. What the court must require is such diligence and expedition as would be shown by a competent prosecutor conscious of his duty to bring the case to trial as quickly as reasonably and fairly possible. In considering whether that standard is met, the court will of

Version OGW 1, Published May 2017 © Crown Copyright, 2017.

OGL This information is licensed under the Open Government Licence v3.0. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey, TW9 4DU.

Any enquiries regarding this publication should be sent to the Serious Fraud Office, 2-4 Cockspur Street SW1Y 5BS email: information.officer@sfo.gsi.gov.uk

SFO OPERATIONAL HANDBOOK

The SFO Operational Handbook is provided "as is" and should not be used to provide legal advice or as a base for decision making in any respect.

Some of the content of this document may have been redacted.

course have regard to the nature and complexity of the case, the extent of preparation necessary, the conduct (whether co-operative or obstructive) of the defence, the extent to which the prosecutor is dependent on the co-operation of others outside his control and other matters directly and genuinely bearing on the preparation of the case for trial. It would be undesirable and unhelpful to attempt to compile a list of matters which it may be relevant to consider in deciding whether this condition is met. In deciding whether the condition is met, however, the court must bear in mind that the period of (112)[3] days specified in the regulations is a maximum, not a target; and that it is a period applicable in all cases. ...the court will not, in considering whether this condition is satisfied, pay attention to pretexts such as chronic staff shortages or, we would add, over-work, sickness, absenteeism or matters of that kind".

[See "Further Reading" in the Information Section] for more information about Good and Sufficient Cause and Due Diligence and Expedition].

Following review

- If the case controller/ prosecutor decides that it may be appropriate to apply to extend the CTL they must follow the procedure set out below.
- If the case controller/prosecutor does not think it appropriate to apply for an extension of the CTL but wishes to apply for conditions to be attached to any bail, they must give written notice to the court and the defendant (see regulation 6). This decision (and reasons) must be recorded.
- If the case controller/prosecutor decides that the defendant should no longer be held in custody and bail is not appropriate, it is the responsibility of the case controller/prosecutor to inform the court.

Note: it is the duty of the case controller/prosecutor constantly to review whether a defendant should be held in custody. If the conditions for custody no longer exist, then the case controller/prosecutor must inform the court immediately and should not wait for the CTL review date.

Failure to apply for an extension by the Expiry Date

The court has no authority to extend custody time limits retrospectively. This is why the case must be reviewed as set out above, and any application to extend prepared and served in good time.

If an urgent application is required for any reason, the matter should be listed for immediate hearing, and oral application.

This can be necessary where a trial is vacated on the day, or the above processes have not been followed.

Version OGW 1, Published May 2017 © Crown Copyright, 2017.

OGL This information is licensed under the Open Government Licence v3.0. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey, TW9 4DU.

Any enquiries regarding this publication should be sent to the Serious Fraud Office, 2-4 Cockspur Street SW1Y 5BS email: information.officer@sfo.gsi.gov.uk

SFO OPERATIONAL HANDBOOK

The SFO Operational Handbook is provided "as is" and should not be used to provide legal advice or as a base for decision making in any respect.

Some of the content of this document may have been redacted.

A CTL failure has taken place where:

- the case controller/prosecutor decides that the defendant should be released from custody between the review date and the expiry date because they realise that they cannot satisfy the conditions for an extension; or
- the defendant is released after the un-extended expiry date or the court refuses to grant an application for extension.

Any CTL Failure will require the case controller/prosecutor to personally account to the Director for the failure.

The Application to Extend

According to regulation 7, an application for extension of the custody time limit may be made in writing or orally. The application to extend must be made prior to the expiry date of the CTL.

Notice of the application should be provided to the court and to the defence:

- in the magistrates' court, at least two days prior to the expiry date; and
- in the Crown Court, at least five days prior to the expiry date.

In exceptional circumstances the court may dispense with these time limits if it is not practicable for the prosecution to provide notice within time. Do not assume such dispensation will be provided. Arrange any listings with plenty of time to allow for an appeal.

[See "Operational stock forms": L09 – Letter to MC or CC re Extension to Custody for a template Notice; L10 – Application for Ext to CTL for a template written application to extend the CTL].

The Criminal Procedure Rules set out the rules on applications to extend CTLs, and appeal against decisions.

[See "Criminal Procedure Rules"].

The case controller/prosecutor must approve the contents of the Notice letter and the application to extend. The application must then be served on both the court and the defence.

The application should contain a full chronology of the case and include key information in support of the Crown's contention that it has acted with all due diligence and expedition and that there is a good and sufficient reason for extending the CTL.

Version OGW 1, Published May 2017 © Crown Copyright, 2017.

OGI This information is licensed under the Open Government Licence v3.0. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey, TW9 4DU.

Any enquiries regarding this publication should be sent to the Serious Fraud Office, 2-4 Cockspur Street SW1Y 5BS email: information.officer@sfo.gsi.gov.uk

SFO OPERATIONAL HANDBOOK

The SFO Operational Handbook is provided "as is" and should not be used to provide legal advice or as a base for decision making in any respect.

Some of the content of this document may have been redacted.

The court will determine whether to extend the CTL at a hearing where both the Crown will make their application and the defence may make submissions.

Further extensions can be applied for, but again the Crown will be required to provide information to support their contention that they have acted with all due diligence and expedition, and provide an up-to-date chronology.

Refusal to Extend Custody Time Limits: Appeal

If an application to extend a CTL is refused, the case controller/ prosecutor must decide whether to appeal. If the case controller/ prosecutor does not wish to appeal, an application may be made for conditions to be applied to bail (as set out in Application to Extend CTL letter).

[See "Criminal Procedure Rules"; – and the accompanying Form – Notice of application for court to consider bail].

Appeals must be made prior to the expiry of the CTL in which case the CTL will be deemed not to expire until the outcome of the appeal is decided (s.22(9) POA).

Appeals from the magistrates' court are heard in the Crown Court (section 22(8) POA). **[See the relevant part in the "Criminal Procedure Rules"]**.

Appeals from the Crown Court may be heard either by way of case stated or judicial review. This is subject to some qualifications [See "Further Reading" in the Information Section]

[1] Regulation 6 Prosecution of Offences (Custody Time Limits) Regulations 1987. As a defendant remanded in custody is held in the custody of the remanding court an order of the court is required to secure a defendant's release. See: *Olotu v Home Office* [1997] 1 WLR 328 CA.

[2] The wording of the regulation is problematic but if all previous periods of custody served by a defendant in the proceedings are taken into account the CTL can be no longer than those that already apply in respect of charges/counts on which the defendant was 'sent' to the Crown Court.

[3] A reference to the maxima which applied to cases 'committed' to the Crown Court under provisions which applied before the 'sending' procedure in the Crime and Disorder Act 1998 was applied to all indictable offences by amendment contained in Schedule 3, Criminal Justice Act 2003.

Version OGW 1, Published May 2017 © Crown Copyright, 2017.

OGL This information is licensed under the Open Government Licence v3.0. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey, TW9 4DU.

Any enquiries regarding this publication should be sent to the Serious Fraud Office, 2-4 Cockspur Street SW1Y 5BS email: information.officer@sfo.gsi.gov.uk