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Assembly

# Research and Information Service Research Paper

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## Statutory Time Limits

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This research paper provides information on statutory time limits in Northern Ireland, England and Wales, Scotland, the Republic of Ireland



## Key Points

- In Northern Ireland there is legislation that would enable the Minister for Justice to make regulations for time limits in prosecution stages and remands in custody at the pre-trial stages. To date such regulations have not been made. A number of reports have called for the introduction of statutory time limits, initially in youth custody cases. The Minister for Justice has announced his intention to introduce time limits to deal with delays, initially in the youth courts.
- Evidence from England and Wales in the youth court pilot indicates that time limits were effective in relation to the Initial Time Limit and Overall Time Limits. Despite this, the Government decided not to roll out the pilot as the benefits identified in the evaluation of the pilot were outweighed by the arguments put forward by various agencies including the police and CPS. The overall view was that the process added bureaucracy.
- Evidence from Scotland indicates that authorities are comfortable with the use of time limits as these have been part of the process for several centuries. However, there have been periodic amendments to the time limits.
- Sanctions are critical to the operation of time limits; without sanctions, the time limits may be ineffective. Evidence from England and Wales in the youth court pilot indicated that the Sentencing Time Limit was ineffective due to a certain lack of sanction for breach.
- Sanctions and safeguards are critical to the operation of time limits and need to balance the interests of the accused against the interests of the victim and wider society. In Scotland for example, when the time limit is reached for a person in custody, then he or she is entitled to release on bail rather than immunity from prosecution.
- In England and Wales in the youth court pilot, if an accused is released due to the expiration of a time limit, the process would be stayed; however if new evidence is obtained then stayed proceedings can be re-instituted. Another safeguard in the youth courts pilot in England and Wales and the time limits in Scotland is the possibility to apply for the extension of a time limit.



## Executive Summary

Legislation in Northern Ireland enables regulations to be made for time limits at the prosecution stages and remands at pre-trial stages. In addition, legislation enables regulations to be made in respect of two additional time limits for persons under the age of 18: an initial time limit which covers the period beginning with the arrest of the young person until the first appearance in court; the second time limit, the sentencing time limit, covers the period between conviction and sentencing. To date regulations have not been made. A number of recent reports (Prisons Review, Youth Justice Review and Criminal Justice Inspection), however, have called for the introduction of a statutory time limit, particularly in youth custody cases. The Youth Justice Review indicated that the current legislative provisions are not adequate as they do not provide for statutory time limits on an end to end basis. The Minister for Justice has committed to introducing statutory time limits, initially in the youth courts. However, consideration is being given to whether the current legislative provisions are adequate or whether fresh legislation is required.

In England and Wales, legislation gives the Secretary of State the power to make regulations to set Overall Time Limits (OTL) and Custody Time Limits (CTL). Regulations were made in England and Wales to fix the maximum periods an accused can be held in custody and were implemented nationally in 1991. In addition, the Prosecution of Offences Act 1985 was amended to allow the Secretary of State to make regulations to set two further additional time limits for persons under 18: the Initial Time Limit (ITL) covering the period of arrest to first appearance in court and the Sentencing Time Limit (STL) which covers the period of conviction to sentence. The Prosecution of Offences (Youth Custody Time Limits) Regulations 1999 piloted three custody time limits in youth court cases: the Overall Time Limit, the Initial Time Limit and the Sentencing Time Limit. Taking the three time limits together all criminal proceedings are covered by the Statutory Time Limits apart from the period of the trial. There are sanctions for non-compliance with the time limits. Failure to comply with custody time limits results in the accused's immediate right to bail. Failure to comply with OTL and ITL can result in the staying of the case. Furthermore, where an ITL expires before the granting of an extension, then a young person could not be charged with that offence unless further evidence is obtained. There is no sanction for breach of the STL. In relation to cases that are stayed, they may be re-instituted within a period of three months after the period which the original proceedings were stayed by the court. However to avoid, this an application can be made for extension of the time limit. The court must be satisfied there is good cause for extension; good cause may include illness or absence of the accused, a necessary witness, a judge or a magistrate; a postponement which is occasioned in the ordering by a court of separate trials in the case of two or more accused or two or more offences or some other good sufficient cause. The prosecution must also show due diligence and expedition.

An evaluation of the pilot published in 2003 suggested that the ITL and OTL had speeded up the process. Furthermore the Time Limits complied with the standards set out in the European Convention on Human Rights. The evaluation recommended that the ITL and OTL should be rolled out nationally. However the ITL would require amendment to ensure a right of appeal against Magistrates decisions to grant or not grant an extension as there is with the OTL. The evaluation found in relation to the STL that interviewees were dismissive of it, viewing it as ineffective due to lack of sanction. However the Government did not accept the recommendations of the pilot to roll out the statutory time limits citing that the benefits were outweighed by the arguments put forward by the various agencies. The Youth Custody Time Limits regulations were subsequently revoked.

Statutory Time limits have been incorporated into the Criminal Procedure (Scotland) Act 1995 (as amended) to prevent delays in trials. The statutory time limits focus on the pre-trial stages of criminal proceedings. If the accused is on bail, a preliminary hearing must take place in High Court cases within 11 months and a trial within 12 months. The consequences of non-compliance are that the accused is discharged from indictment with respect to any offence and cannot at any time be tried on these charges. There are three time limits in respect of persons in custody. An indictment must be served upon the defendant putting the charges to the defendant within 80 days. Preliminary hearings must take place within 110 days and in High Court cases, a trial must take place within 140 days. The 140 day time limit was introduced following a review by Lord Bonomy in 2002 as the 110 day time limit was frequently extended. An evaluation report on legislative amendments to the 1995 Act found that the increase of the 110 day time limit to 140 days in custody cases had made little difference as a large number of extensions were still necessary. The sanction for non-compliance with these time limits is that the accused is entitled to be admitted to bail. This position was changed in 2004, as previous sanctions for non-compliance were that the accused would forever be free from question and process about that offence. An evaluation of the revised time limits in 2007 found that large numbers of extensions to the 140 day time limit were still necessary. In respect of Sheriff court cases a trial must take place within 110 days. A review of Sheriff and Jury Procedure in 2010 recommended that the 110 day rule in Sheriff cases is brought into line with High Court cases; however to date this has not been implemented. Extensions of time limits may be granted on a single ground of cause shown.

In the Republic of Ireland, summary offences are subject to 6 month limitation periods. However there are no such time limits in indictable offences unless specified by legislation. The Irish Constitution does not explicitly guarantee the right to a speedy trial. However the courts in Ireland have interpreted the Irish Constitution to include the entitlement to a trial with reasonable expedition.





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# 1 Introduction

Commentators have highlighted that delay has been a common feature of the criminal justice system in Northern Ireland in recent times. Causes include: the police or prosecuting authority have been slow to act; delays in victims reporting the case; and delay caused by inadequate court time or communication breakdown. The majority of applications to stay proceedings are based on the first cause.<sup>1</sup> A number of recent reports have called for the introduction of statutory time limits due to delays in the criminal justice system and, as a consequence, the Minister for Justice has announced plans to introduce such time limits, initially in youth court cases. England and Wales and Scotland have had experience of dealing with statutory time limits. England and Wales have piloted the use of time limits in youth court cases and this will be examined given that it is intended that time limits will be piloted in youth court cases in the first instance. Statutory time limits have been embedded in the Scottish criminal justice system for some time, although with some amendments over the past decade. This paper will consider how these models have operated and also will examine the position in the Republic of Ireland.

# 2 Northern Ireland

According to an expert in the field of criminal procedure in NI, “save as provided by statute, there is no time limit for commencing or taking any step in a criminal proceeding in NI.”<sup>2</sup> It is possible for the Crown Court and magistrates’ courts to stay a prosecution as an abuse of process for delay and the High Court has the power to stay proceedings in a magistrates’ court.<sup>3</sup> Where, in relation to any specific offence, there is a statutory time limit then it will be an abuse of process to charge the defendant with another offence for which there is no time limit.<sup>4</sup>

Article 12 of the Criminal Justice (Northern Ireland) Order 2003 allows regulations to be made by the Department of Justice for time limits on prosecution stages and remands in custody in the pre-trial stages. The regulations may enable a magistrates’ court or Crown Court in specified circumstances to extend a time limit at any time before it expires.<sup>5</sup> Where an overall time limit expires before the completion of the stage of proceedings to which the limit applies, the magistrates’ court or Crown Court shall stay the proceedings.<sup>6</sup> Article 15 allows regulations to be made in respect of two additional time limits for persons under the age of 18: an initial time limit which covers the period beginning with the arrest of the young person until the first appearance in court; the

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<sup>1</sup> BJAC Valentine (2010) “Criminal Procedure in Northern Ireland”, SLS Legal Publications, 286

<sup>2</sup> Valentine provides an example of the general six month time limit for complaint of a summary only offence (2010) “Criminal Procedure in Northern Ireland”, SLS Legal Publications, 285

<sup>3</sup> BJAC Valentine (2010) “Criminal Procedure in Northern Ireland”, SLS Legal Publications, 285

<sup>4</sup> BJAC Valentine (2010) “Criminal Procedure in Northern Ireland”, SLS Legal Publications, 285

<sup>5</sup> Article 12 (2) (c) of the Criminal Justice (NI) Order 2003

<sup>6</sup> Article 13 of the Criminal Justice (NI) Order 2003

second time limit, the sentencing time limit covers the period between conviction and sentencing. This article provides that where an initial time limit expires before the person is charged with the offence, he shall not be charged unless new evidence is obtained relating to it.<sup>7</sup>

Article 16 of the 2003 Order provides that proceedings for an offence may be instituted within a period of three months after the date on which the original proceedings were stayed by that court. Where the court decides to extend or further extend the custody or overall time limit, the accused may appeal against the decision. Where the court refuses to extend the custody or overall time limits the prosecution may appeal the decision.<sup>8</sup> To date no regulations have been made in respect of statutory time limits at these stages.<sup>9</sup>

A number of recent reports have recommended the introduction of statutory time limits covering the whole of the criminal justice process to deal with the issue of delay in the criminal justice system. The Prison Service Review indicated that statutory time limits to cover the period of arrest to disposal should be implemented over the next three years beginning with cases in the youth court and moving onto the magistrates' courts and then crown court cases.<sup>10</sup> The Youth Justice Review has argued that the current provisions in the 2003 Order are not adequate as they do not provide for statutory time limits on an end to end basis and that legislation would need to be amended or re-drafted to remedy this.<sup>11</sup> The Review Team emphasised that this point is critical for offenders but more importantly for victims as it is the whole of the process that impacts on them rather than the component parts. The Youth Justice Review recommended the introduction of statutory time limits for all youth justice cases providing for a maximum period from arrest to disposal of 120 days and the provision should be included within the next Justice Bill and implemented within 12 months.<sup>12</sup> The review also recommended that provisions should be introduced to ensure there is adequate protection for victims and that cases should not fall because of the length of time it has taken for case to get to court.<sup>13</sup> The Review team recommended that the prosecution is given the right to appeal court decisions not to extend time limits in specific cases but there should be safeguards to ensure this is exceptional and does not become routine.<sup>14</sup> Criminal Justice Inspection Northern Ireland (CJINI) recommended the introduction of statutory time limits on a phased basis, beginning with the youth

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<sup>7</sup> Article 15 (4) of the Criminal Justice (NI) Order 2003

<sup>8</sup> Article 14 of the Criminal Justice (NI) Order 2003

<sup>9</sup> BJAC Valentine "Criminal Procedure in Northern Ireland", SLS Legal Publications 286

<sup>10</sup> The Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons, October 2011, 30

<sup>11</sup> The Review of the Youth Justice System in Northern Ireland, September 2011, 73, available at <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/report-of-the-review-of-the-youth-justice-system-in-ni.pdf>

<sup>12</sup> The Review of the Youth Justice System in Northern Ireland, September 2011, 73

<sup>13</sup> The Review of the Youth Justice System in Northern Ireland, September 2011, 73

<sup>14</sup> The Review of the Youth Justice System in Northern Ireland, September 2011, 73

courts.<sup>15</sup> However CJINI concluded that the mechanics of how statutory time limits should work is a decision for the Department of Justice (DoJ) and that it should draw upon the experiences of Scotland and the pilot scheme in the youth courts in England and Wales.<sup>16</sup>

The Justice Minister indicated in a ministerial statement that consideration needs to be given to whether the legislative provisions in the 2003 Order are adequate or whether fresh legislation is required.<sup>17</sup> Officials from the DoJ highlighted that the current legislative provisions focus on the pre-trial stages of criminal proceedings and fresh legislation would be required in order to go beyond the current provisions.<sup>18</sup> Officials raised issues that need to be worked through or given consideration including:<sup>19</sup>

- Choices to make about when time limits will start and end, options include statutory time limits from the point of arrest to disposal or the time could be much more limited;
- Exemptions or exclusions that could be applied, for example a number of offences could be exempt from being subject to statutory time limits;
- Create opportunities for applications to be made for extensions.

## 3 England and Wales

### 3.1 Legislative Background

Provision has been made for the introduction of statutory time limits under the Prosecution of Offences Act 1985. Section 22 of the Act gives the Secretary of State the power to introduce statutory time limits for the prosecution to complete the preliminary stages of criminal proceedings (Overall Time Limit) and the power to set custody time limits.<sup>20</sup> Custody time limits were implemented nationally in 1991, having initially been implemented in certain areas. The Overall Time Limit was not introduced at that point; however it was piloted along with two additional time limits in relation to youth custody cases.

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<sup>15</sup> Criminal Justice Inspection Northern Ireland "Avoidable Delay: A Progress Report", January 2012, 17, available at <http://www.cjini.org/CJINI/files/0b/0b926375-5443-44b6-b2f9-7a88e6f6725b.pdf>

<sup>16</sup> Criminal Justice Inspection Northern Ireland "Avoidable Delay: A Progress Report", January 2012, 17

<sup>17</sup> Official Report of the Northern Ireland Assembly: Ministerial Statement on Speeding Up Justice, 6 February 2012 <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-11-12/06-February-2012/#a4>

<sup>18</sup> Official Report of the Committee for Justice "Avoidable Delay: A Response" 9 February 2012, <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Meetings-of-Assembly-Committees-Minutes-of-Evidence/Avoidable-Delay-Response/>

<sup>19</sup> Ibid.

<sup>20</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03, 2

### 3.1.1 Custody Time Limits

The Prosecution of Offences (Custody Time Limits) Regulations 1987 (as amended) fix the maximum period an accused can be held in custody before trial:<sup>21</sup>

- 70 Days between first appearance in the magistrates' court and committal proceedings;
- 70 Days between first appearance and summary trial for an offence which is triable either way (reduced to 56 days if the decision for summary trial is taken within 56 days);
- 56 days between first appearance and trial for a summary offence;
- 112 days between committal and arraignment;
- 70 days between first appearance and the decision to send an indictable-only offence to the Crown Court; and
- 182 days between the date when an indictable-only offence is sent for trial and the start of trial.

If a custody time limit expires, the accused has an immediate right to bail.<sup>22</sup> If a court has given an accused bail because of the expiry of the custody limit then it may not set a *pre*-condition such as a deposit or surety.<sup>23</sup> However, the court may impose conditions that the accused must comply with after release (e.g. a curfew or condition of residence or reporting). To avoid this, however, the prosecution can deal with the case quickly or apply for an extension to the custody time limit.<sup>24</sup> Applications for an extension to custody time limits can be made at any time before the expiry of a time limit imposed by regulations. However, the court must be satisfied that the prosecution acted with all due diligence and expedition and that the need for extension is due to:

- Illness or absence of the accused, a necessary witness, a judge or a magistrate;
- a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more accused or two or more offences; or
- some other good and sufficient cause.

<sup>21</sup> See the Prosecution of Offences (Custody Time Limits) Regulations 1987; The Prosecution of Offences (Custody Time limits) (Amendment) Regulations 1988; The Prosecution of Offences (Custody Time limits) (Amendment) Regulations 1991; The Prosecution of Offences (Custody Time limits) (Modification) Regulations 1998; The Prosecution of Offences (Custody Time limits) (Amendment) Regulations 1999; The Prosecution of Offences (Custody Time limits) (Amendment) Regulations 2000. See also J Sprack (2011) "A Practical Approach to Criminal Procedure" 13<sup>th</sup> Edition, Oxford University Press, 108; Crown Prosecution Service "Legal Guidance: Custody Time Limits" [http://www.cps.gov.uk/legal/a\\_to\\_c/custody\\_time\\_limits/#a05](http://www.cps.gov.uk/legal/a_to_c/custody_time_limits/#a05)

<sup>22</sup> The provisions of the Bail Act 1976 as amended by Regulation 8 of the Prosecution of Offences (Custody Time Limits) Regulations 1987

<sup>23</sup> J Sprack (2011) "A Practical Approach to Criminal Procedure" 13<sup>th</sup> Edition, Oxford University Press, 108

<sup>24</sup> J Sprack (2011) "A Practical Approach to Criminal Procedure" 13<sup>th</sup> Edition, Oxford University Press, 108

Applications may be made to the Crown Court if a Magistrates' court grants or refuses to extend a custody time limit or an overall time limit.<sup>25</sup>

CJINI considered the custody time limits and highlighted that any attempt to introduce similar time limits as England and Wales would require a level of exemptions which would undermine the very purpose of the limits.<sup>26</sup>

### 3.1.2 Time Limits in Youth Court Cases

The Crime and Disorder Act 1998 amended the Prosecution of Offences Act 1985 by inserting a provision empowering the Secretary of State to set two additional time limits for persons under the age of 18. The first time limit covers the period of arrest to first appearance at court known as the initial time limit (ITL).<sup>27</sup> The second covers the period between conviction and sentence for the offence being completed, known as the sentencing time limit (STL).<sup>28</sup> The court may extend or further extend the initial time limits but shall not do so unless it is satisfied that the need for extension is due to a 'good and sufficient cause'.<sup>29</sup>

Furthermore, the court must be satisfied that the prosecution has acted with all due diligence and expedition.<sup>30</sup>

There were three statutory time limits set out in regulations relating to youth cases: the overall time limit; the initial time limit and the sentencing time limit. A summary is set out in the table below.

Type of time limit	Stage of Process	Length
Overall Time Limit (OTL)	runs from the date of a first appearance at a youth court to the start of the trial	99 days <sup>31</sup>
Initial Time Limit (ITL)	runs from the date of the persons arrest to the date of first appearance in court	36 days. <sup>32</sup>

<sup>25</sup> Section 22 (7) and section 22 (8) of the Prosecution of Offences Act 1985

<sup>26</sup> Criminal Justice Inspection Northern Ireland "Avoidable Delay" June 2010, 66.

<sup>27</sup> Section 22A of the Prosecution of Offences Act 1985 as amended by section 44 of the Crime and Disorder Act 1998J Jackson, J Johnstone and J Shapland "Delay, Human Rights and the need for statutory time limits in youth cases" [2003] Criminal Law Review 510, 519.

<sup>28</sup> Section 22A of the Prosecution of Offences Act 1985 as amended by section 44 of the Crime and Disorder Act 1998.

<sup>29</sup> Section 22A (3) of the Prosecution of Offences Act 1985

<sup>30</sup> Section 22A (3) of the Prosecution of Offences Act 1985

<sup>31</sup> Regulation 4 of the Prosecution of Offences (Youth Court Time Limits) Regulations 1999

<sup>32</sup> Regulation 5 of the Prosecution of Offences (Youth Court Time Limits) Regulations 1999

Sentencing Time Limit (STL)	runs from conviction to sentence	29 days. <sup>33</sup>
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Fresh proceedings for the offences may be re-instituted in cases stayed under sections 22 or 22A of the Prosecution of Offences Act (as amended) on the condition that it is within a period of three months (or such longer period as the court may allow) after the date the original proceedings were stayed by the court.<sup>34</sup>

## 3.2 Evaluation of the Statutory Time Limit Pilot Schemes in the Youth Courts

### 3.2.1 How did the time limits operate in the pilot?

A pilot of the statutory time limits set out in the legislative provisions for young offenders started on 1 November 1999 in six pilot areas.<sup>35</sup> The statutory time limits for young offenders comprised of the initial time limit, the overall time limit and sentencing time limit. Information on the operation of the statutory time limits has been summarised from an evaluation of the pilot scheme.<sup>36</sup>

The initial time limit (ITL) ran from the date of arrest to the date on which the defendant's case is first heard in court, set at 36 calendar days. It applied when the defendant was arrested, not if the defendant had been warned that they would be reported for summons without prior arrest. The time limit only applies if a person was arrested in one of the pilot areas and if the first appearance was in one of the nominated youth courts for the purposes of the pilot. The ITL did not apply if the young person first appeared in an adult magistrates' court either because they were charged with an adult or for other reasons. The ITL applied to a young person aged under 18 at the time of arrest and continued to apply if the young person turned 18 during proceedings. If the prosecution needed more than 36 days before a first appearance in court then the police or CPS could apply to the Magistrates' court to extend the ITL. Notice of at least two days should be given to the defence and court of the application. If an extension was granted then it was given for a specified period of time. Neither the prosecution nor the defence could appeal against the refusal or the granting of an extension if the application is made pre charge; an appeal was permitted if the extension was granted post charge. If the ITL expired without an extension being granted, then the case was stayed, the accused was released and the case could be lost. The accused could only be charged with the offence again if further evidence was

<sup>33</sup> Regulation 6 of the Prosecution of Offences (Youth Court Time Limits) Regulations 1999

<sup>34</sup> Section 22B of the Prosecution of Offences Act 1985 as amended by the Crime and Disorder Act 1998

<sup>35</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03, 2

<sup>36</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03, 4-7

obtained; if so a new time limit applied. Academic commentators have suggested that this may not be too difficult a hurdle to overcome; for instance the courts considered that the results of forensic tests which can cause delay may constitute further evidence even if based on samples discovered during the initial time limit stage.<sup>37</sup>

If a young person escaped from custody or failed to respond to their bail report at the police station, then the ITL would be suspended and resumes when they were rearrested or responded to bail.

The Overall Time Limit (OTL) was set at 99 days; this ran from the date of a first appearance at a youth court to the start of a trial. It did not include the time a trial takes. The OTL applied to all cases involving a young person appearing in a pilot youth court pre-trial. Unlike the ITL, it applied to cases where a person was charged and in cases where a person was summonsed as well as cases transferred from another court. There was a separate OTL for each charge. If the case was transferred from the pilot youth court for example, committed to the Crown Court or transferred to another court which was not part of the pilot, then the OTL stopped at the point of committal or transfer. If the prosecution or defence needed more than the 99 days limit, then either party could apply to the Magistrates' court for an extension. The court must be satisfied that there is good and sufficient cause for an extension, and the criteria are set out in the Prosecution of Offences Act 1985 (i.e. illness, absence of the accused, a necessary witness, a judge or magistrate, a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more accused or two or more offences; or some other good and sufficient cause). The prosecution must also show due diligence and expedition. More than one extension could be granted. There could be an appeal to the Crown Court against extension or refusal of an extension by the defence/prosecution. However appeals must have started before the limit expired. If the OTL expired before the granting of an extension, then the case would be stayed, providing there was no appeal in process, as is the case of the ITL. The defendant would be released from prison or bail. The prosecution could reinstitute proceedings by way of summons within three months with the consent of the Director of Public Prosecutions or a Chief Prosecutor. If the time period since staying proceedings is over three months, an application must be made for reinstatement. If a young person does not turn up to court or escapes from custody, the OTL would be suspended until the young person is brought back to court. The prosecution could apply for extra time to be applied to the OTL to compensate for the suspension.

The Sentencing Time Limit (STL) ran from conviction to sentence, set at 29 days. The STL applied only if the conviction and sentence took place in the pilot youth court and stops if the person is transferred to another non pilot area court or an adult court. The young person had to be under 18 at the date of arrest or at the time of laying information against him for that offence. There is no sanction if an STL is breached or

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<sup>37</sup> J Jackson et al "Delay, Human Rights and the need for statutory time limits in youth cases [2003] Criminal Law Review 523.

expires. In contrast, the penalty for breach of the Overall Time Limit and Initial Time Limit is staying of the case, if an extension was not granted by the court.<sup>38</sup> Taking the ITL, OTL and STL together, then all criminal proceedings for young people in the pilot areas were covered by statutory time limits, except for the period of the trial.

### **3.2.2 Evaluation of the pilot and Government response**

A final report of an evaluation of the pilot on statutory time limits was published in 2002. The purpose of the evaluation was to look at the progress of youth cases and whether this was speeded up by time limits, the practical effects of their operation, practitioners' views and the impact of the Human Rights Act 1998.<sup>39</sup> The following sections summarise some of the findings of the report.

The evaluation first considered the ITL. The evaluation found that in both 2000 and 2001, the vast majority of defendants were appearing in the youth court well within the ITL of 36 days and the number of cases stayed because the ITL had been breached was very small. However the kinds of cases stayed included both serious and minor offences and the stays were due to lapses by individual officers in the case rather than any pattern of difficulty according to the type of offences. The evaluators found that monitoring the ITL was taking up significant police resources immediately after its introduction but decreased significantly in most areas by 2001. The report found that applications to extend the ITL were made in longer cases such as where there was a need for identification parades or analysis of forensic material, though there were a few complex cases involving many potential defendants. The evaluation found that practitioners varied on their views on the ITL, though almost all thought it speeded up the progress of youth cases. For example some police officers reiterated the objections of the Association of Chief Police Officers who are opposed to time limits. Key objections highlighted included: the ability of magistrates to consider the progress of investigations in deciding whether to extend an ITL; the work needed for monitoring; and the nature of the penalty (staying the case) which might cause injustice, particularly to victims. Other concerns included: the inability of the prosecution to appeal against a magistrates' decision not to extend an ITL pre charge and the lack of possibility of reinstatement without further evidence.<sup>40</sup>

With regards to the OTL, the evaluation report found that almost all cases were finishing within 99 days with 5% or less extending for a longer period of time. The report found that the longer cases, where the OTL was reached or exceeded, primarily involved cases where there were not guilty pleas set for trial. These were often cases where a trial had to be relisted because of witness difficulties. The report found that overall the OTL was being met by courts and also noted the monitoring by the CPS and courts and to improvements in procedures and court sittings. The report suggested that

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<sup>38</sup> Sections 22 and 22 A of the Prosecution of Offences Act 1985

<sup>39</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03. Report was published in January 2002 and revised in 2003.

<sup>40</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03. Report was published in January 2002 and revised in 2003. viii, ix

monitoring was posing some difficulties to CPS staff, mostly due to the lack of suitable IT support. Findings indicated that the proportion of stayed cases was very small, at 1% or less and decreased in 2001. The numbers of applications for extension were higher than for the ITL, ranging from 2% to 5% of cases to which the OTL applied. Between 80% and 100% of applications for extensions were granted in both 2000 and 2001 samples.<sup>41</sup>

The evaluation found that practitioners felt there had been some speeding up of the process. In particular clerks, magistrates, defence solicitors and Youth Offending Team staff were very positive about the OTL. However the evaluators reported that there was cautious and grumbling acceptance from CPS interviewees. The evaluation also noted that, where there were difficulties in finding court time for trials, the CPS did not welcome the focus on the prosecution that applications for extension generated.<sup>42</sup>

In relation to the STL, the evaluation found that in 2000, 80% of cases met the STL, and 2001 figures were similar. The report found that reasons for cases taking longer to sentence included difficulties in completing reports, lack of resources in the youth offending teams and the need to prepare psychiatric reports which contributed to severe delay. The report found that no monitoring was being undertaken by the youth offending teams and only two areas said their courts were monitoring it. In general the report found that interviewees were dismissive of the STL. They viewed it as ineffective due to the lack of any sanction.<sup>43</sup>

The evaluation found that statutory time limits were an effective means of reducing delay, particularly in longer cases but also as facilitating the human rights of both defendant and victim.<sup>44</sup> The report considered relevant human rights standards, including the individual's right to be brought to trial within a reasonable time which is an independent right guaranteed under Article 6 (1) of the European Convention on Human Rights (ECHR). According to the evaluation team, time limits are an effective means of safeguarding the right to seek speedy disposition of all youth cases unlike other government measures such as the setting of targets.<sup>45</sup> The report indicated that the time limits complied with standards laid down by the European Court under the European Convention on Human Rights. However the report suggested that, to safeguard the right of victims, the prosecuting authorities may need to be given a power to reinstate proceedings that have fallen outside the time limits without the need

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<sup>41</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03. Report was published in January 2002 and revised in 2003. viii, ix, x

<sup>42</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03. Report was published in January 2002 and revised in 2003, ix, xi.

<sup>43</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03. Report was published in January 2002 and revised in 2003, xi.

<sup>44</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03. Report was published in January 2002 and revised in 2003, xii.

<sup>45</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03. Report was published in January 2002 and revised in 2003, 184

for further evidence, provided that proceedings are brought within a reasonable period of time.<sup>46</sup>

The evaluation concluded that the ITL and OTL should be rolled out nationally but not the STL. The evaluators recommended that the OTL could be rolled out in its current form. However the ITL would require amendment to ensure a right of appeal against magistrates' decisions not to grant or to grant an extension as there is with the OTL and that there should be the possibility to reinstate serious cases without the need for new evidence, providing the case has been reviewed by the CPS at the level of Chief Prosecutor. The report recommended that the STL should be abolished.<sup>47</sup>

In response to a written question in the House of Lords regarding the future of statutory time limits in the youth courts, Lord Falconer acknowledged recommendations made by the evaluators that time limits should be implemented.<sup>48</sup> However, Lord Falconer reported that the Government had taken the decision not to extend statutory time limits across England and Wales stating "the benefits outlined by the final report are outweighed by the arguments put forward by the various agencies."<sup>49</sup> Reportedly, concerns were expressed by the Association of Chief Police Officers and the Crown Prosecution Service that the time limits placed an administrative burden on the police and CPS in dealing with youth cases. Lord Falconer argued that the overall view is that the process adds bureaucracy- if extensions were needed, applications would have to be made to the court and notice served on the defence; and the time limit would have to be recalculated for those unlawfully at large.<sup>50</sup> Other arguments raised include the potential impact on victims if cases were dropped due to a procedural technicality. Lord Falconer noted that only a few cases were lost because extensions were refused or not applied for. However, if the scheme were to be extended, this potentially would become a greater problem with implications for public confidence in the system. Instead the Government's view was that "custody time limits and the power of the courts to stay cases where delays amount to an abuse of process are adequate legal safeguards against delay in bringing cases to trial."<sup>51</sup> Inter-agency co-operation was emphasised as key to successful case management and local criminal justice board would monitor performance on timeliness, reporting to the national board.<sup>52</sup> The regulations which

<sup>46</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03. Report was published in January 2002 and revised in 2003, xii.

<sup>47</sup> J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03. Report was published in January 2002 and revised in 2003, xii.

<sup>48</sup> Response to a Written Question by Baroness Hilton of Eggardon HL2331

[http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030331/text/30331w01.htm#30331w01\\_sbhd3](http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030331/text/30331w01.htm#30331w01_sbhd3)

<sup>49</sup> Response to a Written Question by Baroness Hilton of Eggardon HL2331

[http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030331/text/30331w01.htm#30331w01\\_sbhd3](http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030331/text/30331w01.htm#30331w01_sbhd3) col WA91

<sup>50</sup> Response to a Written Question by Baroness Hilton of Eggardon HL2331

[http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030331/text/30331w01.htm#30331w01\\_sbhd3](http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030331/text/30331w01.htm#30331w01_sbhd3) col WA91

<sup>51</sup> Response to a Written Question by Baroness Hilton of Eggardon HL2331

[http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030331/text/30331w01.htm#30331w01\\_sbhd3](http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030331/text/30331w01.htm#30331w01_sbhd3) col WA91

<sup>52</sup> Written Question by Baroness Hilton of Eggardon HL2331

[http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030331/text/30331w01.htm#30331w01\\_sbhd3](http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030331/text/30331w01.htm#30331w01_sbhd3) col WA92

provided for maximum periods in youth court proceedings were subsequently revoked in 2003.<sup>53</sup>

## 4 Scotland

Statutory time limits have been embedded in the Scottish criminal justice system for some time. The best known time limit was the 110 day rule described by Lord Bonomy as the “envy of many but which no other jurisdiction really wants to have to work to” required the trial of a person committed to custody to start within 110 days of his committal to custody.<sup>54</sup> This time limit has existed in more or less the same format for in excess of three centuries, having been extended from 100 to 110 days in 1887.<sup>55</sup> The 110 day rule has now been extended to 140 days in High Court cases. The Criminal Justice Review Group in 2000 highlighted that in Northern Ireland delay was a concern of practicing lawyers and human rights organisations, especially in relation to serious cases where custody was involved. The Review Group suggested a longer term objective may be to aim along the lines of the model of time limits operating in Scotland and indicated that participants in the processes in Scotland were comfortable with the arrangements.<sup>56</sup> The following sections therefore examine the system of time limits in Scotland and evaluations that have been undertaken.

### 4.1 Statutory Time Limits in the Criminal Procedure (Scotland) Act 1995

The prevention of delay of trials has been incorporated into legislative provisions in Scotland under the Criminal Procedure (Scotland) Act 1995 as amended by the Criminal Procedure (Amendment) (Scotland) Act 2004.<sup>57</sup> According to the Crown Office and Procurator Fiscal Service (COPFS), the Department must prepare the prosecution in serious custody cases under one of the strictest time limits in the world.<sup>58</sup> An example of the prosecution timeline in a typical murder case in Scotland on the COPFS website is set out in Annex A of this paper.

After arrest, a suspect must appear in court the next working day. The COPFS has eight days to complete initial enquiries. Eight days after the first appearance in court, the accused is brought back to court, fully committed and the time limits for

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<sup>53</sup> The Prosecution of Offences (Youth Courts Time Limits) (Revocation and Transitional Provision) Regulations 2003; see also the CPS guidance [http://www.cps.gov.uk/legal/a\\_to\\_c/custody\\_time\\_limits](http://www.cps.gov.uk/legal/a_to_c/custody_time_limits) the provisions in section 22 of the Prosecution of Offences Act 1985 that relate to the overall time limit and provisions on additional time limits for persons under 18 and re-institution of stayed proceedings in sections 22A and 22B are not in force as the government did not accept the recommendations of the youth court pilot

<sup>54</sup> Lord Bonomy, (2002), “Improving Practice: Review of the Practice and Procedure of the High Court of Justiciary”, p 50

<sup>55</sup> Lord Bonomy, (2002), “Improving Practice: Review of the Practice and Procedure of the High Court of Justiciary”, p 50

<sup>56</sup> Criminal Justice Review Group (2000) Review of the Criminal Justice System in Northern Ireland, 66.

<sup>57</sup> Criminal Justice Inspection Northern Ireland “Avoidable Delay: A Thematic Inspection of Delay in the Processing of Criminal Cases in Northern Ireland, May 2006, 13.

<sup>58</sup> <http://www.copfs.gov.uk/about/110140-day-rule>

proceedings start running.<sup>59</sup> The 1995 Act specifies that an accused person shall not be tried on indictment for any offence unless the trial commences within 12 months of the first appearance of the accused on petition in respect of an offence.<sup>60</sup> The legislation provided strict custody time limits and requires that an indictment is served on an accused person within 80 days of committal. If the indictment is not served within the 80 days, the accused is to be released from custody.<sup>61</sup> The legislation also requires a trial to commence within 110 days of committal. If the trial does not commence within 110 days, the accused is entitled to be released and “thereafter he shall be forever free from all question or process about that offence.”<sup>62</sup> A single High Court Judge may on application extend the time for any sufficient cause however an application may not be granted if the judge is satisfied that for some fault on the prosecution, the indictment could have been served within 80 days.<sup>63</sup> The 110 day time limit may be extended if the judge is satisfied that the delay of the commencement of trial is due to: the illness of the accused or the judge; the absence or illness of any necessary witness; or any other sufficient cause which is not attributable to any fault on the part of the prosecutor.<sup>64</sup> A decision to grant or refusal to extend the time limits may be appealed to the High Court.<sup>65</sup>

#### **4.2 Review of High Court Practices and Procedures 2002 and Amendments to the Criminal Procedure (Scotland) Act 1995**

A review carried out by Lord Bonomy on High Court Practices and procedures in 2002 found that the 80 day time limit was consistently met and that there was no reason for the limit to be altered.<sup>66</sup> However in contrast the 110 day time limit was regularly extended, occurring once in at least 23% of cases in 2001 and this was high given that roughly 55% of cases result in guilty pleas. The most frequent reason for extension was to allow more time for preparation. The explanation given was that the period between the service of the indictment and the start of the trial, which is usually the same as that between the 80<sup>th</sup> and 110<sup>th</sup> days, is often inadequate for defence preparation for trial.<sup>67</sup> The Review made a number of recommendations including:<sup>68</sup>

- The 110 day rule should be modified to require the preliminary hearing to take place within the 110 days and the trial to take place within 140 days in cases where the accused is in custody;

<sup>59</sup> <http://www.copfs.gov.uk/about/prosecution-time-line>

<sup>60</sup> Section 65 (4) (b) of the Criminal Procedure (Scotland) Act 1995, as originally enacted

<sup>61</sup> Section 65 (4) (a) of the Criminal Procedure (Scotland) Act 1995

<sup>62</sup> Section 65 (4) (b) of the Criminal Procedure (Scotland) Act 1995, as originally enacted

<sup>63</sup> Sections 65(5) and (6) of the Criminal Procedure (Scotland) Act 1995, as originally enacted

<sup>64</sup> Section 65 (7) of the Criminal Procedure (Scotland) Act 1995, as originally enacted

<sup>65</sup> Section 65 (8) of the Criminal Procedure (Scotland) Act 1995

<sup>66</sup> Lord Bonomy, (2002), "Improving Practice: Review of the Practice and Procedure of the High Court of Justiciary, p 50

<sup>67</sup> Lord Bonomy, (2002), "Improving Practice: Review of the Practice and Procedure of the High Court of Justiciary, p 51

<sup>68</sup> Lord Bonomy (2002) "Improving Practice: Review of the Practice and Procedure of the High Court of Justiciary, p119-20

- There should be a new time limit requiring cases, where the accused is not in custody, to be indicted to a preliminary diet within 9 months of the first appearance of the accused on petition.<sup>69</sup>
- The grounds on which time limits may be extended by the court should be rationalised. The only ground for extending a time limit should be "cause shown". This means that the court has to be satisfied that there is a good reason for granting the extension.<sup>70</sup>
- Applications to extend time limits in Sheriff Court cases should be heard by the sheriff.
- Where a case cannot be dealt with within the custody time limits, the accused should have a right to apply for bail; and
- The sanction for detaining an accused in custody beyond the custody time limit should be altered. The accused should no longer be "forever free from all question of process", but should be entitled to apply for, and be released on, bail.

In response to the recommendations made by Lord Bonomy, the Scottish Executive published a White Paper in 2003 on proposals for implementation.<sup>71</sup> The Government proposed to introduce legislation to provide that the 110 day time limit will apply from the accused's full committal for trial to the new preliminary hearing to be introduced in the High Court, with the further safeguard that the trial must start within 140 days of full committal. However the Government concluded that it had no plans to make similar changes in the Sheriff and Jury Court as extensions of the 110 day rule were far less frequent.<sup>72</sup>

The White Paper suggested that the introduction of the 140 day rule would mainly benefit the defence, creating more certainty for accused persons whose stay in custody could significantly exceed 110 days. There would also be benefits to the Crown in allowing flexibility to resolve problems over witnesses such as expert witnesses who have other commitments who need fixed trial dates to accommodate these commitments.<sup>73</sup> The Scottish Executive suggested the changes would be of wider benefit to victims and witnesses to avoid repeatedly preparing for trials that are postponed.<sup>74</sup>

In respect of Lord Bonomy's recommendation to introduce a general 9 month deadline to a preliminary hearing, the Government viewed this as "a step too far at this time." The Government indicated that introducing a 9 month deadline to preliminary hearings

<sup>69</sup> The preliminary diet identifies cases in which a trial is necessary and assigns a trial diet, see Lord Bonomy, (2002), "Improving Practice: Review of the Practice and Procedure of the High Court of Justiciary, p 43

<sup>70</sup> Scottish Executive (2003) "Modernising Justice in Scotland: The Reform of the High Court of Justiciary, 8

<sup>71</sup> Scottish Executive (2003) "Modernising Justice in Scotland: The Reform of the High Court of Justiciary, 8

<sup>72</sup> Scottish Executive (2003) "Modernising Justice in Scotland: The Reform of the High Court of Justiciary, pg 22

<sup>73</sup> Scottish Executive (2003) "Modernising Justice in Scotland: The Reform of the High Court of Justiciary, pg 22

<sup>74</sup> Scottish Executive (2003) "Modernising Justice in Scotland: The Reform of the High Court of Justiciary, pg 22

would recreate a culture of extensions and postponements that led to the review in the first place. The White Paper acknowledged that the 12 month deadline was a demanding one and it has no counterpart in other legal systems. Furthermore the limit was only introduced in Scotland 1980, where before this there was no time limit at all in bail cases.<sup>75</sup> However the Scottish Executive indicated there was an argument in the defence having the same minimum amount of preparation time in non-custody cases as in custody cases and therefore would legislate to require the preliminary hearing in High Court cases to be held within 11 months of the accused first appearance on petition. The Scottish Executive agreed with the view of Lord Bonomy that it should not be possible for the accused to evade justice for all time because of a technical failure to observe the custody time limits and a better balance would be struck between the rights of the accused and the rights of society to allow the accused to be released on bail where the Crown is unable to bring the case within the custody time limit. The bail time limit would then apply and if the Crown could not bring the case to trial within a year, then the charges will continue to be dropped for all time.<sup>76</sup> The Government also accepted Lord Bonomy's recommendation to provide for a single ground for extension of time limits i.e. cause shown and would legislate to that effect.<sup>77</sup>

During the debate on the Criminal Procedure (Amendment) (Scotland) Bill, there was little consensus about the extension of the time limit from 110 day rule to 140 days. The Conservatives supported the Justice Committee's recommendations with the exception of the proposal to extend the 100 day rule. Margaret Mitchell MSP argued that it was not acceptable for a person to be held in custody for longer than is necessary and that the case had not been made for changing a rule that had existed for centuries.<sup>78</sup> Annabel Goldie SNP also highlighted that 75% of cases proceed within the 110 day time limits and with that the early service of indictments, managed meetings and preliminary diets could be adjusted to cope with the procedure.<sup>79</sup> The Scottish National Party expressed some reservations. Stewart Maxwell MSP stated that when the committee started consideration of the bill, his instinct was to oppose the change. However he stated "I am on balance persuaded that including the change to 140 days will not erode that principle.... I accept the change to 140 days to gain the prize of preliminary hearings, but we must ensure that helps to speed up justice and does not slow it down."<sup>80</sup> Labour supported the proposed extension to the time limit. Labour SNP Pauline McNeill highlighted that there was more to the proposal of moving the 110 day time limit, because where an accused was free from all time after 110 days, the new proposal was that an accused would be entitled to be admitted to bail. Ms McNeill went

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<sup>75</sup> Scottish Executive (2003) "Modernising Justice in Scotland: The Reform of the High Court of Justiciary, pg 23

<sup>76</sup> Scottish Executive (2003) "Modernising Justice in Scotland: The Reform of the High Court of Justiciary, pg 8

<sup>77</sup> Scottish Executive (2003) "Modernising Justice in Scotland: The Reform of the High Court of Justiciary, pg 24

<sup>78</sup> Margaret Mitchell (Central Scot) (Conservative) Official Report of the Scottish Parliament, Wednesday 25 February 2004

<sup>79</sup> Annabel Goldie (West Scotland) (Con) Official Report of the Scottish Parliament, Wednesday 25 February 2004

<sup>80</sup> Stewart Maxwell (West of Scotland) (SNP) Official Report of the Scottish Parliament, Wednesday 25 February 2004

on to explain that the phrase to be entitled to be admitted to bail was not an automatic entitlement, but means that there will be a hearing.<sup>81</sup>

Amendments to the time limits were welcomed by Victim Support in Scotland which acknowledged that the revised time limits within which cases must be brought to trial appears to strike an appropriate balance between the need to ensure that both Crown and Defence have adequate time to prepare, and the need to ensure that those accused have their cases heard within a reasonable period of time. Victim Support also welcomed that changes would prevent the scenario of a serious case falling on account of a technicality, whilst maintaining the rights of the accused who would be entitled to bail if time limits are breached.<sup>82</sup> In oral evidence to the Justice Committee, Victim Support Scotland highlighted that witnesses are prepared to pay the price of the extension of time limits and of having to wait slightly longer if that will result in greater certainty.<sup>83</sup> Rape Crisis Scotland were also in favour of the changes due to level of delays in rape trial and that it hoped that fixed trial dates would improve the situation.<sup>84</sup>

The Scottish Human Rights Centre (SHRC) in its submission to the Justice Committee raised concerns about changes to the 110 day rule (or starting trials in serious cases when the accused is in custody) which it viewed as the jewel in the Crown of Scottish Justice. The SHRC argued that the 110 day rule is well known within and outside Scotland and that it has worked well for centuries and has resulted in problems rarely. Although there has been an increase in the number of adjournment and postponements, this was indicative of the increased complexity in serious prosecutions. The SHRC argued that other measures in the Bill would tackle some of the problems that lead to delay and these should be given a chance to work without making changes to an established and effective safeguard.<sup>85</sup> The Howard League of Penal Reform also expressed concern at the departure from the 110 day rule and that other measures designed to reduce delays should be given time to work rather than moving to a longer time limit.<sup>86</sup>

Following the publication of the White Paper, the 1995 Act was amended by the Criminal Procedure (Amendment) (Scotland) Act 2004 to implement the recommendations of the Lord Bonomy report and the Scottish Executive

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<sup>81</sup> Pauline McNeill (Glasgow Kelvin) (Lab) Official Report of the Scottish Parliament, Wednesday 25 February 2004

<sup>82</sup> Submission from Victim Support Scotland (Evidence to the Justice Committee on Stage 1 Report on the Criminal Procedure (Amendment) (Scotland) Bill Volume 2 Evidence, 25 November 2003  
<http://archive.scottish.parliament.uk/business/committees/justice1/reports-04/j1r04-02-vol02-03.htm>

<sup>83</sup> Justice Committee Official Report 7 January 2004, <http://archive.scottish.parliament.uk/business/committees/justice1/or-04/j104-0102.htm#Col393>

<sup>84</sup> Justice Committee Official Report 7 January 2004,  
<http://archive.scottish.parliament.uk/business/committees/justice1/or-04/j104-0102.htm#Col393>

<sup>85</sup> Submission from the Scottish Human Rights Centre to the Justice Committee on Stage 1 Report on the Criminal Procedure (Amendment) (Scotland) Bill Volume 2 Evidence, 1 December 2003,  
<http://archive.scottish.parliament.uk/business/committees/justice1/reports-04/j1r04-02-vol02-03.htm>

<sup>86</sup> Correspondence from the Howard League of Penal Reform in Scotland to the Minister of Justice, 22 July 2003

recommendations set out in the White Paper. In summary the changes on time limits included:

- In High Court cases, a preliminary hearing must commence within 11 months of an indictment being served upon the accused. In any case, a trial must commence within 12 months. If the preliminary hearing or trial do not take place within these time limits, the consequences are that the accused is discharged from any indictment with respect to the offence and cannot at any time be tried on these charges.<sup>87</sup>
- Repeal of provisions which set out the specific grounds for extension of time limits may be granted and rationalisation of the grounds for extension to a single ground "On cause shown".<sup>88</sup>
- Where an accused is in custody, if an indictment is not served on the accused within the 80 day time limit, the accused shall be entitled to bail.<sup>89</sup> The previous position was that the accused was simply released from custody and free from all questions or process about that offence.
- Where an accused is in custody, preliminary hearings should take place within the 110 day time limit. The legislation introduced a new 140 day time limits for trials to take place. Again if the time limits are not met, the sanction is that the accused is entitled to apply for bail.<sup>90</sup> The previous position in the 1995 Act was that if the 110 day rule was not complied with the accused was liberated and free from all question or process about the offence.
- The 110 day rule will continue to apply in Sheriff court cases, however where this has not been complied with the accused shall be entitled to be admitted to bail.<sup>91</sup>

#### **4.3 Evaluation of the Amendments to the 1995 Act and The Independent Review of Sheriff and Jury Procedure 2010**

An evaluation of the High Court reforms arising from legislative reforms in 2007 reported that in interviews with criminal justice personnel there was a general agreement that the increase of time limits to 140 days in custody cases had made little difference as a large number of extensions were still necessary.<sup>92</sup> A Review of the

<sup>87</sup> Sections 65 (1) (a) and (b) and 65 (1A) of the Criminal Procedure (Scotland) Act 1995 as amended by Section 6 (2) of the Criminal Procedure (Amendment) (Scotland) Act 2004

<sup>88</sup> Section 65 (3) of the Criminal Procedure (Scotland) Act 1995 as amended by section 6 (4) of the Criminal Procedure (Amendment) (Scotland) Act 2004

<sup>89</sup> Section 65(4) (a) and (aa) of the Criminal Procedure (Scotland) Act 1995 as amended by section 6 (5) (a) of the Criminal Procedure (Amendment) (Scotland) Act 2004.

<sup>90</sup> Section 65(4) (aa) of the Criminal Procedure (Scotland) Act 1995 as amended by section 6 (5) (b) of the Criminal Procedure (Amendment) (Scotland) Act 2004.

<sup>91</sup> Section 65 (4) (A) of the Criminal Procedure (Scotland) Act 1995 as amended by section 6 (5) (c) of the Criminal Procedure (Amendment) (Scotland) Act 2004

<sup>92</sup> J Chalmers et al (2007) "An Evaluation of the High Court Reforms arising from the Criminal Procedure (Amendment) (Scotland) Act 2004, 61.

Sheriff and Jury Procedure conducted in 2010 by Sheriff Principal Bowen considered whether there was a need to alter the time limits.<sup>93</sup> Sheriff Courts are the most important of the lower criminal courts in Scotland and can deal with any criminal matters not reserved to the High Court.<sup>94</sup>

Consideration was given to whether changes needed to be made to the 80 day rule, Sheriff Principal Bowen highlighted that this was a tight time frame in which the Crown has to indict in custody cases. However the 80 day rule is an important safeguard for the accused in providing certainty of the final charges he will face within a reasonable timeframe. The review found no justification for any alteration of the 80 day rule.

However there was a case for changes to the 110 day rule. Sheriff Principal Bowen noted that cases in the Sheriff's court had increased in complexity and volume, impacting on the ability of all parties to prepare cases within the current available timescales.<sup>95</sup> Whilst it made sense in 2003 not to increase the time limit to 140 days for Sheriff's court cases, Sheriff Principal Bowen concluded that position could not stand today. Therefore it was recommended that the 110 day rule contained in the 1995 Act should be amended to 140 days.

Sheriff Principal Bowen noted that the 1995 Act provided that a preliminary hearing in High Court cases must take place within 110 days and if this is not complied with then an accused person is entitled to be admitted to bail. In respect of Sheriff Court cases, Sheriff Principal Bowen recommended that cases are indicted to a First Diet and that the indictment is served 29 days before the First Diet.<sup>96</sup> A First Diet is a date on which an indictment calls in the Sheriff Court in Solemn proceedings to determine whether the prosecutor and defence are ready to go to trial.<sup>97</sup> The trial diet will be required to be assigned within the 140 day period.<sup>98</sup> The Trial Diet is the day on which a trial on indictment or on summary complaint in criminal proceedings at which evidence is to be led will be heard.<sup>99</sup> Where the accused is in custody, the First Diet must take place within the 110 day period.<sup>100</sup> Sheriff Principal Bowen indicated these recommendations would create a system in the Sheriff's Court similar to that operating in the High Court.<sup>101</sup>

The Scottish Government in its response to the review's recommendations agreed in principle to extend the time limit between service of the indictment and the First Diet to 29 days and to amend the 110 day time limit and stated the Government's intention to

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<sup>93</sup> Sheriff Principal Edward F Bowen (2010) ", The Independent Review of Sheriff and Jury Procedure"73.

<sup>94</sup> Scottish Parliamentary Information Centre "The Scottish Criminal Justice System: The Criminal Courts in Scotland ", 24 August 2011, 11/59, 5

<sup>95</sup> Sheriff Principal Edward F Bowen (2010) ", The Independent Review of Sheriff and Jury Procedure"73.

<sup>96</sup> Sheriff Principal Edward F Bowen (2010) ", The Independent Review of Sheriff and Jury Procedure"77.

<sup>97</sup> <http://www.scotland-judiciary.org.uk/29/0/Glossary/a#F>

<sup>98</sup> Sheriff Principal Edward F Bowen (2010) ", The Independent Review of Sheriff and Jury Procedure"77.

<sup>99</sup> <http://www.scotland-judiciary.org.uk/29/0/Glossary/a#T>

<sup>100</sup> Sheriff Principal Edward F Bowen (2010) ", The Independent Review of Sheriff and Jury Procedure"77.

<sup>101</sup> Sheriff Principal Edward F Bowen (2010) ", The Independent Review of Sheriff and Jury Procedure" 77

legislate at the first opportunity.<sup>102</sup> To date, the recommendations have not been implemented and the time limits for trials in Sheriff court cases is 110 days from the date of full committal.<sup>103</sup> Recent correspondence from a colleague at the Scottish Parliamentary Information Centre has indicated there is work in progress to implement the proposals:

The Scottish Government is working on proposals to implement those of the Sheriff Principal's recommendations requiring primary legislation. We hope to bring these forward at an early opportunity. In this regard, we plan to launch a consultation in the next few months on draft legislative proposals which will incorporate some changes to procedural time-limits, including extending the existing 110 day period for commencement of a trial to 140 days. The Scottish Government consider that the proposed time period of 140 days is reasonable and proportionate and balances the needs of the accused with the interest of victims and witnesses and the operation of an effective, efficient system. It would also mirror the position in the High Court. We will of course look carefully at all aspects of the legislative proposals following analysis of consultation responses.<sup>104</sup>

## 5 Republic of Ireland

In the Republic of Ireland, summary offences are subject to limitation periods of 6 months in most cases, however there are longer statutory time limits provided for in some cases.<sup>105</sup> Summary offences include road traffic offences such as speeding or illegal parking or fixed charge penalty notices.<sup>106</sup> In the case of a summary offence, the Gardai must make a complaint to a district judge within 6 months of the offence being committed.<sup>107</sup> Section 7 of the Criminal Justice Act 1951 provides that the time limits in summary cases do not apply to indictable offences.<sup>108</sup> Technically, there is no time limit for the commencement of proceedings in the case of an indictable offence unless specific legislation provides for one.<sup>109</sup> The Irish Constitution does not explicitly guarantee the right to a speedy trial. The courts in Ireland have interpreted Article 38.1 (which states no person shall be tried on any criminal charge save in the due course of the law) to include an entitlement to a trial with reasonable expedition.<sup>110</sup> The courts have also highlighted that there is no fixed scale by which reasonable expedition can

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<sup>102</sup> Scottish Government Response to the Independent Review of Sheriff and Jury Procedure, February 2011, 18  
<http://www.scotland.gov.uk/Resource/Doc/254431/0113481.pdf>

<sup>103</sup> <http://www.copfs.gov.uk/about/110140-day-rule>

<sup>104</sup> Information obtained via email from a Senior Research at the Scottish Parliamentary Information Centre with thanks, 27/04/12

<sup>105</sup> These include prosecution for offences brought under the Social Welfare Acts, the Companies Act 1990, offences under the Wireless Telegraphy Acts, the Revenue Acts and offences under the Customs Acts. Information received from a researcher at the Oireachtas Library and Research Service via email on 26/04/12

<sup>106</sup> [http://www.citizensinformation.ie/en/justice/criminal\\_law/criminal\\_trial/time\\_limitations.html](http://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/time_limitations.html)

<sup>107</sup> [http://www.citizensinformation.ie/en/justice/criminal\\_law/criminal\\_trial/time\\_limitations.html](http://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/time_limitations.html)

<sup>108</sup> <http://www.irishstatutebook.ie/1951/en/act/pub/0002/sec0007.html#sec7>

<sup>109</sup> [http://www.citizensinformation.ie/en/justice/criminal\\_law/criminal\\_trial/time\\_limitations.html](http://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/time_limitations.html)

<sup>110</sup> See *The State (Healy) v Donoghue* 1976 I.R., Gannon, J and reaffirmed in *The State (O'Connell v Fawsitt)* [1986] I.R. 362 and *McFarlane v DPP*, Supreme Court [2008] IESC 7.

be measured but can only be determined taking into account the circumstances of a case.<sup>111</sup>

If there is an excessively long delay in prosecuting an offence, a judge may decide not to hear a case. The judge will decide upon this, taking into account whether the delay will reduce the chances of a fair trial. For example, if the delay means that the witnesses are no longer available to give evidence or if the delay affects their memory of what has happened.<sup>112</sup>

A prosecution should be prohibited or stayed in judicial review if the delay causes unfair prejudice to the defence or if the delay is so excessive as to be unjust in itself and unexplained.<sup>113</sup>

## 6 Conclusion

The issue of delays in the criminal justice process in Northern Ireland has been highlighted by a number of recent reports and there have been calls to introduce statutory time limits covering the period from arrest to disposal, starting with youth court cases. Currently there is no time limit for commencing criminal proceedings except where provided by statute for example there is a general six month time limit for the complaint of a summary only cases. Current legislation exists that would allow the Justice Minister to make regulations to provide for statutory time limits in prosecutions and pre-trial stages. However, to date regulations have not been made. The Youth Justice Review has argued that this legislation is not adequate as it does not provide for statutory time limits on an end to end basis.

In England and Wales, legislation allows for regulations to be made for statutory time limits in prosecution and pre-trial stages. Unlike Northern Ireland, regulations have been made in respect of custody time limits. Furthermore, overall limits, initial time limits and sentencing time limits were piloted in 1999 in youth court cases and taken together covered most of the criminal process i.e. from arrest to sentence, except for the trial period. Despite recommendations made in the evaluation of the youth court pilots, the government did not proceed to roll out these time limits in youth cases nationally.

In Scotland, legislation also provides for statutory time limits in pre-trial stages of criminal proceedings. In non-custody cases a preliminary hearing must take place within 11 months and trials must take place within 12 months. There are three statutory time limits in custody cases: the 80 day rule which requires the service of an indictment

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<sup>111</sup> The State (O'Connell v Fawsitt [1986] I.R. 362

<sup>112</sup> [http://www.citizensinformation.ie/en/justice/criminal\\_law/criminal\\_trial/time\\_limitations.html](http://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/time_limitations.html)

<sup>113</sup> BJAC Valentine "Criminal Procedure in Northern Ireland", SLS Legal Publications 286

listing all the charges and witnesses upon an accused within 80 days of committal; the 110 day rule which requires a preliminary hearing to take place within that period; and the 140 day rule which requires a trial to take place within that period in High Court cases. In Sheriff cases, trial must take place within 110 days. An evaluation on the amendments to statutory time limits reported large numbers of extensions to the 140 day rule are still necessary. A Review of Sheriff procedures has called for the 110 day rule to be brought into line with the 140 day rule in High Court cases.

In the Republic of Ireland, summary offences are subject to 6 month limitation periods. However there are no such time limits in indictable offences unless specified in legislation. The Irish Constitution does not explicitly guarantee the right to a speedy trial. However the courts in Ireland have interpreted the Irish Constitution to include the entitlement to a trial with reasonable expedition.

## Annex A-Prosecution Timeline in Scotland<sup>114</sup>

Below is an example of the time-scale in a typical murder case. The timing and the events illustrated will depend on the unique circumstances of each case.

When the body of the victim is discovered, at any time of the day or night, the Procurator Fiscal (PF) immediately attends at the scene of the murder to provide advice and oversee the collection of evidence. The PF also arranges, attends and supervises the post-mortem examination.

When the suspect is arrested, the PF receives the police report and after careful examination of the evidence gathered so far, drafts the petition. As soon as the accused has appeared in court and been remanded in custody, the PF must prepare and serve a custody statement.

The Department has eight days to complete initial enquiries. The PF instructs necessary further enquiries and identity parades to be held, and requests full statements. Arrangements are also made to have the accused examined by a psychiatrist. Following judicial examination, statements are reviewed and the PF prepares a report for Crown Office seeking authority to have the accused fully committed.

Eight days after the first appearance, the accused is brought back to court, fully committed and the time limits for proceedings start running.

**Day 1** Papers returned from Court. Police instructed to investigate any defence put forward at judicial examination.

**Day 2** Papers passed to PF to consider preliminary work.

**Day 3-5** Medical records and forensic, fingerprint, ballistics and firearms reports requested. Police instructed to lodge productions and any additional evidence/statements of witnesses. Instructions given to make transcripts of tapes of police interviews of accused. Case considered by PF who provides detailed instruction to precognition officer on areas where evidence or law is difficult, sensitive or complex.

**Day 6** Papers passed to precognition officer who allocates dates for precognition (interview) of witnesses.

**Day 7-10** Citations sent to witnesses.

**Day 14-35** Precognition of witnesses. Some fail to attend and are re-cited. Some are not found. Special arrangements made to precognosce vulnerable witnesses, such as children, elderly or infirm people, and people who feel intimidated. Productions may be available at precognition. Some still at laboratory for scientific examination and some witnesses must be re-precognosced. Expert witness reports, such as the post-mortem or forensic science reports received and experts precognosced. PF instructs police to carry out further enquiries.

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<sup>114</sup> Information obtained from the Crown Office and Procurator Fiscal Service, <http://www.copfs.gov.uk/About/roles/pf-role/prosecution/time-line>

**Day 36-40** Documents and productions checked and numbered. Lists of productions and labels completed. Precognition on oath of reluctant witnesses before Sheriff. Interviews with next of kin. Discussions with defence and necessary enquiries into evidence of defence witnesses.

**Day 41-45** Charges and statement of uncontroversial evidence drafted. History of accused and case, summary of case and recommendations dictated. Whole case, including productions collated as a dossier, known as 'the precognition'.

**Day 46-50** Whole case reviewed by PF, sent to Crown Office.

**Day 51-52** Case considered by Crown Counsel and instructions given.

**Day 53-60** Case reviewed at Crown Office by High Court Unit. Final charges drafted, productions checked. Instructions on additional work required sent to PF.

**Day 61** Draft indictment and letter sent to PF.

**Day 62-66** Draft revised by PF. Where possible, questions raised by Crown Office answered. Any additional witnesses and productions added to draft indictment. Draft returned to Crown Office.

**Day 67-68** Indictment printed, sent to PF for service on accused.

**Day 69-79** Indictment sent to police to serve on accused by 80th day. PF continues with further enquiries.

**Day 80-100** Late arriving expert reports received and precognition of expert witnesses. Precognition of defence witnesses. Applications for the evidence of child witnesses to be given by closed circuit television link. Additional witnesses and productions added where further enquiries have indicated that they are necessary.

**Day 101-105** Papers passed to Advocate Depute who is to prosecute in this case.

**Day 110** Preliminary hearing must be commenced by 110th day.

**Day 140** Trial must start by today.

If the 140 day limit in High Court cases, or 110 day limit in Sheriff court cases is not met, the accused is entitled to be released on bail and thereafter the time limits for bail cases apply. The trial would require to be commenced within 12 months (and, in cases proceeding in the High Court, the Preliminary Hearing must be within 11 months). If the bail time limits are not met then the case will fall and the accused will be for all time free from further prosecution in relation to that matter.