

Briefing for Lords oral questions Wednesday 21st October 2020
'Impact on prisons, prisoners, and those on remand of increasing the maximum period of remand in custody by eight weeks' (Lord German)

Key messages

Children should be exempt from the *Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020*. This is because:

- Two thirds of children who are remanded do not go on to get a custodial sentence
- Remand is particularly damaging for children because children in contact with the criminal justice system are some of the most vulnerable in society and conditions in prison during Covid mean children are not getting sufficient education, exercise or support
- The Regulations will have a disproportionate impact on Black and Minority Ethnic children. This has been accepted in the Government's equalities impact assessment
- Longer periods of remand risk tipping older children into the adult criminal justice system without the safeguards in the youth justice system
- Despite the clear detrimental impact these regulations will have on children, a child rights impact assessment has not been carried out.

Background

The *Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020* ("the Regulations") came into force on 28 September 2020 and extended the custody time limits in the crown court by two months. The Regulations appear to attempt to deal with delays by permitting, even facilitating, further delay, which will have a serious, disproportionate implications on children, especially Minority Ethnic (BAME) children.

Consequences for children on remand

Delays to justice for children on remand

Research has revealed that a significant proportion of children who are remanded do not go on to receive prison sentences. By way of example in 2019, some 3000 individuals were acquitted in the crown court having spent time prison on remand.¹ 48% of the children remanded in custody who were subsequently convicted in the crown court did not receive an immediate sentence of imprisonment. More recently in April 2020, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment raised concerns about the use of remands for children in their report to the UK government:

"In the year ending in March 2018, the majority of detained children (58%) had spent less than three months in custody. It is interesting to note that over the same period, children remanded in custody accounted for 24% of the average monthly population of juveniles in custody, and that **a majority of them (63%) did not subsequently receive a custodial outcome**. Given the **high numbers**

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

of juveniles remanded in custody who are subsequently discharged without being sentenced, the CPT would like to be informed about the measures being taken to ensure that young persons are only ever placed in detention as a last resort.”²

The government responded to this concern:

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

...

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

The recently published White Paper, Smarter Sentencing, states the MOJ intends “to avoid the unnecessary use of custodial remand for children”. **This policy will have the opposite effect by routinely extending its use for children.**

The implications of such statistics mean that in some cases, the extension of remand will only **delay justice for a child defendant being kept in custody when they are in fact innocent.**

Longer period of remand will also risk children being tipped into the adult justice system without the safeguards in place in the youth justice system if they have their 18th birthday, despite being accused of committing an offence while still a child.³

Significant harm

Although the number of children in prison has dropped in recent years, the proportion of children on remand at any one time has increased. The latest published statistics show that **37% of children in prison were on remand** as of July 2020 (a rise from 28 per cent in July 2019) (HMPPS 2020).⁴

It has long been acknowledged that children in prisons are particularly vulnerable – many have been in care, have special educational needs, have mental illness, or been a victim of sexual abuse experienced.⁵ Given this, it is not surprising that prison can be extremely damaging for children. Despite a range of independent inquiries that followed the Panorama coverage of Medway Secure Training Centre in 2016, there is still cause for rising concern about the safety of children in prison. The latest safety data shows that there was a **66% increase in the self-harm rate** per 1,000 young people in the 12 months to March 2020 (MoJ 2020).⁶ This

² Report to the United Kingdom Government on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 May 2019, p54. <https://rm.coe.int/16809e4404>

³ See Youth Justice Legal Centre (2020) Timely Justice: Turning 18 A briefing on the impact of turning 18 in the criminal justice system <https://yjlc.uk/wp-content/uploads/2020/06/Turning-18-policy-briefing.pdf>

⁴ Her Majesty's Prison and Probation Service (HMPPS) (2020) Youth Custody Report: July 2020 <https://www.gov.uk/government/statistics/youth-custody-data>

⁵ Ministry of Justice/Youth Justice Board (2017) Key characteristics of admissions to youth custody: April 2014 to March 2016

⁶ Ministry of Justice, (2020) Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to June 2020 Assaults and Self-harm to March 2020, page 6, Published 30 July 2020.

vulnerability is likely to be exacerbated by the heavier impact of imprisonment under Covid-19 restrictions, as acknowledged by the Children's Commissioner for England's recent report.⁷

The Secondary Legislation Committee's report raised concerns on the efficacy of the policy and the implications it had on justice and mental health:

"The backlog that necessitates this extension of remand periods delays justice for both the defendant and the victim and may add to the difficulties that prisons are facing during the pandemic. Extending remand can have extremely detrimental effects on the mental health of the individual and on the welfare of their families, especially where the prisoner is a parent or has dependants, every effort should be made to reduce it as soon as possible. The House may therefore wish to ask the Minister what other measures are being taken to address the backlog of trials."⁸

Given the impact on children, it is extremely concerning that the Children's Commissioner has not been consulted on the Regulations and no Child Rights' Impact Assessment has been carried out.

The court has previously found that where children are affected by a "significant policy change", it will be irrational to not consult the Children's Commissioner.⁹ The extension of custody time limits to a period approaching eight months is a significant policy change.

Disproportionate impact on Black and Minority Ethnic children

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

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

Year	2015	2016	2017	2018	2019
Total RIC	39,138	35,216	32,938	31,138	31,680
BAME RIC	8,561 (22%)	7,693 (22%)	7,044 (21%)	6,426 (21%)	6,408 (20%)
Children	576	455	509	512	526

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

⁷ Children's Commissioner (2020) *Childhood in the time of Covid*, published 29 September 2020

<https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/09/cco-childhood-in-the-time-of-covid.pdf>

⁸ House of Lords Secondary Legislation Scrutiny Committee (2020) *27th Report of Session 2019–21*, published 24 September 2020. <https://committees.parliament.uk/publications/2705/documents/26890/default/>

⁹ In *R (C) v Secretary of State for Justice* [2008] EWHC 171, §35

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

¹¹ Ministry of Justice (2020) *Criminal Justice System Statistics publication: Remands at the Crown Court: Pivot Table Analytical Tool for England and Wales, December 2015-December 2019*, <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>

BAME children	219 (38%)	192 (42%)	186 (37%)	191 (37%)	170 (32%)
Young adults	3,972	3,389	3,177	3,067	2,897
BAME young adults	1,214 (31%)	1,065 (31%)	1,073 (34%)	988 (32%)	928 (32%)

Given the cross-government commitment to tackling discrimination in the criminal justice system, it is imperative that the impact of this measure is fully explored. It is evident that the policy will directly lead to more children from Black and Minority Ethnic backgrounds to be held in custody for longer, despite being more likely to be released after a trial. As a result, the extension of custody time limits directly reinforces the structural inequality and discrimination that already exists in the criminal justice system.

The Equality Impact Assessment published on this measure¹² accepts that there will be a disproportionate impact both on children, and on those from a BAME background. The assessment accepts that the measure *“may pose a risk of indirect discrimination within the meaning of the Equality Act as explained below. At the very least, it is likely to compound the disproportionality that already exists within the Crown Court remand population.”*

Conclusion

Just for Kids Law, the Howard League for Penal Reform and Liberty have serious concerns about these new regulations. We are calling on the Government to withdraw these measures, particularly to exclude children.¹³

Just for Kids Law works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued. **Contact: Jennifer Twite, Head of Strategic Litigation: jennifertwite@justforkidslaw.org or 07507 841792**

The Children’s Rights Alliance for England (CRAE) merged into Just for Kids Law in 2015. It works with over 100 members to promote children’s rights and monitor government implementation of the UN Convention on the Rights of the Child. CRAE fights for children’s rights by listening to what children say, carrying out research to understand what children are going through and challenging those who violate children’s rights. **Contact: Louise King, Director: lking@crae.org.uk or 07919036207**

The Howard League for Penal Reform is a national charity working for less crime, safer communities and fewer people in prison. We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professions, stakeholders and members of the public, influencing debate and forcing through meaningful change. www.howardleague.org. For more information on this issue see <https://howardleague.org/blog/custody-time-limits/> **Contact: Rob Preece, Campaigns and Communications Manager: robert.preece@howardleague.org or 07714 604955,**

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account. Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committee inquiries and other policy fora and undertake independent, funded research. **Contact: Lana Adamou, Lawyer: LanaA@libertyhumanrights.org.uk**

¹² https://www.legislation.gov.uk/ukxi/2020/953/pdfs/uksipes_20200953_en.pdf

¹³ <https://howardleague.org/our-response-to-covid-19-and-prisons/>