



Ms C Darrah  
Clerk to the Committee for Justice  
Northern Ireland Assembly

Date: 04 March 2021

BY EMAIL ONLY

Dear Ms Darrah

Criminal Justice (Committal Reform) Bill

I refer to your letter dated 16 February 2021 in which you have requested, on behalf of the Committee for Justice, the written views of the PPS on what might be appropriate and acceptable statutory time limits. The letter also makes reference to the possibility of “statutory custody time limits given the absence of a Bail Act in Northern Ireland.”

It is important at the outset to distinguish between statutory time limits and custody time limits. The term “statutory time limits” (STLs) is generally used to describe maximum periods by which different types of criminal proceedings should be completed; or by which a specified stage of the proceedings should be reached. The consequence of a STL not being adhered to is that, in the absence of any court ordered extension, the case against the defendant is dismissed.

The Department of Justice conducted a consultation in relation to STLs in 2015/6. I enclose a copy of the consultation document and also our response. Our views remain similar to those articulated at that time. We do not consider that STLs are likely, by themselves, to lead to an improvement in case processing times. We note that subsequent reports on the Deputy Director of Public Prosecutions

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Public Prosecution Service for Northern Ireland

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issue of delay in criminal cases have not recommended their introduction. As I observed in my oral evidence to the Committee, no recommendation to introduce STLs was made by the Northern Ireland Audit Office in its 2018 “Speeding Up Justice” Report. Recent reports by Criminal Justice Inspection Northern Ireland have not proposed STLs as an appropriate tool to tackle delay. Furthermore, in his report on serious sexual offences, Sir John Gillen stated:

“However, research suggests that these statutory time limits have had a limited influence on reducing delays or the length of the criminal justice process. Extensions are common, and the key reason often relates to the defence requiring additional preparation time.” [Paragraph 9.109]

Later in his report Sir John stated:

“Secondly, I see no benefit in statutory time limits... The experience in Scotland and Victoria illustrates that they have little or no impact other than to show their impotence. They fail to recognise that serious sexual offences are in many respects unique and need bespoke directions in most cases.” [Paragraph 9.184]

In our 2016 consultation response we highlighted the English experience of a pilot that applied STLs to youth cases:

“The overall view is that the process adds to bureaucracy—if extensions are needed, applications have to be made to the court and notice served on the defence; and the time limit has to be recalculated for periods unlawfully at large. While only a few cases were lost because extensions were not applied for or were refused, this would be much more of a problem nationally and the potential for loss of public confidence in the system would be that much greater. The impact on victims is of particular concern, especially if the case was perceived as being dropped because of a procedural technicality.”

We further note that the Department’s 2015 proposal was that any introduction initially focus on youth cases only. The focus of the current reforms (at least insofar as direct committal is concerned) is on all indictable only offences (adult and youth cases).

Furthermore, the Department indicated in 2015 that performance would first be reported against an administrative time limit. We agreed that this would be an important first step in



building a more complete evidence base for any further consideration of the introduction of STLs. We are not aware of this work being taken forward or of any more recent work undertaken by the Department with a view to considering the introduction of STLs. We consider that a large amount of work in order to develop detailed proposals, together with full consultation with relevant stakeholders, should be undertaken before any decision is taken in relation to the introduction of STLs.

As a final point we would note that the introduction of STLs would represent a very significant change to Northern Ireland's criminal justice system. Our 2016 consultation response highlighted the risk of limited resources being spread too thin across this, and other, initiatives. Such concerns continue to exist and are particularly acute at the current time as the criminal justice system endeavours to deal with the particular challenges brought about by the pandemic.

“Custody time limits” (CTLs) are different to STLs in that they prescribe the period of time for which a defendant can be held in custody whilst awaiting trial. Again there is generally a process by which extensions can be applied for and granted by a court. The consequence of a CTL expiring is that the defendant is released on bail.

The Department has never consulted on CTLs and we have limited experience of how they operate. We know that they do operate in England but it is clear that the provisions that govern them are detailed and complex. Different time limits apply for different types of cases and there are rules that address a range of matters, including how STLs are calculated and monitored. We have reservations as to whether they would be effective in addressing delay that are similar in to those relating to STLs. We are not aware of any recommendation, applicable to this jurisdiction, that they be introduced. The detailed work required to analyse a CTL model for Northern Ireland has never, to our knowledge, been undertaken; and we would consider such work necessary before we could offer any more considered view on them. It appears to us that Sir John Gillen's comments upon statutory time limits embraced both STLs and CTLs as described above (see, for example, paragraph 9.108 which referred to Scottish provisions under which a failure to meet certain time limits resulted in a defendant being granted bail).

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It is important, however, to understand that the absence of CTLs does not mean that defendants are held indefinitely in custody awaiting trial without adequate legal safeguards. The position is that a defendant who is charged by police can make an application for bail at their first appearance before the Magistrates' Court. If that application is unsuccessful, they can apply afresh to the High Court. If the High Court refuses bail the defendant can still make a further application if there is a "change of circumstances". A change of circumstances can include a significant period of time spent in custody since the previous application and also any further information about a future trial date. In considering a bail application the court will weigh the period of time that a defendant has spent in custody with other relevant factors in order to determine whether the grant of bail is appropriate.

The Law Commission for Northern Ireland (which has not been operational since April 2015) published a report on the issue of bail in 2012. It recommended the adoption of a Bail Act in Northern Ireland as a means of bringing much needed clarity and consistency to an important aspect of criminal procedure. However, we do not consider that the absence of a Bail Act in Northern Ireland advances the case for CTLs. As explained above, delay in reaching trial is already taken into consideration, together with all other relevant factors, when a court determines the issue of bail. The objective of a Bail Act would be to codify and simplify the law to ensure that it is more accessible to the public and applied consistently. It would also make a number of technical amendments to different aspects of bail law and procedure. However, it would not provide a right to bail where one does not currently exist and it would not result in different factors being taken into consideration where a court is considering a potential grant of bail. In other words, the purpose of a Bail Act would not be afford a greater right to bail than that which currently exists.

I would conclude by reminding the Committee of our central point on the proposed reforms. We consider that the best way to tackle delay in the more serious criminal case is to ensure that, rather than have a protracted process within the Magistrates Court whereby the prosecution builds its case whilst the defence is under no obligation to engage in any meaningful way, we transfer the cases forthwith into the Crown Court. We make direct engagement between the parties mandatory during the period between the first appearance in the Magistrates' Court and the first appearance in the Crown Court. We require the parties to report on that direct engagement to the Crown Court Judge and the outcome in terms of

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the anticipated plea and the live issues between the parties. We use the product of that direct engagement to inform further investigations and deliver a proportionate approach to case building. That engagement, where the defendant is represented in the Crown Court by solicitor and counsel has the potential to be much more meaningful than any (voluntary) engagement that currently takes place within the Magistrates' Court. It has the potential to ensure that guilty pleas are disposed of much more quickly than is currently the case and that limited resources are focused on those cases that quite properly require a full trial. This will result in delays in those cases being minimised as far as possible.

We thank the Committee again for the opportunity to give live evidence and to follow up in writing with further representations relating to matters that, due to unavoidable technical issues, we were unable to address fully on the day. We hope that this additional information is of some further assistance and remain willing to answer any further questions that the Committee may have.

Yours sincerely

MICHAEL AGNEW

Deputy Director of Public Prosecutions for Northern Ireland

Enc. Department of Justice Statutory Time Limits Consultation Paper (2015)  
PPS Response to Consultation on Statutory Time Limits

Deputy Director of Public Prosecutions

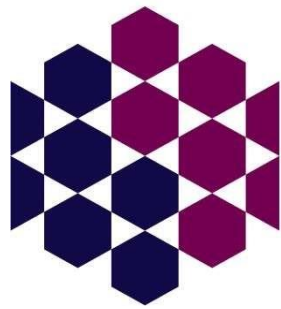
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Department of  
**Justice**

[www.dojni.gov.uk](http://www.dojni.gov.uk)

Building a fair, just and safer community

STATUTORY TIME LIMITS

CONSULTATION DOCUMENT

Date

This consultation begins on 22 December 2015.

This consultation closes on 28 March 2016.

# MINISTER'S FOREWORD

When appointed Minister for Justice, I said that one of my priorities for devolution would be to create a faster, fairer justice system. A key part of achieving this will be the introduction of statutory time limits (STLs). I remain committed to this vision and to that end I would like to see more flexibility on the type of STL scheme which can be delivered.

I am conscious that it will not now be possible to deliver a new STL scheme in this Assembly mandate as it would require primary legislation to amend the Criminal Justice (Northern Ireland) Order 2003 to facilitate a more flexible scheme. Therefore this consultation seeks your views on how the 2003 Order might be amended, and the type of STL scheme, which would then be possible.

This paper builds on the previous consultation on this subject, which took place in December 2013, and it takes into account the views already expressed by our key stakeholders.

This is a fundamental reform. I am proposing STLs as part of an ambitious programme of work to help speed up our justice system. STLs are not, however, the sole means by which performance improvements can be made. Rather an STL scheme should be seen as a framework within which the justice organisations would operate.

This consultation considers options and we would like your views on the options and our conclusions. It is your opportunity to tell my Department what you think and your chance to help us deliver the change.

**David Ford MLA**  
Justice Minister

## EXECUTIVE SUMMARY

- We are seeking views on:
  - (i) how we might amend the Criminal Justice (NI) Order 2003 (the 2003 Order) to enable a flexible statutory time limits (STLs) scheme to be introduced in the next mandate; and
  - (ii) the length of time that respondents feel would be appropriate for an STL.
- Three independent reviews<sup>1</sup> recommended that STLs be introduced as a means of delivering a radical improvement in processing times for criminal cases. We take the view that performance improvements are possible, and STLs can provide a helpful process framework.
- We have also taken cognisance of the views of our key stakeholders both in response to our earlier consultation and other conversations in recent months.
- It is clear from those discussions that stakeholders would prefer that any time limit should commence from the date of the offence or an alternative very early stage in the process. This is not possible under the 2003 Order, hence we are seeking views on how that Order might be changed.
- As the main driver for STLs is improving performance in the Youth Court and the impact of delay on young people, we continue to propose that STLs be introduced into the Youth Court in the first instance and then subsequently into the adult courts.
- Separately, but related to the introduction of STLs, we shall shortly be reporting on performance against an Administrative Time Limit (ATL) of 120 days from the date of the offence.

<sup>1</sup> “Review of the Youth Justice System” led by John Graham, published 26 September 2011; “Review of Northern Ireland Prison Service”, led by Dame Anne Owers, published October 2011; and “Avoidable Delay, a progress report” by Criminal Justice Inspection, published January 2012.



- A response form is provided on page 15, but replies can take any form. The closing date for responses is 28 March 2016.

## 1. INTRODUCTION

1.1 In February 2012, the Minister announced his intention to introduce statutory time limits (STLs) for youth justice cases within this Assembly mandate.

1.2 In reaching his decision, the Minister considered three independent reports on the criminal justice system: the Review of the Youth Justice System, published 26

September 2011; the Review of Northern Ireland Prison Service, led by Dame Anne Owers, published October 2011; and Avoidable Delay, a progress report by Criminal Justice Inspection, published January 2012.

1.3 All three reviews highlighted delay in processing criminal cases as a significant challenge and concluded that STLs should be introduced as a means of delivering a step change in performance in the criminal justice system.

1.4 The consensus across all three reviews was that priority should be given to the Youth Court, where cases take longer to complete on average than in the adult Magistrates' Courts.

1.5 To develop this further the Department of Justice issued a consultation in December 2013 on Time limits in the Youth Courts. Follow up discussions with key stakeholders have made it clear that there is a preference for a time limit starting at the time of the alleged offence is reported or at an alternative very early step in the process. As it stands the Criminal Justice (Northern Ireland) Order 2003 provides for the creation of a time limit for a specified stage, starting at the point of charge or, for summons cases, the date the complaint is made by the Public Prosecution Service (PPS). Therefore, in order to facilitate an earlier start point as, preferred by stakeholders, primary legislation is required. This will amend the Criminal Justice (Northern Ireland) Order 2003 and provide more flexibility on the type of scheme that can be delivered.

- 1.6 It is also clear also from those discussions that the proposed STL should not be set at the 120 days we had proposed. Equally, we need to remain mindful that there will always be cases, which cannot be delivered to a set process time frame and, in the interests of justice, a method of seeking an extension will be needed.
- 1.7 When speaking at a recent Justice Committee seminar, the Lord Chief Justice suggested that the system should aim for a much shorter duration of 70 days initially, with a view to reducing this progressively to get youth cases to court in around 50 days (which is the target achieved under the "benchmark" Hull Youth Justice arrangements from arrest to final disposal).
- 1.8 We want to find the best approach to introducing STLs. To that end we have been reviewing the existing legislation contained in the 2003 Order. To deliver the flexibility we believe we require for STLs for both adults and young people we will need to make changes to Articles 12 and 15 of the Order.
- 1.9 Separately, but related to the introduction of the STL, we will shortly begin to report performance against an ATL.
- 1.10 We remain committed to introducing SLTs, but we want to ensure we get it right. This consultation gives you the opportunity to help us do so. We would therefore welcome your views on the various options set out below.

## 2. PURPOSE OF CONSULTATION

2.1 The purpose of this consultation is to seek:

- (i) confirmation that you agree with the Department's intention to proceed with STLs in the new mandate;
- (ii) views on the flexibility required of the 2003 Order in respect of the start point from which the STL will be calculated; and
- (iii) views on the length of time appropriate for an STL.

2.2 Section 3 illustrates possible start times from which the STL will be calculated.

2.3 Section 4 sets out a range of proposals on the possible length STLs.

2.4 A list of those notified of this consultation is at Appendix 1. This list is not meant to be exhaustive and responses are welcomed from anyone with an interest in or views on this consultation paper.

### 3. REVIEW OF STATUTORY TIME LIMITS IN NORTHERN IRELAND: OPTIONS

3.1 Consultees are invited to comment on the following options so that we can be sure the changes to the 2003 Order will enable a meaningful STL scheme to be developed.

#### Option 1

- Start the STL at the point the offence is reported to the police.

##### Pros

- (i) Starts at the point the victim is affected
- (ii) Can be measured as offence date is recorded on the Causeway criminal justice IT platform.

##### Cons

- (i) Makes Criminal Justice Organisations accountable for a stage when no-one may have been made amenable for the offence.
- (ii) Duplicates the 6 month limit for initiating criminal proceedings.

#### Option 2

- Start the STL at the point when a suspect has been identified.

##### Pros

- (i) Further into the investigative process

##### Cons

- (ii) Data is currently not recorded on the Causeway criminal justice IT platform

#### Option 3

- Start the STL at the point of arrest/first point of contact between suspect and police.

##### Pros

- (i) Covers the stages recommended by the Youth Justice Review

##### Cons

- (i) First point of contact could occur before an arrest so the two are not strictly analogous.
- (ii) Data is currently not recorded on the Causeway criminal justice IT platform.

#### Option 4

- Start the STL at the date of first interview with suspect.

#### Pros

- (i) Starts at the point when suspect is formally questioned by police.

#### Cons

- (i) Data is currently not recorded on the Causeway criminal justice IT platform

#### Option 5

- Start the STL when the accused is informed that the case is being proceeded with.

#### Pros

- (i) The STL clock would start when there is some certainty around the case as it starts when the investigation is complete and police are satisfied that there is a case to answer.
- (ii) Can be measured centrally as the date when the accused is informed is recorded on the Causeway criminal justice IT platform

#### Cons

- (i) There is no analogous stage at an early point in the charge process; some might equate this stage to charge.

#### 4. Length of Time That Would Be Appropriate for an STL

Based on the option you have chosen above, which of the following do you feel would be the appropriate length of time for an STL.

##### Option 1

- 120 days from start point to bringing the case to trial.

This is the length of time that the Department of Justice proposed initially and it is the time limit we will shortly be reporting on performance against as an ATL.

##### Option 2

- 70 days from start point to bringing the case to trial

This proposal stems from comments the Lord Chief Justice made at a Justice Committee seminar in recent months. He suggested that the system should be aiming for a much shorter duration of 70 days initially, with a view to reducing this progressively with the ultimate aim of getting youth cases to court in around 50 days

##### Option 3

- 50 days from start point to bringing a case to trial

Under the “benchmark” Hull youth justice arrangements an average of 50 days was achieved from arrest to final disposal. Whilst our finish point is less challenging than that of the Hull model, option 3 would take into account the Lord Chief Justice’s view that although we have a different system in place in Northern Ireland it might ultimately be possible to get youth cases in particular to court in around 50 days.

##### Option 4

- Other

Is there any other length of time that you feel would be appropriate for an STL?

## 5. EQUALITY

- 5.1 Section 75 of the Northern Ireland Act 1998 requires all public authorities in Northern Ireland to have due regard to equality of opportunity between the nine equality categories and have regard to promote good relations between persons of different religious belief, political opinion or racial group. Public authorities are also required to meet legislative obligations under the Disability Discrimination Order, particularly in the formation of public policy making.
- 5.2 The Department of Justice is fully committed to fulfilling its Section 75 obligations on the promotion of equality of opportunity, good relations and meeting legislative requirements in Northern Ireland.
- 5.3 The options set out in this policy consultation have already been subjected to an Equality Impact Screening, as well as the Department's shared future proofing from the earlier consultation in December 2013 on this subject matter.
- 5.4 There have been no equality issues identified and initial pre-policy screening has not identified any other Section 75 impacts at this stage. However, we would welcome views from respondents who might identify any area in which they feel the approaches outlined in the document could have adverse equality impacts.



## 6. NEXT STEPS

6.1 The Department will consider the responses to this consultation and from those bring forward legislation in the next mandate to make the necessary amendments to the 2003 Order.

## 7. HOW TO RESPOND

7.1 The Department welcomes views on the issues raised in this consultation paper. The consultation will run from 22 December 2015 and all responses should be submitted by 28 March 2016. Appendix 2 provides a questionnaire for completion by respondents which is also available on the Department's website. Responses can be sent by e-mail, fax or post as below.

7.2 For queries and responses to the consultation please contact:

Consultation Co-Ordinator  
Speeding Up Justice Branch  
Massey House  
Stormont Estate  
Belfast  
BT4 3SX

Tel: 028 90 169645

Email: [SpeedingUpJustice@dojni.x.gsi.gov.uk](mailto:SpeedingUpJustice@dojni.x.gsi.gov.uk)

7.3 When responding, please state whether you are making a submission as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Additional copies and alternative formats

- 7.4 An electronic copy of this document is available to view and download from the consultation section of the Department of Justice website (<http://www.dojni.gov.uk>).
- 7.5 You may make copies of this document without seeking permission and if you require further printed copies, we would invite you to access the document through our website. If you do not have access to the internet and require us to provide you with further copies, please contact us with your specific request.
- 7.6 Copies in other formats, including Braille, large print or audio cassette may be made available on request. If it would assist you to access the document in an alternative format, or a language other than English, please let us know and we will do our best to assist you.

#### Confidentiality

- 7.7 At the end of the consultation period, copies of responses received by the Department may be made available publicly. A summary of responses may also be published on the Department of Justice website. If you prefer all or part of your response or name to be anonymised, please state this clearly in your response. Any confidentiality disclaimer that may be generated by you or your organisation's IT system or included as a general statement in your fax cover sheet, will be taken to apply only to information in your response for which confidentiality has been specifically requested.
- 7.8 Any personal data which you provide will be handled in accordance with the Data Protection Act 1998<sup>1</sup>. Respondents should also be aware that the Department's obligations under the Freedom of Information Act 2000<sup>2</sup> may require that responses not subject to specific exemptions in the Act be communicated to third parties on request.

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<sup>1</sup> 1998 c.29.

<sup>2</sup> 2000 c.36.

## Complaints

- 7.9 Any comments, queries or concerns about the way this exercise has been conducted should be sent to the following address:

Standards Unit  
Department of Justice  
Block 5  
Knockview Buildings  
Stormont Estate  
Belfast  
BT4 3SL

or e-mail to [Standardsunit@dojni.x.gsi.gov.uk](mailto:Standardsunit@dojni.x.gsi.gov.uk)

## Appendix 1 – List of Consultees

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This consultation document has been sent to the following organisations:

SUJ: FFJ stakeholder group
Inner East Youth Project
VOYPIC (Voices of young people in care)
Include Youth
Start 360
Children’s Law Centre
NIACRO
NICCY
CJINI

Stakeholders involved in STL Pre-consultation
<p>Include Youth</p> <p>NIACRO</p> <p>Law Society</p> <p>Independent Advisory Group, Limavady      Parents’ Group, Youth Justice Agency      Prosecutor: Public Prosecution Service</p> <p>Young Offenders, Woodlands</p> <p>Chief Executive, Youth Justice Agency</p> <p>Opportunity Youth</p> <p>The Children’s Law Centre      Lecturers</p> <p>University of Ulster</p> <p>NICCY</p> <p>PSNI YDOs</p> <p>PSNI response Officers</p> <p>PBNI</p> <p>Young men in custody at Hydebank</p>

## Appendix 2 – Questionnaire for Respondents

Please Note this form should be returned with your response to ensure that we handle your response appropriately.

### 1. Name/Organisation

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

### 2. Postal Address

Postcode	Phone
Email	

### 3. Permissions - I am responding as... (choose one)

An Individual <input type="checkbox"/>	An Organisation <input type="checkbox"/>
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<p>(a) Do you agree to your response being made available to the public?</p> <p>Please tick as appropriate      Yes      No</p>	<p>(b) The name of your organisation will be made available to the public</p> <p>Are you content for your response to be made available?</p> <p>Please tick as appropriate      Yes      No</p>
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**CONSULTATION OPTIONS [continue on separate sheet of paper as required]**

<p><b>Option 1: Start the STL at the point the offence is reported to the police.</b></p>
<p>Yes / No</p> <p>Comments:</p>

<p><b>Option 2: Start the STL at the point the suspect is identified.</b></p>
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Yes / No

Comments:

Option 3: Start the STL at the point of arrest/first point of contact between suspect and the police.

Yes / No

Comments:

Option 4: Start the STL at the date of first interview with suspect.

Yes / No

Comments:

Option 5: Start the STL when the accused is informed that the case is being proceeded with.

Yes / No

Comments:

Length of Time That Would Be Appropriate for an STL:

120 days from start point to bringing the case to trial



Yes / No

Comments:

Length of Time That Would Be Appropriate for an STL:

70 days from start point to bringing the case to trial

Yes / No

Comments:

Length of Time That Would Be Appropriate for an STL:

50 days from start point to bringing the case to trial

Yes / No

Comments:

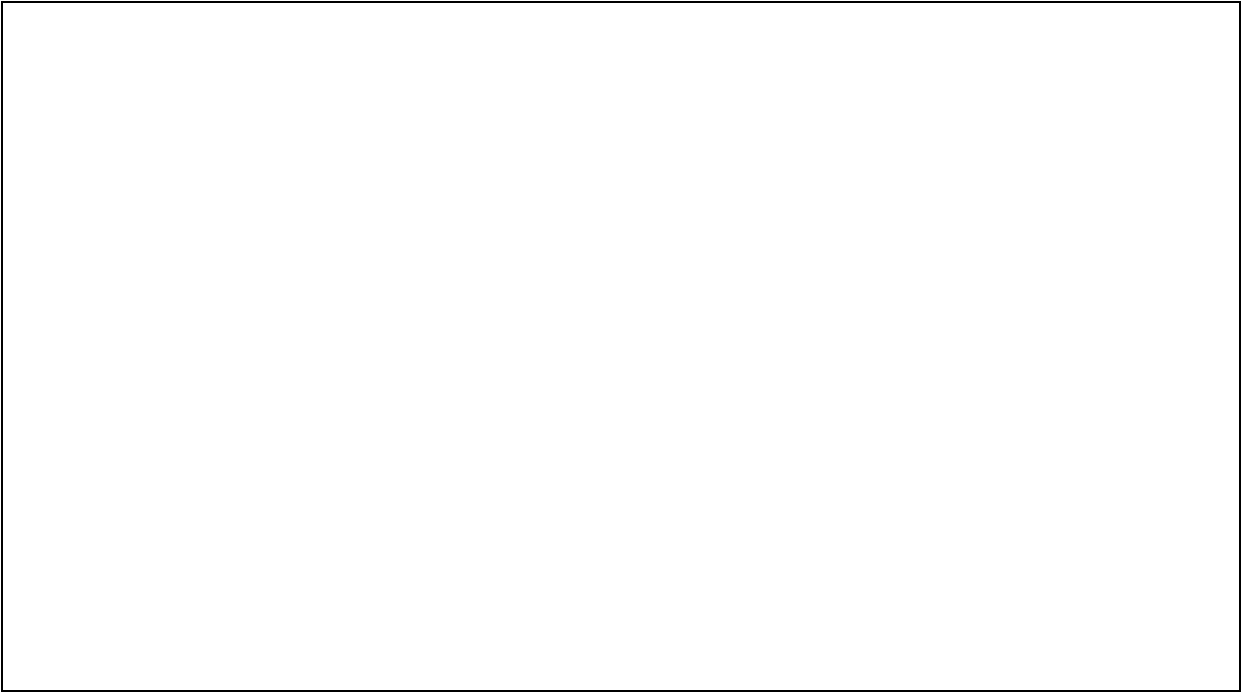
Length of Time That Would Be Appropriate for an STL:

Is there any other length of time that you feel would be appropriate for an STL

Yes / No

Comments:

Any further comments?



## Response to the Consultation on the Introduction of Statutory Time Limits: Public Prosecution Service for Northern Ireland (PPS)

### Introduction

PPS welcomes this opportunity to respond to this very important consultation exercise.

The reduction of avoidable delay is a key priority for the PPS and its criminal justice partners. We continue to work with the DOJ, PSNI, NICTS and other agencies to improve the efficiency of the criminal justice system. For example:

- We are a partner in the programme to implement the range of initiatives set out in the Justice Act 2015, including the direct transfer of cases to the Crown Court.
- The ‘Working Together’ initiative, set up between the PPS and police, is intended to devise and implement revised procedures to improve performance in respect of several key areas for the two organisations, in particular the quality and timeliness of police files and disclosure.
- During 2015 PPS worked with partner agencies in the operation of a new Indictable Cases Pilot. This initiative was intended to reduce avoidable delay, for example by promoting early engagement between PPS and police in the use of proportionate case building.

The PPS recognises that the ongoing discussions regarding the introduction of STLs have been a useful vehicle to bring about a focused dialogue between the agencies as to how best to tackle avoidable delay. However, it is not accepted that STLs will, of themselves, lead to an improvement in processing times.

The PPS’s position is that STLs, in the form set out in the consultation document, should not be taken forward in the new mandate. If STLs are to be implemented this would require significant reworking of the proposals, including the start point and the length of time appropriate for a STL. The summary below provides an outline of the key issues for the PPS, under the following headings:

- Duration of the STL

- Start point for the STL
- Experience in England
- Procedural issues
- Impact on Justice Act and related initiatives
- Pressure on staffing and resources

It should be noted that the PPS response to the specific options identified for the start date and the length of time for the STL are attached at Annexes A and B below.

(i) Duration of the STL

In order for the stated objective of reducing delay to be achieved, the time limit set must be realistic. Therefore in setting out proposals for the duration of the STL, we need to consider current levels of performance across the CJSNI. When actual performance data are considered, it is our view that the proposed time limits of up to 120 days (options 1 to 3) are not achievable. The DOJ's latest timeliness statistics (for Q1 - Q3 2015/16) show that 80% of youth charge cases are currently disposed of in 152 days, while 80% of youth summons cases are disposed of in 248 days. The improvement needed to meet the proposed STLs – for a number of practical reasons – cannot be achieved overnight.

Based on current performance it is likely that a very substantial proportion of cases would fall outside the 120 day time limit. Therefore applications for extensions of the STL, which should be exceptional, are likely to occur in a large number of cases - with the potential for a large proportion of these to be stayed. This would not be in the wider interests of justice, and particularly the interests of victims and their families (see also section iii below). This outcome could also result in significant reputational damage for the PPS and the CJSNI.

It is considered that there is presently a lack of relevant evidence on which to base decisions as to the operation of STLs. The consultation paper refers to an intention to report performance against an ATL in the near future. We welcome this proposal as an opportunity to see where the delays lie in practice and where potential opportunities exist to alleviate these delays. The proposal to report performance against an ATL presents an ideal opportunity to build a more complete evidence base and to make fully informed decisions re the advantages and disadvantages of STLs.

Option 4 of this element of the consultation asks consultees for their views as to the appropriate length for a STL. PPS would not put forward any particular duration at this stage. However we would suggest that any STL must be informed by the available statistical evidence.

(ii) Start point for the STL

The proposed starting points for the STLs described at options 1 to 5 are problematic – the detailed response to each of the options is set out at Annex A.

In the PPS’s view the start point should be subject to further discussion. As outlined above the available performance data, which are based on the date of charge or date accused informed, indicate that a 120 day time limit would be very challenging. Obviously if an earlier start point is selected the result would be to set up a STL which the agencies would not be capable of achieving, creating a position where requests for extension are even more frequent.

It is recognised that there may be a demand for police and PPS time to be accounted for within the STL. If this is the case, and the time taken for police to submit a file and the PPS to take a decision has to be included within the STL, then the duration of the time limit should be set at an appropriate level.

(iii) Experience in England

We are mindful that the pilot operated in England was suspended in 2003 and not rolled out. In his statement to the House of Commons, Lord Falconer said:

“The Association of Chief Police Officers and the Crown Prosecution Service consider that the limits have increased the administrative burden for the police and CPS in dealing with youth cases. They are also concerned that the limits might conflict with the priority being given to improving the quality and effectiveness of case preparation to reduce the number of ineffective trials.

“The overall view is that the process adds to bureaucracy—if extensions are needed, applications have to be made to the court and notice served on the defence; and the time limit has to be recalculated for periods unlawfully at large. While only a few cases were lost because extensions were not applied for or were refused, this would be much more of a problem nationally and the potential for loss of public confidence in the system would be that much greater. The impact on victims is of particular concern, especially if the case was perceived as being dropped because of a procedural technicality.

“We also consider that it is not necessary to have rigid statutory time limits in each and every case in order to deliver our aim of speedy and efficient preparation for trials or sentencing. In our view, custody time limits and the power of the courts to stay cases where delay amounts to an abuse of process are adequate legal safeguards against undue delay in bringing cases to trial.”

In Attorney General's reference (No 3 of 1999) [2001] 2 AC 91, Lord Steyn stated:

"The purpose of the criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. And it is in the interests of everyone that serious crime should be effectively investigated and prosecuted. There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family, and the public."

It is important to note this reference to the “triangulation of interests” recurs throughout criminal justice jurisprudence. The rights of the accused do not, and should not, hold precedence over the rights of the victim and the wider public. It is submitted that the imposition of STLs will overturn this fundamental principle.

#### (iv) Procedural issues

There are numerous procedural issues which have been aired extensively during the previous consultation process on STLs in Youth Cases. Many of these issues are still to be addressed.

For example:

- A high percentage of summonses (20-25%) are unsuccessful at first service. Clarity is needed as to how applications for extensions in such cases would be handled in a situation where the case has not entered the court process.
- On a related point there is a lack of clarity regarding requests for extension of time and subsequent appeals, the impact of which should not be underestimated. Given the limited number of Youth and County Courts and the time limits involved (any appeal must be commenced prior to the end of the STL) it may lead to applications being made almost as soon as, or before, the case is received by the PPS. How such an application process could be handled, and who should make the application if it is prior to the case reaching the PPS, is not apparent.

(v) Impact on Justice Act and related Initiatives

The implementation of STLs is likely to be counterproductive for the CJSNI and its stakeholders, as it will inevitably divert focus and resources away from the various initiatives already underway which are aimed at tackling avoidable delay – some of which are outlined at the introduction above. Given the extensive remit of the current Justice Act and the measures to be implemented in the near future, the imposition of STLs at this time is problematic both strategically and operationally. In short it would not be feasible for the CJSNI to implement these initiatives, while at the same time taking forward the detailed preparations needed for STLs.

(vi) Pressure on staffing and resources

There are significant resource implications associated with the introduction of STLs for PPS and the CJSNI, both in terms of the operational staffing resources needed to manage the process effectively and the financial impact of the ICT changes required to allow implementation to proceed. The ICT changes within PPS will cost in the region of £100k and could exceed £500k across the CJSNI. This pressure cannot be met within current PPS funding.



It should be noted that the PPS, in common with other agencies, is now operating under reduced budgets and lower staffing levels. This limits the flexibility of the Service in responding to new initiatives of this kind.

## Conclusion

PPS welcomes the public consultation on this issue. However it is our view that, for the range of reasons outlined above, STLs should not be introduced in the new mandate.

It is clear that there needs to be a continued focus on addressing avoidable delay across the CJSNI. However such improvements can be achieved without the imposition of STLs, which may (given current budgetary constraints) prove to be counterproductive in meeting this important objective.

Overall it is not accepted that STLs will, of themselves, lead to an improvement in processing times. However if they are to be implemented, this would require significant reworking of the proposals, including the start point and the length of time appropriate for a STL. Any new proposals must be informed by the available statistical evidence.

## ANNEX A: STL Starting Point

### Option 1:

- Start the STL at the point the offence is reported to the police

This is problematic as there may be a significant delay before the suspect is made amenable, and it is not reasonable that the CJSNI should be accountable for this time.

Additionally this time does not impact on the suspect and will only serve to disadvantage the complainant.

### Option 2:

- Start the STL at the point when a suspect has been identified

This is an arbitrary date as defining when a suspect has been identified may be complex: will it be when the complainant names them, will it be following intelligence received providing a name; will it be following a positive identification parade etc. This would make it difficult to determine an appropriate recording date.

### Option 3:

- Start the STL at the point of arrest / first point of contact between the suspect and police

The two options above will not always equate. For example if the first point of contact with a suspect is by telephone to arrange a voluntary interview, there may be a further delay before the suspect is interviewed, while interview will immediately follow an arrest in practically all PACE 25 cases (unless there are medical reasons to delay the interview). There may also be a delay between contacting a suspect and his/her subsequent arrest.

Amendments would be required to the Causeway platform and would be complicated by determining which date is appropriate in which cases. Delays between an initial contact and arrest/voluntary attendance may be due to the suspect but also due to the shift pattern of officers.

### Option 4:

- Start the STL at the date of first interview with suspect

The first interview is the first opportunity for the allegation to be put to the suspect and for him/her to put his/her account. It will also be first time DNA swabs can be taken for comparison and submission; the first opportunity for police to investigate the suspect's account, gather evidence and comply with their duties under the Criminal Procedures and Investigation Act (CPIA) to investigate all reasonable lines of enquiry whether they point away or towards a suspect.

If, as is often the case, there are multiple suspects, whose first interview will start the time limit?

Amendments would be required to the Causeway platform and would be complicated by determining which date is appropriate in which cases.

#### Option 5:

- Start the STL when the accused is informed that the case is being proceeded with

The terminology in this option is misleading as the accused will either be charged or informed they are to be reported to the PPS. Whilst there may be an expectation on being charged that the case will be proceeded with, the decision to proceed on both charge and reported cases will be for the PPS.

In 28 day charge cases the charges are not infrequently withdrawn to proceed by way of report and overnight charge sheets may also be withdrawn to proceed by way of report. How will these cases be dealt with given that this will often be an indication that the file is not case ready? What if charges are changed when the charge sheet is reviewed by the PPS - will the STL run from the date of the fresh charge?

Suspects may be charged because a remand in custody/strict bail conditions are required to prevent further offending, there are concerns the suspect will fail to attend court if released, that the suspect may interfere with the course of justice or the suspect's release might give rise

to public disorder. The imposition of STLs at this time may impact adversely where police are acting in the public interest by charging early rather than reporting.

If there are multiple suspects and only one is charged, will the STL run from the date of charge?

A high percentage of files submitted to the PPS as full files are not in fact full files, and responses to DIRs are required before a decision can be taken. The speed at which these information requests are dealt with is outside PPS control although we work closely with PSNI and specifically with the Police Liaison teams within the PPS to expedite responses.

Greater use of pre-charge bail by police – in order to gather forensic and medical proofs – will be essential if there is to be a realistic prospect of time limits being met in the majority of cases. This is not possible where a remand in custody is sought.

#### ANNEX B: Duration of the STL

##### Options 1 - 3

- 120 days from start point to bringing the case to trial
- 70 days from start point to bringing the case to trial
- 50 days from start point to bringing the case to trial

When actual performance data are considered, it is the PPS's view that a time limit of 120 days is not realistic. In assessing the validity of the proposed STL period, one needs to examine the actual length of time taken for cases to reach completion. DOJ's latest timeliness statistics (for Q1 - Q3 2015/16) provide data in respect of the time taken for 80% of cases to reach completion from either the date of charge or date accused informed. These are as follows:

- For youth charge cases, 80% are disposed of in 152 days.
- For youth summons cases, 80% are disposed of in 248 days.
- For adult charge cases, 80% are disposed of in 115 days.
- For adult summons cases, 80% are disposed of in 214 days.

While these statistics do not provide an exact match with any of the periods covered by the consultation, they provide a clear indication of the scale of the challenge in bringing in a STL of 120 days.

In summons cases in particular, based on current performance it is likely that a very substantial proportion of cases would fall outside the 120 day time limit. In such cases a significant period of time is taken to secure service. There is no evidence to suggest that performance in summons cases will improve markedly prior to the introduction of STLs.

It is noted that in respect of youth cases to be tried in the Crown Court the Q1- Q3 performance statistics indicate that a time limit of 120 days will not be attainable – these show that the average time taken from date of charge to hearing of committal (adults and youths) was 282 days – in fact only 48% of cases reached committal within this 282 day period. Therefore it is submitted that the system is clearly not ready for imposition of an STL of 120 days in relation to such cases. Our view is that youth cases proceeding on indictment should be excluded from the application of the STL.

Some offences, by their very nature, are more complex than others. In such cases it may be inevitable that the process proposed to be covered by the STL will not be completed within 120 days. In that regard it is proposed that certain offences should be excluded from the STL. This would act as an additional safeguard where the offence is of such a serious nature that it would offend the public interest not to have the matter prosecuted to its conclusion.

If the start date is earlier than the date of PPS decision the potential performance gap above would be even greater. Above all, it is essential that any STL is realistic - if it is not the failure to meet the target regularly will lead to reputational damage for the criminal justice system as a whole.

We would contend that this element of the consultation is unlikely to gather the information needed in order to take a properly informed decision regarding the duration of the STL. No data have been provided on which stakeholders can base their assessment of the number of days

required. Information of this kind should have been made available at the commencement of the consultation process.

There are also a number of practical difficulties faced by PPS in terms of complying with a time limit of 120 days, many of which are substantially outside our control:

(i) File Quality

There is an assumption within the discussion around STLs that once the decision to charge (or summons) a person has been made, this indicates that the case is at a certain stage of readiness. This statement ignores cases where an accused is charged to appear at court at the next available court (an “overnight charge”). In those cases the decision to charge is not a reflection of the state of readiness of the case; it is more a reflection of the police view that a remand in custody or imposition of bail terms is appropriate. Even in cases where an accused is charged by police and bailed to attend the first court hearing (“28 day charge files”) it is often the case that the prosecutor is unable to take a decision as to prosecution in advance of the first hearing. This is so even though such files are required by PPS/PSNI protocol to be “case ready” at the point of submission. Current PPS statistics (for the 2015/16 financial year to date) show that prosecutors required further information before taking a decision in 17.6% of all charge cases and 14.6% of reported cases.

(ii) Defence Practitioners

It is unusual for an indication as to attitude (i.e. guilty or not guilty plea) to be given either on the first appearance date of a summons case or at the next appearance following service of papers in a charge case. Routinely in summons cases defence solicitors are permitted one or two weeks from the date of the first appearance to indicate attitude. In courts outside Belfast the time will be longer due to the fact that fewer youth court sittings are available. Similar delays exist in charge cases. The potential for early sharing of the summons with defence solicitors may be of benefit in terms of improving the state of preparedness of the defence lawyer at first appearance.

However, such an innovation will not address the difficulty which some representatives face in terms of meeting with their client to obtain instructions. It will also require firm case management by the Court.

(iii) Court Process

There are certain essential stages within the court process which consume a fixed period of time and in respect of which there is no reason to believe that there will be a reduction in the time taken.

For example in a summons case the period between signing of the summons and first appearance is generally four weeks for postal service and six weeks for personal service. As indicated above one or two weeks, at the very least, are usually given to defence representatives to obtain instructions. Where a case is proceeding to contest two weeks will be required for witness availability to be ascertained. Contests are habitually listed at least 4 weeks ahead of the court date on which the hearing date is set. In Belfast the Youth Court sits three times each week. However, in other parts of Northern Ireland court sittings are much more infrequent. In many venues the Youth Court sits on just 2 days every month.

Those standard parts of the court process total around 12 weeks (84 days) leaving little time to allow for complications which often arise.

(iv) Defendants

There may be occasions where a defendant has contributed to the delay in progressing a case – for example by evading service of the summons or not providing instructions to his/her legal representative. While many people are seeking a speedy conclusion this could not be said to be true of all.

There is a concern that some defendants may see the existence of STLs as a vehicle to manipulate the process in order to damage the prospects of the prosecution case. It will be essential that

District Judges are alive to attempts to delay the process. Furthermore, in considering a prosecution application for an extension of the time limit it is submitted that the conduct of the defence case will be a relevant factor to inform the court's determinations.



