



Ministry of  
**JUSTICE**

## **Legal Aid, Sentencing and Punishment of Offenders Bill**

Sentencing and punishment of offenders:  
Full equality impact assessment

**Published November 2011**

# CONTENTS

<b>Contents</b> .....	<b>2</b>
<b>Introduction</b> .....	<b>3</b>
<b>Equality duties</b> .....	<b>4</b>
<b>Evidence sources</b> .....	<b>5</b>
<b>Consultation and engagement</b> .....	<b>8</b>
<b>Impact on victims</b> .....	<b>11</b>
<b>Impact on offenders</b> .....	<b>14</b>
<b>Chapter 1: sentencing</b> .....	<b>15</b>
<i>community orders</i> .....	15
<i>suspended sentence orders</i> .....	21
<i>requirements under community orders and suspended sentence orders</i> .....	28
<i>referral orders for young offenders</i> .....	36
<i>youth rehabilitation orders</i> .....	41
<i>finis</i> .....	47
<b>Chapter 2: bail</b> .....	<b>53</b>
<b>Chapter 3: remands of children otherwise than on bail</b> .....	<b>57</b>
<b>Chapter 4: release on licence etc</b> .....	<b>62</b>
<i>life and ipp sentenced prisoners</i> .....	62
<b>Chapter 5: dangerous offenders</b> .....	<b>67</b>
<b>Chapter 7: out of court disposals</b> .....	<b>80</b>
<i>juvenile penalty notices for disorder, youth cautions and youth conditional cautions</i> .....	80
<i>conditional cautions</i> .....	85
<b>Chapter 8: offences</b> .....	<b>90</b>
<i>offences of threatening with article with blade or point or offensive weapon in public or on school premises</i> .....	90
<i>causing serious injury by dangerous driving</i> .....	96
<i>offence of squatting in a residential building</i> .....	100
<i>reasonable force for the purposes of self-defence etc</i> .....	116
<b>Monitoring</b> .....	<b>119</b>
<b>Annex a: evidence</b> .....	<b>120</b>

# INTRODUCTION

The Ministry of Justice (MoJ) published a consultation document entitled 'Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' (Breaking the Cycle) on 7 December 2010. It set out proposals to reform how we punish, sentence and rehabilitate offenders. The government published its response to the consultation exercise in June 2011. The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill was also published in June 2011, and passed through the House of Commons in September and October 2011. This Equality Impact Assessment (EIA) accompanies introduction of the Bill to the House of Lords in October 2011.

The government aims to reform how offenders are punished, sentenced and rehabilitated in a way that delivers value for money and is consistent with the Spending Review obligations of the Ministry of Justice (MoJ). The policy seeks to improve public safety and reduce the number of victims through reducing reoffending.

There have been 8 EIAs published on the sentencing and punishment provisions of the LASPO bill<sup>1</sup>:

- Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders consultation EIA;
- Government response EIA;
- Minimum sentences for the new offences of threatening with an article with a blade or point or offensive weapon in public or on school premises EIA;
- Increasing magistrates' courts fine limit EIA;
- Clarification of the law on self defence EIA;
- Review of Indeterminate Sentences for Public Protection EIA;
- Options for dealing with squatting EIA;
- Knife crime and dangerous driving EIA.

This EIA consolidates these previous EIAs and updates with the most recent information.

This EIA is intended as a companion document to the LASPO Bill Explanatory Notes document and the LASPO impact assessment (IA). The EIA follows the structure of the Bill as it enters the Lords with the policies arranged under the headings in the Bill and presents the clauses in the order in which they appear in the Bill.

This EIA should be seen as supporting the development of the LASPO Bill as it is introduced to House of Lords.

---

<sup>1</sup> [www.justice.gov.uk/publications/bills-and-acts/bills/legal-aid-and-sentencing-bill.htm](http://www.justice.gov.uk/publications/bills-and-acts/bills/legal-aid-and-sentencing-bill.htm)

## EQUALITY DUTIES

Under the Equality Act 2010 section 149, when exercising its functions, Ministers and the Department are under a legal duty to have 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a protect characteristic and those who do not); and
- Foster good relations between different groups.

Paying 'due regard' needs to be considered against the nine "protected characteristics" under the Equality Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

MoJ has a legal duty to investigate how policy proposals are likely to impact on the protected characteristics and where a potential disadvantageous effect is identified how that is either mitigated or justified by reference to the objectives of the policy. MoJ also has a legal duty to advance equality of opportunity in the design and delivery of its policies and practices. MoJ records its fulfilment of its duties by completing an Equality Impact Assessment (EIA).

# EVIDENCE SOURCES

We have used evidence from a range of official statistics and research.

Data on the risk of becoming a victim of crime by demographic characteristics is from the British Crime Survey (BCS). The BCS includes data on race, disability, gender, age and marital status for victims of crime. There is limited information on religion and sexual orientation. The BCS does not include data on the following: gender reassignment, civil partnership or pregnancy and maternity. As such we do not have data relating to these characteristics for victims of crime.

Data on the demographic characteristics of admissions to NHS hospitals in England involving wounds suffered as the result of assault with a sharp object are from the NHS Information Centre, Hospital Episode Statistics for England. Data is available by age and gender.

Data on court disposals are from the Court Proceedings Database. This holds information on defendants proceeded against, found guilty and sentenced for criminal offences in England and Wales. It includes information on the age of the defendant, their gender, ethnicity, the police force area and court where proceedings took place as well as the offence and statute for the offence. Information on gender reassignment, disability, pregnancy and maternity, sexual orientation, religion or belief or marriage and civil partnership for criminal offences may be held by the courts on individual case files. However it has not been possible to collate these data for this Equality Impact Assessment because of practical difficulties.

Data on the prison population are based on further analysis of Offender Management Caseload Statistics. Data are held centrally for ethnicity, gender, age and religion. Information is not held centrally on gender reassignment, sexual orientation, pregnancy and maternity or marriage and civil partnership. Disability data is held centrally but is not sufficiently reliable to use in this Equality Impact Assessment.

Data on IPP releases are based on information held by the Public Protection and Mental Health Group, NOMS, in the Public Protection Database. Data are held centrally for gender and age. Information is not held centrally on ethnicity, religion, disability, gender reassignment, sexual orientation, pregnancy and maternity or marriage and civil partnership.

Data on mental and physical health of adult offenders in custody are from the Surveying Prisoner Crime Reduction prisoner survey. This was a longitudinal cohort study in 2005/6 of nearly 1,435 newly sentenced adult prisoners, sentenced to less than 4 years in custody, in England and Wales.

Data on those cautioned or sentenced for knife possession are drawn from an extract of data held by the Ministry of Justice taken from the Police National Computer (PNC). Data are held centrally for ethnicity, gender and age.

Data on the use of requirements attached to, and terminations of, COs and SSOs are further analysis of data published in Offender Management Caseload Statistics. Data are held centrally for ethnicity, gender, age and disability. The MoJ does not hold data on sexual orientation, pregnancy and maternity, religion or belief, gender reassignment or marriage and civil partnership. The facility exists in some Probation Trusts' case management systems to record sexual orientation and religion but these are not mandatory fields. These data are not returned to MoJ centrally. Disability data

are collected and returned to the centre, but are not deemed sufficiently reliable to use in this Equality Impact Assessment. In future, data on marital status and disability will be available from the Offender Management Community Cohort Study (OMCCS).

Youth out of court disposals data are from the Youth Justice Board's Workload Statistics, which includes the latest available data on age, gender and ethnicity for youth offenders.

Data on the use of conditional cautions are from the Crown Prosecution Service and are available by age.

Data on the general population of England and Wales by gender, age and ethnicity is from the Office for National Statistics mid-year population estimates. Data on the general population by religion for England and Wales are from the 2010/11 Integrated Household Survey. Estimates of the general population with a disability are from the Office for Disability Issues estimates on the prevalence of disability.

We have also reviewed the following reports:

- 'Households Below Average Income (HBAI) 1994/95-2009/10' by Department for Work and Pensions (May 2011);
- 'Offenders on probation' Home Office Research Study 167 by George Mair and Chris May (1997);
- 'The national prison survey 1991' by Dodd & Hunter (1992);
- 'Adult Psychiatric Morbidity in England, 2007: results of a household survey' by NHS Information Centre (January 2009);
- 'Psychiatric Morbidity among Young Offenders in England and Wales' by Deborah Lader, Nicola Singleton and Howard Meltzer, Office for National Statistics (2000);
- 'In the dark: The mental health implications of Imprisonment for Public Protection' by Sainsbury Centre for Mental Health (2008);
- 'Unjust Deserts: imprisonment for public protection' by Jessica Jacobson and Mike Hough, Prison Reform Trust (2010);
- 'Squatting: a homelessness issue - an evidence review' by Keisa Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011);
- 'Homelessness among A8 Nationals in the UK' Paper presented at: Housing Studies Association Annual Conference by Dr Carol Corinne McNaughton, Centre for Housing Policy at the University of York (April 2008);
- 'Homelessness among migrant groups: a survey of homelessness and refugee agencies across England' by Homeless Link Migration Project (March 2010);
- 'The hidden truth about homelessness: experience of single homelessness in England' by Kesia Reeve with Elaine Batty at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (May 2011);
- 'Squatting in residential properties, Standard Note SN/SP/355' by House of Commons Library (August 2011);

- ‘Life on the Margins: The experiences of homeless people living in squats’ by Keisa Reeve with Sarah Coward for CRISIS and the Countryside Agency (March 2004);
- ‘How Many, How Much? Single homelessness and the question of numbers and cost’ by Peter Kenway and Guy Palmer from the New Policy Institute for CRISIS (2003);
- ‘Hidden in Plain Sight: Homelessness amongst lesbian and gay youth’ by William O’Connor and Donna Molloy, National Centre for Social Research in collaboration with Stonewall Housing (2001);

Where data relating to certain protected characteristics have not been available, information has been drawn from engagement with relevant stakeholders (see ‘Consultation and Engagement’ section below). This has proven to be a very useful source of information especially in identifying the qualitative, as distinct from quantitative, nature of potential impacts.

We note that there is a lack of research or statistical evidence relating to a number of protected characteristics. As part of a wider programme of work, MoJ is looking at how best (and most appropriately) the data gaps that exist might be filled, taking into account cost considerations.

The following assessments only explore equality impacts arising from the policy proposals in relation to the groups affected by the proposals. They are not intended to provide an assessment of the wider factors at play which may explain observed differentials in the distribution of protected characteristics at each stage of the criminal justice system. Such an analysis would consider the extent to which factors other than equality characteristics (such as offence type and offending history) might contribute to the over- or under-representation of particular groups. Two MoJ statistics publications provide some of this more detailed analysis: “Statistics on Race and the Criminal Justice System” and “Statistics on Women and the Criminal Justice System”<sup>2</sup>.

---

<sup>2</sup> [www.justice.gov.uk/publications/statistics-and-data/criminal-justice/race.htm](http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/race.htm)  
[www.justice.gov.uk/publications/statistics-and-data/criminal-justice/women.htm](http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/women.htm)

# CONSULTATION AND ENGAGEMENT

## Breaking the Cycle Green Paper

During the consultation process that ran from 7 December 2010 to 4 March 2011, MoJ held a number of stakeholder events across the country to elicit views and improve understanding of the proposed Green Paper reforms. The Green Paper received over 1200 responses. The consultation events were held across a diverse range of locations including Bristol, London, Manchester and Nottingham (up to 100 attendees each) as well as Birmingham, Cardiff, Newcastle and York (smaller events).

During these consultation events views were actively sought from:

- senior leaders responsible for delivery, including probation chiefs; probation chairs; prison governors; courts; local authorities; senior police officers and voluntary sector representatives;
- a range of voluntary sector provider organisations with an interest in justice;
- private sector provider organisations;
- lobby groups;
- academics;
- local governance bodies including Local Criminal Justice Boards and Community Safety Partnerships;
- Trade Unions;
- front line criminal justice system prison and probation staff;
- the wider delivery chain including, local authorities, police, other government departments; and
- Inspectorates and the Prisons and Probation Ombudsman.

A further number of targeted engagement events, more specifically seeking views from stakeholder groups and/or feedback on the likely effects on policy areas was also undertaken involving:

- Association of Chief Police Officers;
- equalities;
- offenders;
- families of offenders;
- payment by results;
- victims;
- women's policies; and
- youth justice (12 events led by the Youth Justice Board including London, Leeds, Birmingham, Preston and Cardiff).

## Women's workshop

MoJ ran a 'Breaking the Cycle' women's workshop on 15 February targeted specifically at women's policy issues raised by the Green Paper. There were over 60 delegates from a range of backgrounds in attendance, including representatives from the Voluntary and Community Sector (VCS); Private Sector; Academia; CPS; Courts, Police; Prison Probation; Youth Justice Board.

## **Equalities engagement event**

MoJ also ran a specific 'Breaking the Cycle' equalities event on 28 February 2011. This was dedicated to improving our understanding of the likely equality impacts of the proposals and, where necessary, how they could be modified or mitigated.

The event was attended by 54 external delegates (representing all protected characteristics, e.g. Stonewall, British Humanist Association, Coalition for Racial Justice, VOICE UK, Clinks, Women in Prison, Equality and Human Rights Commission, RADAR, NACRO, Gender Identity Research and Education, UNISON, Babies in Prison, Runnymede Trust, School's OUT, Working Chance). In addition, 14 officials from various parts of MoJ attended the event (strategy, policy, equality specialists and analysts).

## **Equality questionnaire**

The MoJ issued an equalities questionnaire to around 240 stakeholders with an interest in equalities issues. We sought views on new evidence and the possible impacts that the proposals might have on people on the basis of the nine protected characteristics identified in the Equality Act 2010. Seven questionnaire responses were received.

## **Dangerous offenders**

The consultation process on Dangerous Offenders included:

- Ministry of Justice Green Paper *Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders* (Dec 2011) and analysis of consultation responses;
- Consultation with voluntary sector organisations including the Prison Reform Trust; Criminal Justice Alliance and with senior judiciary as well as consideration of relevant reports produced by voluntary sector and independent organisations on IPPs;
- Consideration of health implications for those on Indeterminate Sentences for Public Protection (IPP), including those with diagnosed personality disorders, and impacts upon policy in these areas;

Research on international and UK practice of indeterminate sentences.

## **Causing serious injury by dangerous driving**

The offence has been created following concerns expressed by victims of dangerous driving, their families, representatives and road safety campaign groups.

## **Offence of squatting in a residential building**

The consultation exercise 'Options for dealing with squatting' ran for twelve weeks between July 13 and 5 October 2011. During the consultation period, MoJ officials met with groups of homeless charities and property owners. Representatives of groups with an interest in equalities were also invited to attend a meeting. The

consultation paper included the following options for dealing with squatting and these options were also discussed at the face to face meetings:

- 1) Create a new criminal offence of squatting in all buildings;
- 2) Extend the offence in section 7 of the Criminal Law Act 1977 so that it is committed when trespassers refuse to leave any building when required to do so by or on behalf of the owner or lawful occupier or as an alternative when required to do so by the police;
- 3) Widen the exemption to the offence in Section 6 of the Criminal Law Act 1977 to include all property owners or lawful occupiers who seek to gain entry to the property where the person who opposes the entry is a trespasser;
- 4) Leave the criminal law unchanged but work with the enforcement authorities to improve the enforcement of existing offences; and
- 5) Do nothing.

Victims of squatting and owners of residential property who fear their buildings might be occupied without their authority are generally supportive of the government's proposals to criminalise squatting in residential property. On the other hand, homelessness charities and squatters' advisory groups argue that squatting is a symptom of a housing crisis and that many people who squat are homeless and vulnerable. They consider that more should be done to tackle the root causes of homelessness and to bring empty homes back into use.

## IMPACT ON VICTIMS

Many of the sentencing and punishment proposals have the potential for a positive impact on victims, and a summary of these are provided under each policy proposal. These are drawn from the analysis in this section of the risk of experiencing certain crimes from the 2010/11 BCS, as well as analysis using other information where appropriate. The analysis presented assumes there may be a greater impact on those groups that are currently at greatest risk of experiencing certain crimes.

In this section we examine the risk of being a victim of the following crime types, using the BCS:

- Overall crime;
- Violent crime (excluding sexual offences);
- Burglary<sup>3</sup>;
- Robbery;
- Theft from the person.

### *Potential Age Impacts*

Tables 1 and 2 (Annex A) show that younger people are at greatest risk of being a victim of overall crime and violent crime (this includes wounding, assault with minor injury, assault without injury and robbery). Adults aged 16 to 24 have a higher risk than older age groups of being a victim of overall crime. Risks of being a victim of violent crime for adults aged 65 and over were less than one per cent.

Table 2 (Annex A) also shows younger people are at greatest risk of being a victim of robbery. Adults aged 16 to 24 have a higher risk of being a victim of robbery than other age groups.

Table 3 (Annex A) shows that where the household reference person is aged 16 to 24 the proportion of burglaries is the highest (6.4 per cent), and around 2.5 times the proportion for all households (2.6 per cent)

Table 4 (Annex A) shows that it is also younger adults who are at greater risk of theft from the person. The risk is lowest for adults aged 35 and over.

Tables 7 and 8 (Annex A) present experimental statistics on crime against children aged 10 to 15. These are not directly comparable to the adult statistics because of differences in methods of data collection and definitions used. Comparing the year ending December 2009 BCS data across the two age groups provided, though, suggests that the likelihood of being a victim of crime is similar for younger children (aged 10 to 12) and older children (aged 13 to 15).

---

<sup>3</sup> For burglary it is necessary to select one person in the household to indicate the characteristics of the household more generally. Following the National Statistics harmonised classifications, the BCS replaced head of household with household reference person (HRP) in 2001/02. The HRP is the member of the household in whose name the accommodation is owned or rented, or is otherwise responsible for the accommodation. Where this responsibility is joint within the household, the HRP is the person with the highest income. If incomes are equal, then the oldest person is the HRP.

### *Potential Disability Impacts*

Table 1 (Annex A) shows that the risk of being a victim of overall crime is slightly lower for people with a longstanding illness or disability than it is for those with no longstanding illness or disability; 19.4 per cent of adults with a limiting illness or disability had been a victim of all BCS crime in 2010/11 compared with 22 per cent of those with no longstanding illness or disability.

There is also little difference in the risk of being a victim of violence, as shown in Table 2 (Annex A). Those with limiting long term illnesses or disabilities, however, have an older age profile than the population at large: when age is controlled for, those with a limiting long term illness or disability are more likely to be a victim of violent crime<sup>4</sup>.

Information is not available on the risk of being a victim of burglary by whether the person is disabled or not.

Table 2 (Annex A) shows that there is little difference in the risk of being a victim of robbery by whether the person is disabled or not.

Table 4 (Annex) shows that there is little difference in the risk of being a victim of theft from the person by whether the person is disabled or not.

### *Potential Gender Reassignment Impacts*

Information is not available on the risk of being a victim by gender reassignment.

### *Potential Marriage and Civil Partnership Impacts*

Tables 1 and 2 (Annex A) show that single people have the highest risk of being a victim of overall crime and violent crime by marital status (27.9 per cent and 6.8 per cent respectively). This is likely to reflect the younger age profile of this group. Single adults also have the highest risk of being a victim of robbery.

Table 3 (Annex A) shows that where households consists of a single adult with child(ren) the proportion that are victims of burglary is higher than for all households (5.6 per cent compared to 2.6 per cent).

Table 4 shows that single adults have the highest risk of being a victim of theft from the person compared to other adults (2.2 per cent compared to 0.7 per cent for married adults and 1.0 per cent for divorced).

### *Potential Pregnancy and Maternity Impacts*

Information is not available on the risk of being a victim by pregnancy and maternity.

---

<sup>4</sup> See Crime in England and Wales 2009/10, Chapter 3:  
[www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb1210/hosb1210?view=Binary](http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb1210/hosb1210?view=Binary) .

### *Potential Race Impacts*

Table 1 (Annex A) shows that there are small differences in the risk of being a victim of overall crime by ethnic group, with 24.9 per cent of the Black and Minority Ethnic (BME) group reporting victimisation, compared to 21.1 per cent of the White ethnic group.

Table 2 (Annex A) shows that there are small differences in the risk of being a victim of violent crime by ethnic group, with 3.9 per cent of the BME group reporting victimisation, compared to 3.0 per cent of the White ethnic group.

Table 2 (Annex A) shows that there are differences by ethnic group in the risk of being a victim of robbery, with 0.4 per cent of the White ethnic group victims of robbery, compared to 0.9 per cent of the BME group.

Information is not available on the risk of being a victim of burglary by ethnicity.

Table 4 (Annex A) shows that there are differences by ethnic group in the proportion of adults who are victims of theft from the person, with 2.1 per cent of the BME group compared to 1 per cent of the White ethnic group.

### *Potential Religion or Belief Impacts*

Table 5 (Annex A) provides the most recent published data on the risk of being a victim of crime by religion from the 2006/07 BCS. There are differences in the risk of being a victim of violent crime by religious group.

### *Potential Sex Impacts*

Table 1 (Annex A) shows that men are slightly more likely to be a victim of overall crime than women (22.6 per cent compared to 20.5 per cent).

Table 2 (Annex A) shows that men are nearly twice as likely as women (4.1 per cent compared with 2.2 per cent) to experience one or more violent crimes and twice as likely to be victims of robbery (0.6 per cent compared to 0.3 per cent).

Findings from the 2010/11 BCS self-completion module showed that 2.5 per cent of women aged 16 to 59 and 0.5 per cent of men (of the same age) had experienced a sexual assault (including attempts) in the previous 12 months. The majority of these were accounted for by less serious sexual assaults.

Table 3 (Annex A) shows small differences between men and women. Of households where women are the household reference person, 2.8 per cent are burgled compared to 2.4 per cent of households where men are the household reference person.

Table 4 (Annex A) shows a different pattern for victims of theft from the person with 1.4 per cent of women reporting victimisation compared to 0.9 per cent of men.

### *Potential Sexual Orientation Impacts*

Due to the relatively small number of respondents to the BCS who identify themselves as gay, lesbian or bisexual, data from the 2007/08 and 2008/09 BCS have been combined for the purposes of analysis and are given in Table 6 (Annex A). This shows, for example, that more lesbian/gay or bisexual people reporting experiencing any domestic abuse in the past year than heterosexual/straight people.

## **IMPACT ON OFFENDERS**

Many of the sentencing and punishment proposals have the potential to have a positive or negative impact on offenders, and a detailed assessment of the potential impacts are provided under each policy proposal. These assessments draw on information outlined in the section on 'evidence sources' as well as responses to consultations.

# CHAPTER 1: SENTENCING

## Community orders

### Summary

The proposals are to give courts a new power to impose a fine of not more than £2,500 on an offender in relation to a breach of a requirement imposed as part of a community order (CO). We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010.

#### *Direct discrimination*

The proposals to give courts a new power to fine an offender in relation to a breach, of not more than £2,500 in relation to the breach, apply to all offenders given a CO. There is therefore no direct discrimination within the meaning of the 2010 Act.

#### *Indirect discrimination*

Although the proposals will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be given a CO, may be more likely to have an order terminated for negative reasons or may be more likely to be on low income. We have identified in particular potential differential effects in respect of age, disability, race and sex. To the extent that certain groups that share a protected characteristic are more likely to be given a CO or more likely to breach a CO they may also be more likely to be subject to a fine for that breach. However, we consider that any differential impact would be justified. The proposals amount to a proportionate means of achieving the legitimate aim of ensuring that offenders face the most appropriate response for failing to comply with a CO. It may be a positive benefit to the offender to be subject to a fine for a less serious breach, rather than subject to more onerous conditions, or being resentenced.

#### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the proposals extend to disabled offenders, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope of the proposals, but it is considered reasonable to ensure that effective communications are in place to explain the significance of breaches to offenders with learning difficulties.

#### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

### *Advancing equality of opportunity*

Wherever possible we have considered how these proposals impact on the duty to advance equality of opportunity by taking steps to meet offenders' needs.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

### *Conclusion*

Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to give a court a new power to fine an offender in relation to a breach, of not more than £2,500 in relation to the breach. We believe these powers may also add confidence to the public that breaches will be dealt with effectively and may be beneficial to victims.

## **Aims and outcomes for the policy**

The government believe that the addition of a fine to the current options for dealing with a breach of a CO will be valuable in ensuring that offenders receive the appropriate sanction for failing to comply with a CO.

At the moment, an offender who fails to comply with any of the requirements of their CO must be dealt with in one of two ways set out in statute. The court must either vary the existing order by making its requirements more onerous or revoke the order and re-sentence the offender as if they had just been convicted of the original offence.

This clause will extend that limited menu by adding the option of a fine of up to £2,500. That is a straightforward punishment for failing to comply with a CO. The CO will run on unchanged.

## **Methodology**

In analysing the potential equalities impacts of these proposals, we have considered the impact on:

- **Victims:** Information is not available on characteristics of victims of those who breach COs. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential equality impacts of these proposals;
- **Offenders:** We have compared the characteristics of those given COs against all sentences, and where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact. We have also compared the proportion of offenders whose CO is terminated for failure to comply with requirements or conviction of an offence (terminated for negative reasons), and identified where there are differences between different groups;

- **Offenders:** Data on the general demographics and income of the population of England and Wales from the Department for Work and Pensions has enabled an assessment of the likely potential impact of the proposals on different groups. We are aware that the demographics of the general population could differ from those offenders who will be subject to a fine for breach. This research gives us an indication of the groups that, due to their lower average incomes, may be differentially affected in general by the imposition of a fine on breach.

## Analysis

This analysis looks at the potential impacts of the proposals to give courts a new power to impose a fine of not more than £2,500 on an offender in relation to a breach of a requirement imposed as part of a CO.

### Impact on victims

There are potential benefits to victims as these proposals will make a clear statement to the public that failing to comply with the orders of the court will be dealt with effectively, if that is the right response. The proposals also includes a new provision enabling the court not to impose a penalty for breach which ensures the court has a range of options which can be tailored to the circumstances of the offence, offender and impact on the victim.

Information is not available on the characteristics of victims of those sentenced to COs or those breaching COs. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential positive equality impacts of these proposals. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age.

### Impact on offenders

The impact on offenders will be a financial one. However, there may be a positive benefit to offenders to be subject to a fine for a minor breach rather than imposing more onerous conditions or resentencing the offender.

### *Potential Age Impacts*

Table 9 (Annex A) shows that there are small age related differences in the distribution of COs compared to all sentences.

Table 12 (Annex A) shows that those in the younger age groups are more likely than other age groups to have their CO terminated for negative reasons. For example, the rate for those aged 18-20 was 33 per cent compared to 7 per cent for those aged 60 and over.

The DWP research indicates that there is a general correlation between age and disposable income: 80 per cent of individuals in households with children where the head of the household is aged 16-24 years old and 52 per cent of individuals in households without children where the head of the household is aged 16-19 years old are in the two lower disposable income quintiles compared to 37 per cent of all working-age adults.

Therefore there is the potential for the proposals to have a differential impact in relation to age.

#### *Potential Disability Impacts*

The 1997 Home Office Research Study 'Offenders on Probation' found that whilst the definitions of disability used in the probation and general population surveys were not identical 'it is clear that a larger proportion of those on probation than in the general population as a whole considered themselves to be affected by long-term illness. In addition, nearly five per cent of probationers said they were registered as disabled, compared with less than three per cent of the population as a whole (a statistically significant difference)<sup>5</sup>.

Concerns have been raised that people with a learning disability may require increased support to enable them to meet the terms of any CO and the focus should be on ensuring that the additional support is available.

Some concern was expressed during the Breaking the Cycle consultation that increasing the use of financial penalties may have an adverse impact on disabled people due to higher rates of poverty. The DWP research shows 52 per cent of disabled working age adults are in the two lower disposable household income quintiles compared to 34 per cent of non disabled working age adults<sup>6</sup>.

Therefore there is the potential for the proposals to have a differential impact in relation to disability.

#### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Marriage and Civil Partnership Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Race Impacts*

Tale 10 (Annex A) shows that those given community sentences are slightly more likely to be from the White ethnic group in comparison to all those given sentences for indictable offences.

Table 13 (Annex A) shows that those in the Mixed, White and Black ethnic groups are more likely than other ethnic groups to have their CO terminated for negative reasons.

---

<sup>5</sup> 'Offenders on probation' Home Office Research Study 167 by George Mair and Chris May (1997)

<sup>6</sup> No adjustment is made to disposable household income to take into account any additional costs that may be incurred due to illness or disability.

The DWP research shows that those in households where the head of the household is from a minority ethnic group are more likely to have disposable incomes in the bottom two quintiles: this percentage stands at 55 per cent for Black/Black British groups, 57 per cent for Asian or Asian British and 50 per cent of Chinese, versus 37 per cent of the working population overall and versus 34 per cent of the White population.

Therefore there is the potential for the proposals to have a differential impact in relation to race.

#### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Sex Impacts*

Table 11 (Annex A) shows that those given community sentences are more likely to be male in comparison to all those sentenced (83 per cent compared to 74 per cent). Furthermore, Table 14 shows that males are more likely than females to have their CO terminated for negative reasons (26 per cent compared to 22 per cent).

Some concern was expressed during the Breaking the Cycle consultation that increasing the use of financial penalties may have an adverse impact on women due to higher rates of poverty. The DWP research shows that 18 per cent of both adult males and females are in the bottom quintile. 18 per cent of adult males are in the second quintile, compared to 20 per cent of adult females<sup>7</sup>. These data indicate that there is little difference in the proportion of adult males and females in lower income households. The DWP research also provides an analysis for lone parent households with dependant children. This shows that 40 per cent were in the bottom quintile and 28 per cent in the second quintile. The majority of lone parent households are headed by women and research suggests that a higher proportion of female prisoners lived with dependent children and no other adult prior to imprisonment (14 per cent of women compared to 1 per cent of men)<sup>8</sup>.

Therefore there is the potential for the proposals to have a differential impact in relation to sex.

#### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

---

<sup>7</sup> The HBAI analysis aims to measure the living standards of an individual as determined by household income and is based on the assumption that both partners in a couple benefit equally from household income. Research has suggested that, particularly in low-income households, this assumption is not always true as males sometimes benefit at the expense of females from household income. The HBAI analysis by gender could therefore understate differences between males and females.

<sup>8</sup> Dodd & Hunter (1992) *The national prison survey 1991*.

## **Mitigation and Justification**

The government believes that these proposals will bring home to offenders the importance of adhering to the terms of their sentences and improve compliance. It will also make a clear statement to the public that failing to comply with the orders of the court will be dealt with effectively. The clause also contains a new provision enabling the court not to impose a penalty for breach which ensures the court has a range of options which can be tailored to the circumstances of the offence, offender and impact on the victim.

Concerns have been raised that people with a learning disability may require increased support to enable them to meet the terms of any CO and the focus should be on ensuring that the additional support is available so that they fully understand the implications of breaches. Courts are under a statutory duty to explain to offenders in ordinary language and general terms the effect of the sentence imposed on them. In addition, responsible officers have a statutory duty to make any necessary arrangements in connection with offenders' requirements and to promote compliance, particularly in relation to reasonable adjustments for offenders' disabilities.

Those representing particular groups of offenders, such as women, those with family responsibilities, and disabled people, raised concerns during the Breaking the Cycle consultation about fines imposed at the lower end, on those on benefits or with low incomes. In determining the level of the fine the court must take account of the offender's means or, in the absence of such information, make such determination as it sees fit. Any fine is enforced as it would be had it been imposed on conviction. We will be working to improve the provision of means information to help ensure a fair calculation of fines in relation to offender need (i.e. ability to pay). Under the proposals, when a CO has been breached the court has a range of options open to them; they could decide to impose a fine taking into account the means of the offender, they could make the existing order more onerous, they could resentence the offender or they could decide not to impose a penalty for breach.

# Suspended sentence orders

## Summary

The proposals are to provide courts with greater discretion in using suspended sentence orders (SSOs) so that they are able to:

- suspend a sentence for a custodial period of up to two years;
- choose whether or not to impose community requirements; and
- have the additional option of imposing a fine of up to £2,500 for a breach.

This analysis examines these proposals. We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010, which are outlined below.

### *Direct discrimination*

The proposals apply to all offenders given an SSO. There is therefore no direct discrimination within the meaning of the 2010 Act.

### *Indirect discrimination*

Although the proposals will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be given an SSO, may be more likely to have their order terminated for negative reasons or may be more likely to be on low income. We have identified in particular potential differential effects in respect of age, disability, race and sex. However, we consider that any impact would be justified. We believe that allowing courts to suspend a custodial period of up to two years and having the option of applying community requirements and fines for breach is a proportionate measure in order to allow courts to target suspended sentences to best effect and to increase the court's discretion in dealing with the breach of an SSO.

### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as these proposals extend to disabled offenders, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope of the proposals, but it is considered reasonable to ensure that reasonable adjustments are made for offenders with disabilities in relation to the imposition of community requirements or fine for breach of order.

### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

### *Advancing equality of opportunity*

Wherever possible we have considered how these proposals impact on the duty to advance equality of opportunity by taking steps to meet offenders' needs.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

### *Conclusion*

Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that the policy is justified in order to improve the delivery of justice, allow courts to target SSOs to best effect and to increase the court's discretion in dealing with a breach of an SSO.

## **Aims and outcomes for the policy**

The proposals amend provisions relating to SSOs. Currently a court cannot suspend prison sentences of longer than 12 months. The courts are also currently required to attach at least one "community requirement" to an SSO even if they consider that no community requirement is necessary in the circumstances.

The proposals enable courts to suspend longer sentences of imprisonment (between 14 days and two years), and to provide the court with discretion as to whether or not to impose community requirements. The clause retains the current position whereby the sentence of imprisonment will not take effect unless the offender fails to comply with a community requirement or is convicted of a further offence during the period of suspension. Community requirements are available to address issues of offender behaviour through treatment programmes such as alcohol or drug addiction and poor cognitive skills, and courts will have the discretion not to impose requirements if issues of this nature do not need to be addressed.

At present the court has no power to impose a fine for breach of an SSO. The proposal is to enable the court to impose a fine of up to £2,500 for breach of an SSO where it decides not to give effect to the custodial sentence. An SSO is breached where an offender fails to comply with any community requirement or is convicted of another offence during the period for which the sentence is suspended. In determining the level of the fine the court must take account of the offender's means or, in the absence of such information, make such determination as it sees fit. Any fine is enforced as it would be had it been imposed on conviction. We will be working to improve the provision of means information to help ensure a fair calculation of any breach of suspended order fines in relation to offender need (i.e. ability to pay).

The aim is to improve the delivery of justice, allow courts to target SSOs to best effect and to increase the court's discretion in dealing with the breach of an SSO.

## **Methodology**

In analysing the potential equalities impacts of these proposals, we have considered the impact on:

- **Victims:** Information is not available on characteristics of the victims of offenders given SSOs. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential equality impacts of these proposals;

- **Offenders:** We have compared the characteristics of those given SSOs against all sentences, and where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact. We have also compared the proportion of offenders whose SSO is terminated for failure to comply with requirements or conviction of an offence (terminated for negative reasons), and identified where there are differences between different groups in this proportion;
- **Offenders:** Data on the general demographics and income of the population of England and Wales from the Department for Work and Pensions has enabled an assessment of the likely potential impact of the proposals on different groups. We are aware that the demographics of the general population could differ from those offenders who will be subject to a fine for breach. This research gives us an indication of the groups that, due to their lower average incomes, may be differentially affected in general by the imposition of a fine on breach.

## Analysis

This analysis looks at the potential impacts of the proposals to reform SSOs by allowing courts to suspend a custodial period of up to two years and having the option of applying community requirements and fines for breach

### Impact on victims

There are potential benefits to victims as these proposals will lead to more discretion for the courts to target SSOs appropriately, and SSOs have a lower re-offending rate than short custodial sentences and COs. Also, the availability of a fine for breach will mean that all breaches will receive a meaningful penalty.

Information is not available on the characteristics of victims of those sentenced to SSOs or those breaching SSOs. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential positive equality impacts of these proposals. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age.

### Impact on offenders

The impact on offenders of extending the courts power to impose SSOs without community requirements is that unnecessary requirements will be avoided.

The impact of extending the courts power to suspend sentences to longer custodial sentences of up to two years will be that there is a possibility for those offenders affected remaining supervised in the community rather than going to prison. There is a possibility of a move away from the use of immediate custodial sentences for one to two year sentences towards SSOs and/or an increase in SSOs for some offenders. However, there is mixed evidence about whether the increased sentence length will be used widely and that there will be significant shifts from other sentence disposals. Therefore, our best estimate is that while there is a possibility that there could be some impacts of this policy, we expect that increasing the maximum sentence that can be suspended will have a negligible effect.

The changes mean some offenders will be fined for breach rather than being recalled to prison. If an offender is not sent to custody this could have positive impacts in maintaining family ties and employment.

#### *Potential Age Impacts*

Table 15 (Annex A) shows the age distribution for SSOs and all sentences for indictable offences. The age distribution for SSOs varies slightly in comparison to the age distribution for all sentences for indictable offences.

Table 12 (Annex A) shows that those in the younger age groups are more likely than other age groups to have their SSO terminated for negative reasons. For example, the rate for those aged 18-20 was 35 per cent compared to 7 per cent for those aged 60 and over.

The DWP research indicates that there is a general correlation between age and disposable income: 80 per cent of individuals in households with children where the head of the household is aged 16-24 years old and 52 per cent of individuals in households without children where the head of the household is aged 16-19 years old are in the two lower disposable income quintiles compared to 37 per cent of all working-age adults.

The data suggests there is the potential for SSO reforms to have a differential impact in relation to age.

#### *Potential Disability Impacts*

The 1997 Home Office Research Study 'Offenders on Probation' found that whilst the definitions of disability used in the probation and general population surveys were not identical 'it is clear that a larger proportion of those on probation than in the general population as a whole considered themselves to be affected by long-term illness. In addition, nearly five per cent of probationers said they were registered as disabled, compared with less than three per cent of the population as a whole (a statistically significant difference)<sup>9</sup>.

Concerns have been raised that people with a learning disability may require increased support to enable them to meet the terms of any SSO and the focus should be on ensuring that the additional support is available to ensure they understand the implications of any breach.

Some concern was expressed during the Breaking the Cycle consultation that increasing the use of financial penalties may have an adverse impact on disabled people due to higher rates of poverty. The DWP research shows 52 per cent of disabled working age adults are in the two lower disposable household income quintiles compared to 34 per cent of non disabled working age adults<sup>10</sup>.

The data suggests there is the potential for SSO reforms to have a differential impact in relation to disability.

---

<sup>9</sup> 'Offenders on probation' Home Office Research Study 167 by George Mair and Chris May (1997)

<sup>10</sup> No adjustment is made to disposable household income to take into account any additional costs that may be incurred due to illness or disability.

### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Marriage and Civil Partnership Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Race Impacts*

Table 16 (Annex A) shows the ethnic distribution for SSOs and all sentences for indictable offences. The distribution by ethnicity for suspended sentences is similar to the distribution by ethnicity for all sentences for indictable offences. The Black ethnic group account for 8 per cent of SSOs, in comparison to 9 per cent of all sentences for indictable offences.

Table 13 (Annex A) shows that those in the Mixed, White and Black ethnic groups are more likely than other ethnic groups to have their SSO terminated for negative reasons.

The DWP research shows that those in households where the head of the household is from a minority ethnic group are more likely to have disposable incomes in the bottom two quintiles: this percentage stands at 55 per cent for Black/Black British groups, 57 per cent for Asian or Asian British and 50 per cent of Chinese, versus 37 per cent of the working population overall and versus 34 per cent of the white population.

The data suggests there is the potential for SSO reforms to have a differential impact in relation to race.

### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Sex Impacts*

Table 17 (Annex A) shows the distribution by sex for SSOs and all sentences. 85 per cent of SSOs are given to males, in comparison to 74 per cent of all sentences.

Table 14 (Annex A) shows that males are more likely than females to have their SSO terminated for negative reasons (28 per cent compared to 20 per cent).

Some concern was expressed during the Breaking the Cycle consultation that increasing the use of financial penalties may have an adverse impact on women due to higher rates of poverty. The DWP research shows that 18 per cent of both adult males and females are in the bottom quintile. 18 per cent of adult males are in the

second quintile, compared to 20 per cent of adult females<sup>11</sup>. These data indicate that there is little difference in the proportion of adult males and females in lower income households. The DWP research also provides an analysis for lone parent households with dependant children. This shows that 40 per cent were in the bottom quintile and 28 per cent in the second quintile. The majority of lone parent households are headed by women and research suggests that a higher proportion of female prisoners lived with dependent children and no other adult prior to imprisonment (14 per cent of women compared to 1 per cent of men)<sup>12</sup>.

The data suggests there is the potential for SSO reforms to have a differential impact in relation to sex.

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

The government do not expect there to be many cases in which a court would suspend a custodial sentence of between 12 months and two years, but we think it would be a useful extension of the court's powers. The purpose of the provision is to give the courts greater discretion to deal with the full range of cases which come before them.

The proposal to provide the court with discretion as to whether or not to impose community requirements aims to allow courts to only impose specific requirements where they are relevant to the circumstances of the offence and the offender.

The proposal to enable the court to impose a fine of up to £2,500 for breach of an SSO where it decides not to give effect to the custodial sentence, increases the court's discretion in dealing with an offender for a breach of an SSO. An SSO is breached where an offender fails to comply with any requirement or is convicted of another offence during the period for which the sentence is suspended.

Those representing particular groups of offenders, such as women, those with family responsibilities, and disabled people, raised concerns during the Breaking the Cycle consultation about fines imposed at the lower end, on those on benefits or with low incomes. In determining the level of the fine the court must take account of the offender's means or, in the absence of such information, make such determination as it sees fit. Any fine is enforced as it would be had it been imposed on conviction. We will be working to improve the provision of means information to help ensure a fair calculation of fines in relation to offender need (i.e. ability to pay). Under the proposals, when an SSO has been breached the court has a range of options open to them; they could decide to impose a fine taking into account the means of the offender, they could make the existing order more onerous or they could resentence the offender.

---

<sup>11</sup> The HBAI analysis aims to measure the living standards of an individual as determined by household income and is based on the assumption that both partners in a couple benefit equally from household income. Research has suggested that, particularly in low-income households, this assumption is not always true as males sometimes benefit at the expense of females from household income. The HBAI analysis by gender could therefore understate differences between males and females.

<sup>12</sup> Dodd & Hunter (1992) *The national prison survey 1991*.

Concerns have been raised that offenders with learning disabilities may require increased support to enable them to meet the terms of any SSO and the focus should be on ensuring that the additional support is available to help them understand the implications of breach. Courts are under a statutory duty to explain to offenders in ordinary language and general terms the effect of the sentence imposed on them. In addition, responsible officers have a statutory duty to make any necessary arrangements in connection with offenders' requirements and to promote compliance, including making reasonable adjustments for offenders' disabilities.

# Requirements under community orders and suspended sentence orders

## Summary

The proposals are to make changes to certain requirements, as detailed below. We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

### *Direct discrimination*

The proposals are to make changes to certain requirements, as detailed below. These apply to all offenders given these requirements. There is therefore no direct discrimination within the meaning of the 2010 Act.

### *Indirect discrimination*

Although the proposals will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be given certain requirements attached to COs and SSOs. We have identified in particular potential differential effects in respect of age, disability, race and sex. However, even if it were established that these effects constituted a particular disadvantage, we believe that the changes to the requirements for COs and SSOs brought about by these provisions are a proportionate measure to make the orders more effective at addressing the factors that caused the offending in the first place.

### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as this proposals extend to disabled offenders, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope of the proposals, but it is considered reasonable to ensure that effective communications are in place to explain the significance of complying with community and suspended sentence requirements to offenders with learning difficulties.

### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

### *Advancing equality of opportunity*

Wherever possible we have considered how these proposals impact on the duty to advance equality of opportunity by taking steps to meet offenders' needs.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

## *Conclusion*

Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to take forward these improvements to the CO and the SSO.

## **Aims and outcomes for the policy**

### *Programme requirement*

Programme requirements may be imposed as components of a CO or an SSO with a view to addressing particular aspects of offender behaviour such as treatment of alcohol or drug addiction and poor cognitive skills. In each instance the court is required to specify the type of programme that the offender must attend and the number of days on which the offender must take part in an accredited programme.

The proposal is to remove the requirement for a court to specify (a) the specific accredited programme in which the offender must participate, and (b) the place at which the offender must participate in an accredited programme. It will be for the responsible officer whose role is to manage the CO or SSO, to determine which programme the offender should attend and to notify the offender of this.

The aim of the proposal is to make it easier for responsible officers to exercise their professional judgment about what is the most appropriate accredited programme for an offender while ensuring that courts maintain control over the broad content and length of the requirement.

### *Curfew requirement*

The proposal is to increase the maximum period in any day for which the court may impose a curfew requirement from twelve to sixteen hours, and to increase the maximum duration of a curfew requirement from six to twelve months from the date on which the CO or SSO is made.

It remains the case that, before imposing a curfew requirement, the court must obtain and consider the effect that the curfew might have on other people living at the curfew address.

The intention is to make curfew requirements more punitive and better capable of protecting the public. That means that the courts can impose COs or SSOs with greater confidence, and the public can have greater confidence that the objective of the sentences will be met.

### *Foreign travel prohibition requirement*

The proposal is to enable a court to impose a prohibition on foreign travel as a requirement in a CO or SSO. The effect of the new requirement is to prohibit travel to a country or countries outside the British Islands (the United Kingdom, the Channel Islands and the Isle of Man).

### *Mental health treatment requirement*

Currently, a court cannot make a mental health treatment requirement unless it is satisfied that the mental condition of the offender requires treatment and may be susceptible to it, and other disposals under the Mental Health Act 1983 are not warranted. In determining these matters the court is required to have evidence from a medical practitioner who is approved by for the purposes of section 12 of the Mental Health Act 1983.

The proposal is to remove the requirement that the court have evidence from such a practitioner. It will remain the case that the court must be satisfied that the mental condition of the offender requires treatment and may be susceptible to it, and that other disposals under the Mental Health Act 1983 are not warranted. It will also remain the case that the court may not include a mental health treatment requirement unless the offender has expressed willingness to comply with it.

It means that a broader range of mental health specialists, such as doctors practising as psychiatrists, and psychiatric nurses and psychologists, can carry out the initial health assessment, and it will help to ensure that assessments are carried out more promptly and reduce court delay.

### *Drug rehabilitation requirement*

The proposal is to remove the requirement that the treatment and testing period specified in a drug rehabilitation requirement must be at least six months. The effect of this is that there will be no minimum treatment and testing period. The change provides the court with greater discretion in determining the appropriate length of the requirement.

### *Alcohol treatment requirement*

The proposal is to remove the requirement that the period of an alcohol treatment requirement must be at least six months. The effect of this is that there will be no minimum period. The change provides the court with greater discretion in determining the appropriate length of the requirement.

## **Methodology**

In analysing the potential equalities impacts of these proposals, we have considered the impact on:

- **Victims:** Information is not available on characteristics of victims of those given requirements under COs and SSOs. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential equality impacts of these proposals;
- **Offenders:** We have compared the characteristics of those given the requirements under reform against all requirements, and where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact.

## Analysis

This analysis looks at the potential impacts of the proposal to reform requirements.

### Impact on victims

There are potential benefits to victims as these proposals may make the CO or SSO more punitive, more effective in rehabilitating offenders, increase public protection and more accessible to a wider range of offenders.

Information is not available on the characteristics of victims of those sentenced to COs or SSOs. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential positive equality impacts of these proposals. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age.

### Impact on offenders

There is the potential for adverse impacts on offenders in relation to the reform of curfew requirements. In the absence of a general up-tariffing of sentences by sentencers, we might expect that only those offenders currently receiving the maximum intensity or length could receive longer sentences. Under a range of assumptions that some of those currently receiving between 5 and 6 months now receive longer under the new maxima, it is estimated that this might impact on around 2,500 adult offenders. This does not take into account the possibility that courts might issue these longer curfews in place of more expensive disposals. The increase in the maximum period from twelve to sixteen hours in any day for which the court may impose a curfew requirement may adversely impact on access to employment, and this may have a differential impact in relation to age and gender.

There is also the potential for adverse impacts in relation to the foreign travel prohibition requirement.

There is the potential for positive impacts on offenders in relation to the reform of mental health treatment requirements as the proposals will help to ensure that assessments are carried out more promptly and reduce court delay.

### *Potential Age Impacts*

The data on use of requirements by age are given in Table 18 (Annex A). The age distribution for Accredited Programmes is similar to the age distribution for all requirements. Mental health treatment requirements are more likely to be given to those aged 40-49 in comparison with all requirements. Drug treatment requirements are more likely to be given to those aged 25-39, and alcohol treatment requirements to 30-59 year olds.

Therefore there is the potential of a differential impact in reforming requirements in relation to age.

### *Potential Disability Impacts*

The 1997 Home Office Research Study 'Offenders on Probation' found that whilst the definitions of disability used in the probation and general population surveys were not identical 'it is clear that a larger proportion of those on probation than in the general population as a whole considered themselves to be affected by long-term illness. In addition, nearly five per cent of probationers said they were registered as disabled, compared with less than three per cent of the population as a whole (a statistically significant difference)<sup>13</sup>.

Concerns have been raised that people with a learning disability may require increased support to enable them to meet the terms of any CO or SSO and the focus should be on ensuring that the additional support is available.

Therefore there is the potential of a differential impact in reforming requirements in relation to disability.

### *Potential Gender Reassignment Impacts*

Concern has been raised that offenders could be placed at increased risk of domestic violence and abuse by the imposition of a curfew, and that transgender people may be at a higher risk of domestic violence.

### *Potential Marriage and Civil Partnership Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Race Impacts*

The data on use of requirements by age are given in Table 19 (Annex A). The ethnic distribution for Accredited Programmes is similar to the ethnic distribution for all requirements. Mental health treatment requirements are more likely to be given to the Black or Black British ethnic group in comparison with all requirements. Alcohol treatment requirements are more likely to be given to the White ethnic group.

There may be the potential for differential impact for Black and Minority Ethnic (BME) offenders in relation to the imposition of a foreign travel prohibition as they may be more likely to have more relatives or property abroad.

Therefore there is the potential of a differential impact in reforming requirements in relation to race.

---

<sup>13</sup> 'Offenders on probation' Home Office Research Study 167 by George Mair and Chris May (1997)

### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Sex Impacts*

The data on use of requirements by sex are given in Table 20 (Annex A). Programme requirements are more likely to be given to men, in comparison to all requirements. Drug treatment requirements are more likely to be given to women, in comparison to all requirements.

The proposals include measures to provide offender managers with more discretion by reducing the level of detail with which a programme requirement is specified by the court. In addition to those with other protected characteristics, this could potentially address the concern expressed during the Breaking the Cycle consultation that COs need to take account of the different needs presented by women offenders compared to men.

Concern has been raised that women offenders could be placed at increased risk of domestic violence and abuse by the imposition of a curfew. In addition, concerns have been raised that extending curfew hours will have a negative impact on people with caring responsibilities, the majority of whom are women. The court is under a statutory duty to ensure that the requirements of a CO or SSO are the most suitable for the offender and that any restriction on liberty is commensurate with the seriousness of the offence.

Therefore there is the potential of a differential impact in reforming requirements in relation to sex.

### *Potential Sexual Orientation Impacts*

Concern has been raised that offenders in same sex relationships could be placed at increased risk of domestic violence and abuse by the imposition of a curfew. BCS data shows that people who were lesbian/gay or bisexual were more likely to have experienced any domestic abuse in the past year compared with heterosexual/straight people.

## **Mitigation and Justification**

### *Programme requirement*

It can become clear soon after an offender has started a programme that a different course or programme would be more likely to deal with their problems and turn them away from crime. The proposal will allow the offender manager to make the change without the necessity of going back to court. The court will still require the offender to take part in a properly accredited programme and it must still specify the number of days that the offender must participate in the programme.

Courts are under a statutory duty to explain to offenders in ordinary language and general terms the effect of the sentence imposed on them. In addition, responsible officers have a statutory duty to make any necessary arrangements in connection with offenders' requirements and to promote compliance, including making reasonable adjustments for offenders' disabilities. In the case of a programme

requirement, this duty involves discussing with the offender what they must do and how they can best participate in the programme chosen for them in the light of their circumstances.

#### *Curfew requirement*

The intention is to make community sentences, in terms of curfew, more punitive and better capable of protecting the public. The increase in the number of hours and the overall length of time for which a person can be curfewed will allow the courts more flexibility to tailor the requirements to the offence and the offender, to restrict liberty and reduce the risk of re-offending.

In providing that curfews can be for longer periods, due regard will be paid to the potential impact on those in protected groups and the need for support and reasonable adjustments being made where appropriate, particularly for disabled offenders. The law requires a court, before imposing a curfew as part of a CO or an SSO, to obtain and consider information about the proposed curfew address, including information about the attitude of anyone likely to be affected by the enforced presence of the offender at that address. This may be especially relevant to some of the protected groups.

#### *Foreign travel prohibition requirement*

It is important to note, in terms of the proportionality of any adverse impacts, that the courts will be the bodies imposing the requirement, and will do so in cases where it is appropriate to do so, on the facts of the individual case. They will make this assessment based on the circumstances of the individual case, such as whether an offender has close family abroad, needs to travel for a specific occasion such as a funeral, or whether the offender needs to travel to pursue or protect business interests.

#### *Mental health treatment requirement*

The proposal removes the need for a medical practitioner who is approved by for the purposes of section 12 of the Mental Health Act 1983. In practice, the current provisions mean delays of up to 3 months can occur, given the pressures on senior clinicians. We want to bring processes in line with community services and therefore ensure that a broader range of mental health specialists, such as doctors practising as psychiatrists, and psychiatric nurses and psychologists, can carry out the initial health assessment. It will help to ensure that assessments are carried out more promptly and reduce court delay.

This is likely to have a positive impact on offenders who would benefit from treatment under a mental health treatment requirement since they will be dealt with more quickly in relation to their need.

The clause does not effect existing requirements that will maintain necessary safeguards for imposing a treatment requirement. The court must be satisfied that the appropriate assessment of need has been carried out; that arrangements are in place for the treatment to be delivered; and that the offender has expressed his willingness to undertake, and comply with, treatment, before making the requirement.

*Drug rehabilitation requirement*

The change provides the court with greater discretion in determining the appropriate length of the requirement.

*Alcohol treatment requirement*

The change provides the court with greater discretion in determining the appropriate length of the requirement.

In addition, responsible officers have a statutory duty to make any necessary arrangements in connection with offenders' requirements and to promote compliance, particularly in relation to reasonable adjustments for offenders' disabilities.

# Referral orders for young offenders

## Summary

The proposals are to remove the current restrictions on the repeated use of referral orders and allow courts to give a young person who is in court for the first time, and pleads guilty, a conditional discharge as an alternative to a referral order. We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

### *Direct discrimination*

The proposals will apply to all youths. There is therefore no direct discrimination within the meaning of the 2010 Act.

### *Indirect discrimination*

Although the proposals will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be given a conditional discharge as an alternative to a referral order. We have identified in particular potential differential effects in respect of age, race and sex. There is the potential for positive impacts for offenders as the proposal gives courts greater flexibility and discretion when sentencing.

### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as this proposals extend to disabled offenders, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope of the proposals, but it is considered reasonable to ensure that effective communications are in place to explain the significance of complying with these orders to offenders with learning difficulties.

### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

### *Advancing equality of opportunity*

Wherever possible we have considered how these proposals impact on the duty to advance equality of opportunity by taking steps to meet offenders' needs.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

## *Conclusion*

Having paid due regard to the potential differential impacts identified in the ‘analysis’ section below, the government is satisfied that it is right to reform referral orders to increase their flexibility by allowing courts greater discretion to make a referral order whenever they consider it suitable and by allowing the Court to conditionally discharge a young offender who pleads guilty to a first offence.

## **Aims and outcomes for the policy**

The proposed reforms are to remove the current restrictions on the repeated use of the order and allow courts to give a young person who is in court for the first time, and pleads guilty, a conditional discharge.

A referral order involves referral to a youth offender panel and requires the offender to attend meetings of the panel and enter into a contract with the panel to undertake rehabilitative activities for a period of between 3 and 12 months.

All young people on referral orders are allocated a youth offending team (YOT) worker and the YOT worker will clearly explain to the young person and their parent(s)/guardian(s) the referral order and panel procedures, including the young person’s rights and choices. The young person should have appropriate preparation and support from the YOT before attending the first panel meeting and throughout the process.

Other than where the court is considering imposing custody or a mental health treatment requirement, it must sentence a young offender who has pleaded guilty to their first offence (or where they are before the court for more than one offence, at least one of these offences) with a referral order or an absolute discharge. The proposals widen this power to include an additional option for the court to pass a conditional discharge.

The proposals also widen the powers of a court to deal with an offender where they have pleaded guilty to an offence which is not their first (or where they are before the court for more than one offence, at least one of these offences). As a result of these proposals, the court will no longer be prevented from offering referral orders to offenders who meet this criterion but who received a referral order previously. There will be no limit to the number of referral orders that a repeat offender can receive.

## **Methodology**

In analysing the potential equalities impacts of these proposals, we have considered the impact on:

- **Victims:** Information is not available on characteristics of victims of those given referral orders. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential equality impacts of these proposals;
- **Offenders:** We have compared the characteristics of those given a referral order, conditional discharge and all young people sentenced, and where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact.

## Analysis

This analysis examines the potential impacts of the proposals to remove the current restrictions on the repeated use of referral order and allow courts greater flexibility to give a young person who is in court for the first time, and pleads guilty, a conditional discharge as an alternative to a referral order.

### Impact on victims

There are potential benefits to victims as these proposals will potentially enable courts to make more referral orders and give victims more opportunities to participate in panels including taking part in restorative meetings where available in which they can meet the young offender and explain to them the effect their crime has had on them and the wider community. By allowing the Court to conditionally discharge a young offender who pleads guilty to a first offence, sentencers and practitioners will be able to concentrate resources on young offenders where there is a need for intervention (for example where there is a victim).

Information is not available on the characteristics of victims of those sentenced to referral orders. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential positive equality impacts of these proposals. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age.

### Impact on offenders

There is the potential for positive impacts on offenders as it gives courts greater flexibility and discretion when sentencing. The reforms may lead to an increase in the use of conditional discharges and referral orders.

### *Potential Age Impacts*

Table 21 (Annex A) shows the age distribution for referral orders, conditional discharges and all young people sentenced for indictable offences. The age distribution varies between referral orders, conditional discharges and total young people sentenced for indictable offences. 17 year olds account for 43 per cent of conditional discharges compared to 36 per cent of all sentences for indictable offences, and 28 per cent of referral orders.

The data suggests there is the potential for a differential impact in relation to age.

### *Potential Disability Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Marriage and Civil Partnership Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Race Impacts*

Table 22 (Annex A) shows the ethnic distribution for referral orders, conditional discharges and all young people sentenced for indictable offences. The ethnic distribution varies between referral order, conditional discharge and total young people sentenced for indictable offences. The White ethnic group account for 78 per cent of conditional discharges, compared to 71 per cent of referral orders, and 73 per cent of all sentences for those aged under 18.

The data suggests there is the potential for a differential impact in relation to race.

### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Sex impact*

Table 23 shows the distribution by sex for referral orders, conditional discharges and all young people sentenced. Males account for 85 per cent of conditional discharges, compared to 84 per cent of all sentences for those aged under 18, and 80 per cent of referral orders.

The data suggests there is the potential for a differential impact in relation to sex.

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

We are keen to see a greater use of referral orders as part of wider measures to promote the use of restorative justice and thus an increase in victim participation in England and Wales. Removing the current restriction on repeated use of the referral order will allow for this. Making a conditional discharge available to courts as an alternative to a referral order for first time offenders will give courts more sentencing options, particularly at the lower level of offences for example where there is no victim involved. This will help to ensure that sentencers and practitioners are able to concentrate their efforts and resources on young offenders where there is a real need for intervention.

With reference to offenders with learning disabilities, responsible officers have a statutory duty to make any necessary arrangements in connection with offenders'

requirements and to promote compliance, particularly in relation to reasonable adjustments for offenders' disabilities.

# Youth rehabilitation orders

## Summary

This analysis relates to reforms of Youth Rehabilitation Orders (YROs). We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

### *Direct discrimination*

The proposals will apply equally to all those sentenced to a Youth Rehabilitation Order. There is therefore no direct discrimination within the meaning of the 2010 Act.

### *Indirect discrimination*

Although the proposals will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be given a YRO. We have identified in particular potential differential effects in respect of race. However, even if it were established that these effects constituted a particular disadvantage, we believe that these proposals are a proportionate measure to ensure that the Youth Rehabilitation Order is recognised as being a rigorous and demanding order which has the confidence of both the courts and the public.

### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the proposals extend to disabled offenders, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope of the proposals, but it is considered reasonable to ensure that effective communications are in place to explain the significance of meeting the terms of the YRO to offenders with learning difficulties.

### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

### *Advancing equality of opportunity*

Wherever possible we have considered how these proposals impact on the duty to advance equality of opportunity by taking steps to meet offenders' needs.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

### *Conclusion*

Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to ensure that community sentences are rigorous and effective and are a viable and strong alternative to

custody which can aid rehabilitation and the reintegration of the young person into their community.

## **Aims and outcomes for the policy**

The Youth Rehabilitation Order (YRO) is the main community sentence available for under-18s and was introduced in November 2009 under the Criminal Justice and Immigration Act 2008. As part of the sentence a court may impose one or more of 18 component requirements that the offender must comply with and the sentence can last for a maximum of 3 years although, where there is more than one requirement imposed, these may have a shorter duration.

1) The proposals are:

- Increasing the maximum number of hours per day for which a curfew requirement in a YRO can be imposed, from twelve to sixteen, and increasing the maximum overall duration of a curfew requirement from six to twelve months.

The government believes this provides the courts with a tougher community sentence option, as an alternative to custody. It also allows the courts to impose a curfew tailored to the individual offender and is designed to prevent offending behaviour by imposing restrictions at those times of the day when the offender poses the greatest risk of offending, as well as providing reassurance to victims. This mirrors the amendments to the curfew requirement applicable to COs (which apply to adults).

- Currently, a court cannot make a mental health treatment requirement unless it is satisfied that the mental condition of the offender requires treatment and may be susceptible to it, and other disposals under the Mental Health Act 1983 are not warranted. In determining these matters the court is required to have evidence from a medical practitioner who is approved by for the purposes of section 12 of the Mental Health Act 1983.

The proposal is to remove the requirement that the court have evidence from such a practitioner. It will remain the case that the court must be satisfied that the mental condition of the offender requires treatment and may be susceptible to it, and that other disposals under the Mental Health Act 1983 are not warranted. It will also remain the case that the court may not include a mental health treatment requirement unless the offender has expressed willingness to comply with it.

It means that a broader range of mental health specialists, such as doctors practising as psychiatrists, and psychiatric nurses and psychologists, can carry out the initial health assessment, and it will help to ensure that assessments are carried out more promptly and reduce court delay.

- Allowing the court to extend a YRO by up to six months to allow the court to deal with a breach of the original YRO or an application to extend it, where it wishes to allow additional time for a component requirement to be completed. This has the effect that, in some cases, an order may now have a maximum length of 3 years and six months.

This replicates changes in relation to COs. The government believes it is important in the interests of consistency of the sentencing framework to apply the same additional flexibility around the end of the order, as is being applied to the CO.

- Raising the maximum fine available to courts to punish a young person who breaches a Youth Rehabilitation Order to £2,500.

The government believes that increasing the maximum fine makes it clear that community sentences should be seen as robust and that breach of a YRO is serious and the penalties applying will be tough. Where the young person or their parent or guardian (if they are made to pay on behalf of the offender), does have the means to pay, courts should be able to impose a substantial fine. The maximum fine available aligns with the maximum fine that applies for breach of the CO.

This package of policies is designed to reduce bureaucracy, ensure relevant requirements are made, enable orders to be successfully completed by allowing extensions in length and to ensure punishments for breach are sufficient by providing courts with the tools to make sure an appropriate and proportionate penalty is imposed.

## Methodology

In analysing the potential equalities impacts of these proposals, we have considered the impact on:

- **Victims:** Information is not available on characteristics of victims of those given YROs. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential equality impacts of these proposals;
- **Offenders:** We have compared the characteristics of those given YROs and all young people sentenced, and where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact.

## Analysis

The potential impacts are provided below.

### Impact on victims

There are potential benefits to victims as these proposals will enable the courts to impose longer curfews tailored to the individual offender by imposing restrictions at those times of the day when the offender poses the greatest risk of offending, thus providing more reassurance to victims.

Information is not available on the characteristics of victims of those sentenced to YROs. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential positive equality impacts of these proposals. The results are

presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age.

#### Impact on offenders

There is the potential for adverse impacts on offenders in relation to the reform of curfew requirements. Without a general uptarringing by sentencers, we might expect that only those offenders currently receiving the maximum intensity or length could be sentenced to longer. Under a range of assumptions that some of those currently receiving between 5 and 6 months now receive longer under the new maxima, it is estimated that this might impact on around 500 young offenders. This does not take into account the possibility that sentencers might issue these longer curfews in place of more expensive disposals.

The impact on offenders of raising the maximum fine limit will be a financial one. However, there may be a positive benefit to offenders to be subject to a fine for a minor breach rather than imposing more onerous conditions or resentencing the offender. Parents will be responsible for paying the fines of under-16s.

#### *Potential Age Impacts*

Table 24 (Annex A) shows that there is little difference in the age distribution of those given YROs compared to all sentences.

With reference to raising the maximum fine available to courts we note that some concerns have been raised that increasing the use of financial penalties may have an adverse impact on young people due to higher rates of poverty. However, parents will be responsible for paying the fines of under-16s.

#### *Potential Disability Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

Concerns have been raised that people with a learning disability may require increased support to enable them to meet the terms of a YRO and the focus should be on ensuring that the additional support is available.

With reference to raising the maximum fine available to courts we note that some concerns have been raised that increasing the use of financial penalties may have an adverse impact on disabled people due to higher rates of poverty.

#### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Marriage and Civil Partnership Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Race Impacts*

Table 25 (Annex A) shows that the White ethnic group accounts for a slightly larger proportion of YROs compared to other sentences.

The data suggests there is the potential for a differential impact in relation to race.

### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Sex Impacts*

Table 26 (Annex A) shows that there is little difference by sex for those given YROs compared to all sentences.

With reference to raising the maximum fine available to courts we note that some concerns have been raised as part of the Breaking the Cycle consultation that increasing the use of financial penalties may have an adverse impact on females due to higher rates of poverty.

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

This package of policies is designed to reduce bureaucracy, ensure relevant requirements are attached to YROs, enable orders to be successfully completed by allowing extensions in length and to ensure punishments for breach are sufficient by providing courts with the tools to make sure an appropriate and proportionate penalty is imposed.

Concerns have been raised that there could be an increased risk of domestic violence against young offenders, as a result of extending the duration of youth rehabilitation order curfew requirements. We believe that this should not be problematic as the youth offending team carry out a risk assessment of possible harm to the young person or their family when they complete a pre-sentence report for the court and are responsible for informing the court of the suitability, or not, of an offender's place of residence for an electronically monitored curfew.

Concerns have been raised that people with a learning disability may require increased support to enable them to meet the terms of any order and the focus should be on ensuring that the additional support is available. Courts are under a statutory duty to explain to offenders in ordinary language and general terms the effect of the sentence imposed on them. In addition, responsible officers have a

statutory duty to make any necessary arrangements in connection with offenders' requirements and to promote compliance.

Those representing particular groups of offenders, such as women, those with family responsibilities, and disabled people, were concerned generally about fines imposed at the lower end, on those on benefits or with low incomes. In determining the level of the fine the court must take account of the offender's means or, in the absence of such information, make such determination as it sees fit. Parents will be responsible for paying the fines of under-16s. Any fine is enforced as it would be had it been imposed on conviction. We will be working to improve the provision of means information.

Taking into consideration the available evidence we consider that the potential impacts are justified on the basis that the reforms are a proportionate means of achieving a legitimate aim of ensuring the community sentences for young people are completed and that robust penalties will be imposed if the young offender fails to comply.

# Fines

## Summary

We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

### *Direct discrimination*

The proposals to remove the upper limits of £5,000 or more on fines imposed in the magistrates' courts apply to all offenders given a fine. There is therefore no direct discrimination within the meaning of the 2010 Act.

### *Indirect discrimination*

Although the proposals will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be given fines of £5,000 or over. We have identified in particular potential differential effects in respect of age and sex. However, even if it were established that these effects constituted a particular disadvantage, we believe that removing the upper limit represents a proportionate response so that proportionate fines can be imposed on wealthy or corporate offenders and organisations.

### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the proposals affect disabled people, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make any adjustment for disabled persons.

### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

### *Advancing equality of opportunity*

We don't think these proposals impact on the duty to advance equality of opportunity.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

### *Conclusion*

Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to proceed with the proposal to remove the upper limits of £5,000 or more on fines imposed in the magistrates' courts.

## **Aims and outcomes for the policy**

The government believes that financial penalties, set at the right level, can be just as effective as a community sentence at deterrence and punishment. It believes that there are persuasive arguments in favour of using financial penalties for many offenders before turning to other sanctions. The provisions in the Bill support this aim by encouraging greater use of the fine in the magistrates' courts.

The government also wants to remove elements of the law that unhelpfully fetter courts' discretion and believes that the court which has heard all the evidence and all the facts about the offence and the offender is in the best position to make a just decision over sentencing. The provisions in the Bill would remove the upper limit to magistrates' powers when imposing fines for both summary and either way offences.

The maximum fines currently available to magistrates depend on the seriousness of the offence committed. For most summary only offences maximum fines are set by reference to five statutory levels, £200, £500, £1,000, £2,500 and £5,000. For triable either way offences magistrates may fine offenders a sum not exceeding a statutory amount, currently £5,000. There are some exceptional statutory maximum fines for offences suitable for being dealt with by magistrates, but where the financial gain realised by the offender is so large that the normal fine limits are inadequate. Such offences tend to be environmental or health and safety offences committed by companies, with maximum fines such as £50,000 or £20,000.

There is already a power to increase the statutory maxima (the levels for summary offences and the 'statutory maximum' for either way offences) in line with changes to the value of money, but no power to raise them by any other amount, or to remove them altogether.

The provisions in the Bill would remove maximum fines of £5,000 and above available to magistrates on summary conviction as well as the maxima available for either way offences tried summarily. There is also a power to increase the other summary maximums of £200, £500, £1,000 or £2,500, keeping them in the same ratios one to another. This power is not tied to any changes in the value of money.

The way in which magistrates fix individual fines is governed by statute and sentencing guidelines. Where a court decides that a fine is the right sentence, it is required to fix a sum of money that reflects the seriousness of the offence and takes account of the known means of the offender. Seriousness is the main factor in deciding any sentence, but taking account of the income of the offender as well ensures that a fine poses an equal burden for a particular level of seriousness regardless of income.

Courts are also under a statutory duty to follow any relevant sentencing guidelines unless the court is satisfied that it would be contrary to the interests of justice to do so.

Under the current guidelines, a fine is based on one of three bands. Each band gives a starting point and a range defined in terms of the offender's "relevant weekly income" (RWI). This is calculated from information provided by the offender on a means form, which they are required by law to complete. The guidelines assume offenders who have a low income or are on benefits to have a weekly income of £100. Offenders not on benefit, but who do not provide means information are

assumed to have a weekly income of £350. The levels of fine suggested by the guidelines take account of normal living expenses.

The guidelines' three bands are:

Band A:	Starting point: 50 per cent of RWI	Range 25-75 per cent of RWI
Band B:	Starting point: 100 per cent of RWI	Range 75-125 per cent of RWI
Band C:	Starting point: 150 per cent of RWI	Range 125-175 per cent of RWI

Separate guidelines govern the fixing of fine amounts when the offender is a company.

We will be discussing with the Sentencing Council the impact of all the provisions in the Bill on current guidelines and any changes needed, including those relating to the setting of fines.

Under the above arrangements, most fines in the magistrates' courts fall well below the upper limits. But there are some cases, where the offence is at the serious end of the spectrum dealt with by magistrates and where the offender is relatively wealthy, possibly a corporate body, for which the current maxima - £5,000 in most cases or the exceptional maxima – curtail magistrates in the fines that they can impose.

Where such cases are triable on summary conviction only, and a community sentence is not available to them, magistrates have no choice but to adhere to the statutory maximum which can mean that an offender is fined an amount which does not represent a real punishment. Where the offence is summary only and a community sentence is available (in cases where the offence carries imprisonment and the offence being heard is serious enough to warrant a community sentence) the court may choose to impose a CO if it believes that its powers to fine are insufficient. This is counter to the Government's aim to increase the use of financial penalties and is more costly and resource intensive.

Where the case is triable either way the magistrates can commit it to the Crown Court for sentence – fines are unlimited in the Crown Court – but this is bureaucratic, time consuming and costly. It also means that sentence is not passed by the court which heard all the evidence and convicted the offender. The provisions in the Bill would give magistrates the power to impose a realistic and proportionate fine in such instances, dealing with more cases in the magistrates' courts rather than the Crown Court.

For offences with fine maxima below £5,000, fines actually imposed are generally significantly below the upper limits. But again there may be scope for higher fines where offenders are particularly wealthy. The Bill's provisions do not remove these limits, which would lose the gradations in severity of punishment afforded by the current stepped levels, but provide a power to increase them by statutory instrument in a manner that would retain their relative values. The government intends to consult before this order-making power is first exercised.

## **Methodology**

In analysing the potential equalities impacts of these proposals, we have considered the impact on offenders, by comparing the characteristics of those given fines of

£5,000 or over in the magistrates court with the characteristics of all those given fines. Where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact.

## **Analysis**

This is an assessment of the potential impacts of the proposal to remove the upper limits of £5,000 or more on fines imposed in the magistrates' courts and to provide a power to amend the upper limits on fines with existing maxima lower than £5,000. However, as the government intends to consult before this order-making power is first exercised, we have not included an assessment of these impacts. The consultation will invite views from equality organisations to help inform us better of the likely impacts in due course.

### Impact on victims

This policy will enable magistrates' courts to issue higher value fines which victims should view positively, but we only expect it to impact a small number of cases.

### Impact on organisations

1 per cent of all fines in magistrates' courts, and around 60 per cent of all fines of £5,000 or over in the magistrates court, are issued to organisations. Therefore organisations may be more affected numerically relative to individuals.

The vast majority of these fines are for indictable offences which the magistrates' can currently commit to the Crown Court if they think their sentencing powers are insufficient. These cases are therefore unlikely to be affected, but it is possible that magistrates' do not currently commit these cases to the Crown Court because it is time consuming and costly and they may issue higher fines if they have the power to do so.

### Impact on offenders

In the absence of changes in sentencing courts' behaviour, the only fines that can be expected to increase are those that are currently set at or very close to the maximum of £5,000 and that would have been set higher if not for the current limit. Analysis of magistrates' courts fines in 2010 found that substantially less than 1 per cent of fines are at or close to the maximum. For these small number of offenders there could be increased revenue, although with the potential for additional enforcement costs. There is unlikely to be savings from retaining cases in the magistrates' courts by requiring fewer committals for sentence, because the numbers of fines close to or over £5,000 issued in the Crown Court is small.

More generally, if increasing the upper limit of fines serves as an indicator to sentencers to increase the level of fines generally, this might lead to increased revenue but there is also the potential for additional enforcement costs.

However, based on the evidence available, it is not anticipated that there will be a significant impact of raising the fine limits in magistrates' courts.

Many respondents to the Breaking the Cycle consultation supported the aim of increasing financial penalties. The main concerns were that this would not be achieved without improvements in means information and perceptions of the extent to which fines are enforced. Those representing particular groups of offenders, such as women, those with family responsibilities and substance misusers, were concerned about fines imposed at the lower end, on those on benefits or with low incomes. Such offenders would be highly unlikely to be affected by the removal of limits of £5,000 or above.

#### *Potential Age Impacts*

Table 27 (Annex A) shows that those offenders given fines of £5,000 or more in magistrates' courts are more likely to be aged 25 and over than those offenders receiving fines generally in the magistrates court. However this is based on a small comparison group of the 72 individuals who were given a fine of £5,000 or more in 2010 for indictable offences.

We have only included indictable offences because of data recording issues with summary offences. The pattern may be different for those sentenced for summary offences.

These data suggest that there is the potential for the removal of the upper-limit on fines to have a differential impact in relation to age.

#### *Potential Disability Impacts*

Due to the limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Gender Reassignment Impacts*

Due to the limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Marriage and Civil Partnership Impacts*

Due to the limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Pregnancy and Maternity Impacts*

Due to the limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Race Impacts*

Due to the limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Religion or Belief Impacts*

Due to the limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Sex Impacts*

Table 28 (Annex A) shows that those offenders given fines of £5,000 or more in magistrates' courts are more likely to be male than those offenders receiving fines generally in magistrates' courts. However this is based on a small comparison group of the 117 individuals who were given a fine of £5,000 or more for all offences in 2010.

These data suggest that there is the potential for the removal of the upper-limit on fines to have a differential impact in relation to sex.

### *Potential Sexual Orientation Impacts*

Due to the limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

The most significant impact of the new provisions is likely to be on organisations when compared with individual offenders, in terms of the numbers affected. We consider that this can be justified as, in general, organisations are likely to have greater funds at their disposal than individuals and are therefore more likely to be able to pay higher fines set by reference to their financial means.

There may also be a differential impact on male offenders when compared with females and on the over 25s compared with offenders under 25. Courts already consider offenders' means before deciding the appropriate level for financial penalties and we will be working to improve the provision of means information.

## CHAPTER 2: BAIL

### Summary

The Ministry of Justice has proposed in the Bill only to restrict the use of remands in custody to those defendants whose offending and alleged offending is sufficiently serious enough to warrant custody. We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

#### *Direct discrimination*

The proposals to restrict the power of the courts to remand in custody where there is no real prospect that the defendant would, if convicted, receive a custodial sentence applies to all defendants. There is therefore no direct discrimination within the meaning of the 2010 Act.

#### *Indirect discrimination*

As the proposals restrict the use of remand, we do not believe that there is the potential for negative impacts on defendants.

#### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the proposals extend to disabled people, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope of the proposals, but it is considered reasonable to ensure that effective communications are in place to explain the significance of bail conditions to people with learning difficulties.

#### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

#### *Advancing equality of opportunity*

Wherever possible we have considered how these proposals impact on the duty to advance equality of opportunity by taking steps to meet needs of those bailed or remanded.

#### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

#### *Conclusion*

Having paid due regard to the potential differential impacts identified in the 'analysis section' below, the government is satisfied that it is right to restrict the use of remands in custody to those defendants whose offending and alleged offending is serious enough to warrant custody.

## **Aims and outcomes for the policy**

The proposals are that certain of the exceptions to the presumption that bail should be granted to a defendant will not apply where there is no real prospect that the defendant will be sentenced to a custodial sentence ("the no real prospect test"). This new test (which increases the availability of bail) is limited to non-extradition proceedings and to adult defendants who have not been convicted. There is an exception to the right to bail which is not subject to the new 'no real prospect test'. This new exception to bail relates to a person who, if released on bail, might commit an offence by engaging in conduct involving domestic violence.

## **Methodology**

In analysing the potential equalities impacts of these proposals, we have considered the impact on people who might have otherwise been remanded in custody, by comparing the characteristics of those remanded who were not subsequently given an immediate custodial sentence against all those remanded in custody in 2010. Where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact.

## **Analysis**

This is an assessment of the potential impacts of the proposals to restrict the power of the courts to remand in custody where there is no real prospect that the defendant would, if convicted, receive a custodial sentence.

### Impact on victims

In response to concerns raised during the Breaking the Cycle consultation regarding the risk of harm to alleged victims of domestic violence, the government has created an exception to the right to bail applicable in such cases to protect this vulnerable group. This may have a differential positive impact on women, lesbian, gay, bi-sexual, and transgender people who proportionately may be more likely to be victims of domestic violence.

### Impact on defendants

Our best evidence to date suggests that reform of remand could result in 8,500 fewer defendants being remanded. This estimate has been calculated by assuming that 30 per cent of those who subsequently did not receive a custodial sentence would have been remanded on bail instead of remanded in custody as a result of this policy. There is uncertainty around these estimates as it may not be clear at the point of remand that there is no real prospect of a custodial sentence if found guilty.

To the extent that there are particular groups that are less likely to receive a custodial sentence if convicted, the proposal would have a favourable impact on defendants from those groups, as they would become less likely to be remanded in custody.

### *Potential Age Impacts*

Table 29 shows the age distribution for adults remanded in custody in 2010 who were not subsequently given an immediate custodial sentence. There are minor differences in the age distribution for defendants not given an immediate custodial sentence after remand compared to all defendants remanded in custody.

While the data suggest minor age related differences, there is not enough evidence to suggest there would be a differential impact in relation to age.

#### *Potential Disability Impacts*

We do not hold information on the proportion of those remanded in custody who are disabled. Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that around a third of prisoners aged 18 and over serving custodial sentences of less than 4 years classified themselves as having a 'longstanding illness, disability, or infirmity of any kind'<sup>14</sup> compared to around a fifth of the general population of adults aged 16 and over.

#### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Marriage and Civil Partnership Impacts*

Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that 8 per cent of offenders sentenced to custodial sentences of one month to 4 years are married<sup>15</sup>. This compares to around a half of the general population aged 18 and over.

#### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Race Impacts*

Table 30 shows the ethnic distribution for adults remanded in custody who were not subsequently given an immediate custodial sentence. There are minor differences in the ethnic distribution for defendants not given an immediate custodial sentence after remand compared to all defendants remanded in custody.

While the data suggest very minor ethnic differences, there is not enough evidence to suggest there would be a differential impact in relation to race.

---

<sup>14</sup> Data from, [www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm](http://www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm)

The data is from the Surveying Prisoner Crime Reduction prisoner survey and the exact question asked was "Can I check, did you have any longstanding illness, disability, or infirmity of any kind just before you came into custody? By longstanding I mean anything that has troubled you over a period of time or that is likely to affect you over a period of time. Please remember that your answer is treated in the strictest confidence and that none of this information will be passed to anyone in the prison or to any government agency that can identify you as an individual."

<sup>15</sup> Table 2.18, [www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls](http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls)

### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Sex Impacts*

Table 31 shows the gender distribution for adults remanded in custody who were not subsequently given an immediate custodial sentence. There are minor differences by gender for defendants not given an immediate custodial sentence after remand compared to all defendants remanded in custody.

This data suggest that there is little evidence for differential impact in relation to sex when looking at overall numbers.

The 1991 National Prison Survey found that a higher proportion of female prisoners lived with dependent children and no other adult prior to imprisonment (14 per cent of women compared to 1 per cent of men). There was also a difference in who became the primary carer of dependent children during parental imprisonment depending on the gender of the parent in custody. This survey found that 91 per cent of male prisoners dependent children were being cared for by their partner/ex-partner (compared to 23 per cent of female prisoners)<sup>16</sup>. This suggests that restricting the use of remand may have more of an positive impact on females when considering maintaining family ties.

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

This proposal are to only use remand places where it is necessary to protect the public from criminals whose offending is serious enough to warrant custody. Courts will still have the power to remand such defendants, including those persistent offenders who flout bail to the point that their offending may merit custody, and to remand in custody in cases where there is a risk of domestic violence.

In response to concerns raised during consultation regarding the risk of harm to alleged victims of domestic violence, the government has created an exception to the right to bail applicable in such cases to protect this vulnerable group. This may be to the benefit of women, lesbian, gay, bi-sexual and transgender people who may be more likely to be victims of domestic violence.

---

<sup>16</sup> Dodd & Hunter (1992) The national prison survey 1991. London: HMSO.

# CHAPTER 3: REMANDS OF CHILDREN OTHERWISE THAN ON BAIL

## Summary

The Ministry of Justice has proposed to reform custodial remand for young people so that all children under 18 are treated in the same way for remand purposes, rather than 17 year olds being treated in the same way as adults (as is currently the case). We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

### *Direct discrimination*

The proposals are to reform remand for young people so that all children under 18 are treated in the same way for remand purposes, rather than 17 year olds being treated in the same way as adults. There is therefore no direct discrimination within the meaning of the 2010 Act. The criminal justice system for children continues to remain distinct from adults; the framework for the youth justice system was established in the Crime and Disorder Act 1998 which set out the principal aim of the youth justice system which is to prevent offending by children and young people under the age of 18. There is a separate youth justice system with its own sentencing framework, secure estate and court processes.

### *Indirect discrimination*

As the proposal restricts the use of remand, we do not believe that there is the potential for negative impacts on defendants.

### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the proposals extend to disabled people, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope of the proposals, but it is considered reasonable to ensure that effective communications are in place to explain the significance of bail conditions to people with learning difficulties.

### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

### *Advancing equality of opportunity*

Wherever possible we have considered how these proposals impact on the duty to advance equality of opportunity by taking steps to meet needs of those bailed or remanded.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

### *Conclusion*

Having paid due regard to the potential differential impacts identified in the 'analysis' below, the government is satisfied that it is right to apply the changes to the under-18 remand framework as this will result in equal treatment amongst this age group plus there will be mechanisms in place to restrict the unnecessary use of secure remand.

## **Aims and outcomes for the policy**

The current remand framework for young people is complex and could be construed as discriminatory with differing conditions applying by both age and gender. Financial responsibilities are also misaligned; central government pay for the majority of secure remands and so there is little incentive for local authorities to invest in community based remand packages. The remand provisions in the Bill seek to address these issues.

Currently there are two types of remand: non-secure and secure remand:

- a. 'Non-secure remand' - this is referred to as a remand to local authority accommodation. A young person aged 12-16 is remanded to accommodation in the community as determined by the local authority. This can include the young person's own family home. Any young person remanded in local authority accommodation automatically becomes a 'looked after child' as a result of which the local authority has certain statutory duties to safeguard and promote their welfare. 17 year olds are excluded from this process; legislation requires that they be remanded to prison.
- b. 'Secure remand' - there are two types of secure remand. The court's power to impose each is dependant on a young person's age and gender.
  - i. 'Court Ordered Secure Remand' (COSR) is available in respect of:
    1. 12-14 year old boys and girls,
    2. 15-16 year old girls; and
    3. some 15-16 year old boys who meet vulnerability criteria determined by a court and defined in legislation.

COSR is a term used for a remand to custody in local authority accommodation with an additional duty imposed on the local authority to ensure that the accommodation provided is secure. Placements in secure accommodation provided by the local authority can be either a secure children's home or a secure training centre. As with non-secure remand, a young person subject to a COSR automatically becomes a 'looked after child' because they are being provided with accommodation by the relevant local authority. COSRs represent around one quarter of all secure remands and are funded by local authorities, who pay a third of the cost, with the Youth Justice Board, paying the remainder.

- i. 'Remand to custody' applies to:
  1. 15-16 year old boys; and
  2. 17 year old boys and girls.

Young people 'remanded to custody' are those who are required by legislation to be accommodated in prison whilst remanded in custody. In practice they are placed in a prison within a YOI in the youth estate. These types of remand represent around three quarters of all 'secure remands' and are funded centrally by the YJB. 15-17 year olds remanded in this way are not 'looked after children' because they are not placed in accommodation provided by the local authority. Local authority children's services do not have any responsibilities for planning for their future care.

The new youth remand provisions in the Bill will ensure a consistent approach for all under-18s and will simplify the existing remand legislation to allow for young people to be placed based on their needs and risk factors rather than their age. It will place greater responsibility and accountability with local authorities and ensure that 17 year olds are treated as young people which will meet duties under the UNCRC to treat under 18s as distinct from adults. Importantly, we propose to transfer full financial responsibility for secure remands to local authorities so that they are incentivised to consider how to make best use of specialised support in the community in order to provide an alternative to secure remand for young people. Responsibility for commissioning youth detention accommodation and placing young people in specific establishments will be retained by central government.

As a result of the new provisions all children who are remanded to youth detention accommodation will be treated as having looked after child status, thereby ending the current practice which only extends looked after child status to a small group of under-18s. Giving all remanded children looked after child status means that the local authority will become responsible for promoting their welfare and exercising their duties to safeguard the child.

The Bill provisions will also restrict the use of secure remand to those young people who have committed a violent or sexual offence or one where an adult could receive a custodial sentence of 14 years or alternatively, to those who have committed or are charged with an offence committed on remand and who have a real prospect of a custodial sentence. This test will reserve secure remand for only the most serious offenders where it is appropriate to securely remand such a child.

## **Methodology**

In analysing the potential equalities impacts of these proposals, we have considered the impact on offenders, by comparing the characteristics of those remanded who were not subsequently given an immediate custodial sentence against all those remanded in custody. Where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact.

## **Analysis**

This analysis examines the potential impacts of the proposal to only use remand places where it is necessary to protect the public from those whose offending and alleged offending is serious enough to warrant custody.

### Impact on offenders

The remand amendments for young people are estimated to lead to a reduction in the number of young people securely remanded; in particular there will be few cases where an offender who is not likely to receive a custodial sentence will be securely remanded.

The provision of Looked After Child status to all young people will lead to benefits. Children on remand have particular vulnerabilities which need to be considered particularly in view of the often short term nature of remand. Conferring looked after status on all such vulnerable children will place a duty on the authority responsible for their care to assess their needs, co-ordinate services on their behalf and maintain a link with their home communities, including offering support to their families to keep in contact with them.

### *Potential Age Impacts*

Table 32 shows the age distribution for young people remanded in custody and subsequently not given an immediate custodial sentence. There are minor differences in the age distribution for defendants not given an immediate custodial sentence after remand compared to all defendants remanded in custody.

While the data suggest that there are very minor differences, there is not enough evidence to suggest there would be a differential impact in relation to age.

The proposal to reform remand for young people so that all under 18 year-olds are treated in the same way for remand purposes, rather than treating 17 year olds as adults, will ensure compliance with the United Nations Convention on the Rights of the Child.

### *Potential Disability Impacts*

The ONS study 'Psychiatric Morbidity among Young Offenders in England and Wales' presented estimates of the prevalence of neurotic psychopathology including depressive episodes. This found that 52 per cent of the male remand young offenders in the sample had scores on or above the threshold compared with 11 per cent of those aged 16-19 in the ONS survey of adults living in private households<sup>17</sup>.

The Breaking the Cycle consultation raised concerns that mental health problems can often only be identified when people are remanded in custody and that if they are bailed appropriate mental health support should be given. However, we take the view that remand should not be used as a tool to assess mental health issues

### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Marriage and Civil Partnership Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

---

<sup>17</sup> Psychiatric Morbidity among Young Offenders in England and Wales, Office for National Statistics (2000)

### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Race Impacts*

Table 33 shows that the ethnic distribution for young people remanded in custody and then not given an immediate custodial sentence. There are very minor differences in the ethnic distribution for defendants subsequently not given an immediate custodial sentence after remand, compared to all defendants remanded in custody.

While the data suggest very minor differences, there is not enough evidence to suggest there would be a differential impact in relation to race.

### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Sex Impacts*

Table 34 shows the gender distribution for young people remanded in custody who are subsequently not given an immediate custodial sentence. There are no differences in the gender distribution for defendants subsequently not given an immediate custodial sentence after remand, compared to all defendants.

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

Data shows that 61 per cent of children who have been securely remanded go onto receive either a non-custodial sentence or are acquitted which suggests that the majority of secure remands were unnecessary. Therefore, to prevent unnecessary remands, we are introducing new measures which make it harder for a child to be remanded to youth detention accommodation and will transfer the costs of remand to local authorities who are encouraged to find community alternatives to secure remand for these children. The new remand provisions will also enable the Government to fulfil its duties under the UNCRC as all 17 year olds will be treated in a similar way to younger children for the first time.

# CHAPTER 4: RELEASE ON LICENCE ETC

## Life and IPP sentenced prisoners

### Summary

The policy would allow for the deportation of foreign national indeterminate prisoners at tariff expiry. We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

#### *Direct discrimination*

The policy to allow for the deportation of foreign national indeterminate prisoners at tariff expiry will, by definition, only apply to foreign nationals. This will enable the Ministry of Justice to better to manage its prison accommodation and probation resources and support the policy of removing from the UK at the earliest opportunity those foreign national prisoners who are liable to deportation or administrative removal. There will be no discrimination on grounds of ethnicity or nationality; any difference in treatment with other prisoners will purely be on grounds of immigration status, which the courts have not held as discriminatory. We are therefore satisfied that there is no direct discrimination within the meaning of the 2010 Act.

#### *Indirect discrimination*

Although the proposals will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be serving an indeterminate sentence. We have identified in particular potential differential effects in respect of age, race and religion. However, even if it were established that these effects constituted a particular disadvantage, we believe that by allowing for the deportation of foreign national indeterminate prisoners at tariff expiry is a proportionate measure to better managing prison accommodation and probation resources.

#### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the proposals extend to disabled people, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make any adjustment for disabled persons so that they are out of scope of the proposals, but it is considered reasonable to ensure that effective communications are in place to explain the significance of deportation for life and IPP sentenced prisoners whose first language is not English or who may have learning difficulties.

#### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals. The decision to deport or remove a prisoner from the UK will have been taken by the UK Border Agency (UKBA) and subject their safeguards and appeal mechanisms, so the removal itself will be compliant with ECHR requirements. The Bill will simply allow UKBA to effect the removal earlier than may otherwise have been possible.

### *Advancing equality of opportunity*

Wherever possible we have considered how these proposals impact on the duty to advance equality of opportunity by taking steps to meet offenders' needs.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

### *Conclusion*

Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to allow for the deportation of foreign national indeterminate prisoners at tariff expiry.

## **Aims and outcomes for the policy**

The proposal is to provide a power for the Secretary of State to remove from the UK foreign national prisoners who are serving indeterminate sentences once they have served the minimum term ("tariff") set by the court. The Secretary of State may remove such a prisoner whether or not the Parole Board has directed the prisoner's release. Provision is also made for prisoners who are removed under this power and subsequently return to the UK to be detained in pursuance of their sentence.

## **Methodology**

In analysing the potential equalities impacts of these proposals, we have considered the impact on offenders, by comparing the characteristics of foreign nationals serving indeterminate sentences against all those serving determinate sentences. Where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact.

## **Analysis**

This analysis looks at the potential impacts of allowing for the deportation of foreign national indeterminate prisoners at tariff expiry.

### Impact on victims

Due to the serious nature of the types of offences which attract an indeterminate sentence, and where there has been a victim of a serious violent or sexual offence, there will be a Victim Liaison Officer (VLO) in most of these cases responsible for keeping the victim and/or their family informed about the prisoner's release and taking on board any concerns they may have. Where the prisoner is a foreign national liable to removal from the UK, the VLO will advise the victim/victim's family that, under these provisions the offender is likely to be removed once they have completed the tariff set by the court.

Unlike prisoners who are to be released on licence in the UK, there will, therefore, be no need to invite victims to make recommendations for licence conditions preventing the offender having contact with them or going to specified places. Victims will need to be given assurances, though, that the offender will be excluded from the UK so will

not be permitted to return; and if they did manage to get back into the country they would be unlawfully at large and liable to be returned immediately to prison.

It is difficult to predict victims' reaction to prisoners being removed under these provisions as this is likely to vary depending on the individual circumstances. In some cases a victim may feel pleased and relieved that the offender is being removed from the country and will not be released into the community in the UK. In other cases, a victim may feel aggrieved that the offender only serves until the tariff has been completed and then gets to return to their home country, where other prisoners serving indeterminate sentences must remain in prison for as long as the Parole Board judges them to be a risk. Overall, however, there should be no adverse impact on victims.

### Impact on offenders

The provisions will mean that foreign national offenders will be removed from the UK earlier in their sentence than may otherwise have been possible. Without these provisions, such offenders could only be deported once the Parole Board had made a positive decision to release them. In some cases, it has proved difficult for foreign national prisoners (FNPs) to demonstrate to the Parole Board that their risk has reduced sufficiently for them to be released – especially where the Board considers it necessary for them to complete certain courses or programmes and where language barriers have prevented them from undertaking or completing such courses. This has resulted in some FNPs remaining in custody for long periods beyond their tariff expiry before they are released by the Parole Board and then deported. Given that these are prisoners who are going to be removed from the country anyway the rationale behind the policy is that they should be removed as soon as they have served the minimum custodial period set by the court.

Whether offenders themselves welcome the provisions will again vary depending on their circumstances and how they regard their removal from the UK. For those who wish to return to their home country as soon as possible the provisions are likely to be welcomed as it means they will no longer have to remain in prison for, sometimes, many years beyond their tariff expiry before they can be released and deported. However, for those offenders with families or other significant ties to the UK who do not wish to leave, their earlier deportation may not be welcome. However, given they will be deported from the UK at whatever point they are released there will still be no prospect of them returning to live in the community in this country. Overall, therefore, we would not regard these provisions as having an adverse impact on offenders.

### *Potential Age Impacts*

Table 35 (Annex A) shows that foreign national prisoners serving IPP sentences or Life are more likely to be aged 30-39 compared to IPP and Life sentenced prisoners of all nationalities.

The data suggest there would be a differential impact in relation to age.

### *Potential Disability Impacts*

We do not hold information on the proportion of foreign national prisoners who are disabled. Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that around a third of prisoners aged 18 and over serving custodial sentences of less than 4 years classified themselves as having a 'longstanding

illness, disability, or infirmity of any kind<sup>18</sup> compared to around a fifth of the general population of adults aged 16 and over.

#### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Marriage and Civil Partnership Impacts*

Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that 8 per cent of offenders sentenced to custodial sentences of one month to 4 years are married<sup>19</sup>. This compares to around a half of the general population aged 18 and over.

#### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Race Impacts*

Table 36 (Annex A) shows that a higher proportion of foreign national prisoners serving IPP or Life sentences are from the Black, Asian or Chinese and Other ethnic groups compared to IPP and Life sentenced prisoners of all nationalities.

The data suggest that there is the potential for a differential impact in relation to race.

#### *Potential Religion or Belief Impacts*

Table 37 (Annex A) presents data on the prison population sentenced to IPPs or Life sentences by religion. This shows that a higher proportion of foreign national prisoners serving IPP or Life sentences are Muslims compared to the total prison population sentenced to IPPs or Life sentences.

The data suggest that there is the potential for a differential impact in relation to religion.

#### *Potential Sex Impacts*

Table 38 (Annex A) shows that there is little difference in the proportion of foreign national IPP and Life sentence prisoners who are female compared to IPP and life sentence prisoners of all nationalities.

---

<sup>18</sup> Data from [www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm](http://www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm)

The data is from the Surveying Prisoner Crime Reduction prisoner survey and the exact question asked was "Can I check, did you have any longstanding illness, disability, or infirmity of any kind just before you came into custody? By longstanding I mean anything that has troubled you over a period of time or that is likely to affect you over a period of time. Please remember that your answer is treated in the strictest confidence and that none of this information will be passed to anyone in the prison or to any government agency that can identify you as an individual."

<sup>19</sup> Table 2.18, [www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls](http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls)

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

The policy to allow for the deportation of foreign national indeterminate sentence prisoners at tariff expiry will, by definition, only apply to foreign nationals. This will enable the Ministry of Justice better to manage its prison accommodation and probation resources and supports the policy of removing from the UK at the earliest opportunity those foreign national prisoners who are liable to deportation or administrative removal. There will be no discrimination on grounds of ethnicity or nationality; any difference in treatment will purely be on grounds of immigration status, which the courts have not held as discriminatory. We are therefore satisfied that the proposals are fully justified.

It is important to note that removal under this scheme will only take place once UKBA have completed their deportation process, including any appeals against deportation, and it has been settled that the prisoner is liable to removal from the UK. If the prisoner believes that deportation is not justified or breaches the ECHR, they can appeal and only once all avenues of appeal have been exhausted and UKBA have set removal directions will deportation on or after tariff expiry be possible under these provisions. The normal safeguards against discrimination and unlawful deportation will, therefore, apply in these cases before prisoners are removed from the country.

It is important that prisoners understand the implications of deportation from the UK. To that end, a leaflet has been produced for foreign national prisoners who are facing deportation, providing general guidance on deportation, appeal rights and where to go for further help or advice. Since 1 April 2010, it has been sent to foreign national prisoners who are assessed at an early stage as meeting deportation criteria. The leaflet has been translated into 17 languages. In addition, copies of 15 of the most commonly used generic letters and documents used in deportation and removal proceedings have been translated into the top 20 languages spoken by foreign national prisoners. These documents have been developed by UKBA and made available for use in all prisons.

Our prisons hold offenders from more than 150 different countries, and it is simply cost-prohibitive to provide all documents in all languages used in those countries. We believe that the current provisions ensure that the overwhelming majority of prisoners can access documentation in a language they can understand. Where that is not the case, local arrangements will be made to ensure that the prisoner understands the deportation process. That may be done through local translation services, or translation by staff or other prisoners with a common language. We will also make reasonable adjustments to help ensure that any foreign national IPP prisoners with learning difficulties understand the process and its implications.

# CHAPTER 5: DANGEROUS OFFENDERS

## Introduction

This analysis examines the equality impacts arising from the provisions to reform how the criminal justice system punishes, sentences and rehabilitates serious sexual and violent offenders.

## Summary

IPPs and the youth equivalent - the Detention for Public Protection sentence - were introduced through the Criminal Justice Act 2003 in April 2005, with the purpose of detaining in prison, the 'most dangerous, violent and sexual offenders' who pose a significant risk to the public of causing serious harm until they no longer pose such a risk. The offender can only be considered for release once they have completed their 'tariff' or minimum custodial term, which reflects the appropriate punishment for their crime. Subsequently they are only released when the Parole Board is satisfied that it is safe to do so.

By 2006, the sentence had been used much more widely than had been intended and a considerable proportion of those sentenced to IPPs had relatively short tariffs or two years or less. Changes in the Criminal Justice and Immigration Act (CJIA) 2008 restricted the use of IPPs and DPPs to those who would merit a minimum four year determinate sentence (i.e. a minimum two year tariff) and gave increased discretion to the courts over its use. However, the issues around the lack of clarity and inconsistency around the current system still remain.

This makes the sentencing framework unclear and difficult to explain, as well as defend to the public. A return to a definite, more balanced principle of punishment for crime committed which will restore clarity, coherence and common sense to sentencing, is therefore desirable. It is therefore proposed to replace both the current IPP and Extended sentence for Public Protection (EPP) sentence. So the new sentencing hierarchy for sexual and violent offenders will be:

- Mandatory life
- Discretionary life
- Extended Determinate Sentence
- Standard Determinate Sentence

We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

### *Direct discrimination*

All offenders who would previously have received an IPP or EPP will be eligible for a new extended determinate sentence. There is therefore no direct discrimination within the meaning of the 2010 Act.

### *Indirect discrimination*

We cannot determine with certainty what sentences the courts will give in the future. This, along with the lack of certainty about how long those given IPPs spend in custody, means it is difficult to identify whether there may potentially be negative

impacts for offenders. Although the sentences will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be given an IPP or EPP, and therefore more likely to be given sentences under the new sentencing framework. Although clear conclusions are difficult to draw from the available data, we have identified in the potential for differential effects in respect of age, disability, race and sex. Further monitoring will be required to determine the nature of any effects.

However, even if it were established that these effects constituted a particular disadvantage, we believe that the new sentencing framework for serious sexual and violent offences represents a proportionate response to the problems of the current sentencing framework and the aim of protecting the public.

#### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the new sentencing framework extends to disabled offenders, we believe that the policy is proportionate, having regard to its aim. The proposals also include increased access to rehabilitation interventions, ensuring programmes in prison are more tailored which can be delivered in a number of different ways to increase flexibility and inclusion of offenders with more complex needs such as learning difficulties.

#### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

#### *Advancing equality of opportunity*

The proposed future clarity in sentencing through a new, more determinate sentencing framework, and the proposals to make rehabilitative interventions in prison more tailored to individual needs and circumstances, may also potentially be a positive impact on offenders. We have identified in the potential for these differential effects in respect of age, disability, race, religion and sex.

#### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

#### *Conclusion*

Having paid due regard to the potential differential impacts identified below, the government is satisfied that it is right to reform how the criminal justice system punishes, sentences and rehabilitates serious sexual and violent offenders. The benefits include future clarity over determinate sentence lengths, whereby both victims and offenders will know what punishment the offender will receive and how long the offender is likely to spend in custody has the potential for positive impact for victims. In this analysis we have identified how victims of violence are more likely to come from certain groups with protected characteristics, and therefore potentially may be more likely to benefit from the positive impact. We have identified the potential for these differential effects in respect of age, religion and sex.

## Aims and outcomes for the policy

The Ministry of Justice Green Paper *Breaking the Cycle* published in December 2010 consulted upon proposals to limit IPPs to a smaller category of offences. The consultation made clear that there are many problems with the IPP sentence, in particular with issues surrounding inconsistency and uncertainty. IPPs have proved difficult to understand and leave victims and their families uncertain about how and when an offender will be released. IPPs have also led to inconsistent sentencing - they have been given to some offenders, while others who have committed similar crimes have served fixed sentences.

This makes the sentencing framework unclear and difficult to explain, as well as defend to the public. A return to a definite, more balanced principle of punishment for crime committed which will restore clarity, coherence and common sense to sentencing, is therefore desirable.

The large range of potential options is constrained by a number of important policy aims. The requirements of proposals are to abolish IPPs and create a new sentencing framework for serious sexual and violent offences, which:

- Replace IPPs with a coherent sentencing framework which is not over-complex and more easily understood by victims and the public.
- Will be justifiably tough and can be seen to effectively punish offenders.
- Must continue to protect the public from sexual and violent offenders.
- Makes the period of incarceration more certain and establish clear delineations between sentences depending upon the severity of the offence and associated risk factors.
- Will ensure that offenders undertake work to address their offending behaviour with the purpose to rehabilitate as part of their sentence.
- Will ensure that we manage resource pressures into the next Spending Review Period and beyond by keeping the prison population at roughly current levels.

In order to meet the criteria set out above we need a balanced sentencing framework incorporating elements from each of the options we have considered. The following proposals effectively address the criteria set out above.

Under a new sentencing framework we will introduce a “two strikes” policy so that a mandatory life sentence will be given to anyone convicted of a second serious sexual or violent offence where both offences merit sentences of ten years or more. We estimate that approximately 20 offenders per year will be given this new mandatory life sentence.

Discretionary life sentences will continue to be available as currently for other serious and violent offenders. We expect wider use of these sentences following abolition of the IPP.

We will create a new “extended determinate sentence” for offenders convicted of serious sexual or violent offences who would have previously been eligible for either an IPP or an EPP. They will serve at least two-thirds of their sentence in custody

and, in more serious cases, will only be released at the two-thirds point if the Parole Board assesses them as suitable; these offenders will only be subject to automatic release at the full term of their sentence.

The new sentence will be coupled this with extended licence periods following release: up to five years for violent offenders; eight years for sexual offenders. Any breach of their licence conditions during this extended period can result in an immediate return to custody for these offenders, so that when they are released from prison they will be monitored for long periods and returned to prison if necessary.

All offenders under this sentence will be required to follow a sentence plan including undertaking a range of targeted rehabilitative interventions, aimed at reducing their risk. Work will be undertaken to make interventions in prison more tailored to individual need which can be delivered in a number of different ways, including for offenders with complex needs such as learning disabilities. This will ensure that all offenders undergo rigorous assessments of need; that all methods of effective rehabilitation are considered and used and that there is an enhanced focus upon sentence plan progression; offenders taking responsibility and action to reform, and reduce public protection risks.

The extended sentence will be available in addition to standard determinate sentences, and life sentences. It will replace both the current IPP and EPP sentence. So the new sentencing hierarchy for sexual and violent offenders will be:

- Mandatory life
- Discretionary life
- Extended Determinate Sentence
- Standard Determinate Sentence

This overall approach will also help simplify the sentencing framework, and make it easier to explain whilst ensuring that the courts continue have sufficient powers in place to continue to protect the public from sexual and violent offenders.

For the existing IPP population, the system in the past has struggled to put in place adequate steps to help reduce their risks, or for them to demonstrate that to the Parole Board for assessment of possible release. It is clear that for offenders whom the courts have determined pose a risk, sufficient interventions must be available to assist the offender in reducing those risks.

We therefore propose to undertake work in a number of areas to improve the management of the existing population and the processes which lead to a reduction in risk such as expanding the capacity of rehabilitative interventions for this group focusing priority interventions based upon risk. These measures will help us ensure more IPP offenders make progress and can demonstrate to the Parole Board that they can be safely released.

## **Scope and Methodology**

The scope of this assessment is the introduction of a new sentencing framework for sexual and violent offenders, and the proposals to make rehabilitative interventions in prison more tailored to individual need and circumstance.

In analysing the potential equalities impacts of these proposals, we have considered:

- The impact on **victims**, by considering the ways in which victims might benefit from the proposals; and how the characteristics of victims of sexual and violent offences. The future clarity over release dates whereby both victims and offenders will know what punishment the offender will receive and how long the offender is likely to spend in custody has the potential for positive impact for victims.
- The impact on **offenders**, by considering the ways in which offenders will be affected by these proposals in terms of expected impact on their sentence length, and access to offender management programmes. The future clarity in sentencing, and the proposals to make rehabilitative interventions in prison more tailored to individual need and circumstance, may also potentially be a positive impact on offenders. We cannot determine with certainty what sentences the courts will give in the future, which, along with the lack of certainty about how long those given IPPs spend in custody, mean it is difficult to identify whether there may potentially be negative impacts for offenders. In assessing the potential impact we have undertaken the following comparisons:

*For those who would previously have been given IPPs*

- Characteristics of those who received IPPs who have been subject to release in 2010 have been compared with those sentenced to IPPs in 2010 to understand whether currently particular types of offenders are less likely to be released. Note that this is based on low volumes, given the low release rate of IPPs;
- Examination of research evidence on IPPs and access to offender management programmes;
- Whether or not the expected distribution of future sentences affects offenders with certain protected characteristics. We cannot determine with certainty what sentences the courts will give in the future, which, along with the lack of certainty about how long those given IPPs spend in custody, mean it is difficult to identify whether there may potentially be negative impacts for offenders. However, we do consider that for future sentences the minimum time served will be on average **longer** than the tariffs currently given for IPP sentences.

*For those who would previously have been given EPPs*

- Whether or not the expected distribution of future sentences (which on average we expect the minimum time served to be **longer** than the time currently served for EPP sentences) affects offenders with certain protected characteristics.

*For the existing IPP population*

- Characteristics of the IPP population in 2011 compared to the sentenced prison population in 2011.

## Analysis - Future sentences

We believe a number of these proposals will have a positive impact upon equalities. Namely:

- Replacing IPPs with a new determinate sentence will result in a clearer and more consistent system whereby both victims and offenders will know with more certainty what punishment the offender will receive and how long the offender is likely to spend in custody;
- Proposals to make rehabilitative interventions in prison - for existing IPP prisoners and future prisoners under the current sentencing regime - more tailored to individual need and circumstance e.g. increasing range of ways in which interventions can be delivered - oral, written, visual - including to those with learning disabilities.

The proposals aim to ensure that all offenders undertake rehabilitative activity as part of their sentence plan; this is an enhanced proposal than previously and we believe will result in better assessment of offender needs and better access to necessary interventions.

### Impact on victims

The future clarity over how long the offender is likely to spend in custody, and when they will be released, has the potential for positive impact for victims.

Information is not available on the characteristics of victims of those sentenced to IPPs. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of violent crime by demographic characteristics to further understand the potential positive equality impacts of these proposals. The results are presented in Tables 2 and 5 and we have identified the potential for differential effects in respect of age, religion and sex.

### Impact on those who would have previously been given IPPs

The future clarity over sentencing in regards to how long the offender is likely to spend in custody, and the proposals to make rehabilitative interventions in prison more tailored to individual need and circumstance, may also potentially be a positive impact on offenders. We cannot determine with certainty what sentences the courts will give in the future which, along with the lack of certainty about how long those given IPPs spend in custody, mean it is difficult to identify whether there may potentially be negative impacts for offenders.

Although the sentences will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be given an IPP, in comparison to those sentenced to custody for indictable offences, and therefore more likely to be given the new sentences. We have also identified where those with a certain characteristic may be more likely to be released from an IPP in comparison to those given an IPP sentence.

Although clear conclusions are difficult to draw from the available data, we have identified in the potential for these differential effects in respect of age, disability, race and sex.

### *Potential Age Impacts*

Table 39 (Annex A) suggests that those aged under 21 are less likely than other age groups to be released from an IPP in comparison to those given IPP sentences, although this may be partially due to their age band increasing by the end of their tariff. Those aged 25-29 are more likely to be released from an IPP.

Table 39 (Annex A) suggests that those sentenced to IPPs are more likely to be aged 40 and over than those sentenced to custody for indictable offences.

Our current assessment, based on this evidence, is that there is the potential for the new sentences to have a differential impact in relation to age.

### *Potential Disability Impacts*

We do not hold information on the proportion of those on IPPs who are disabled. Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that around a third of prisoners aged 18 and over serving custodial sentences of less than 4 years classified themselves as having a 'longstanding illness, disability, or infirmity of any kind'<sup>20</sup> compared to around a fifth of the general population of adults aged 16 and over.

Research suggests that in many cases IPP prisoners' mental health related issues may be pre-existing conditions, but at the same time, it seems very likely that the stress created by the uncertainties of indeterminate imprisonment lead directly to poor emotional and mental health<sup>21</sup>.

Research also suggests "that access to offending behaviour programmes is particularly difficult for IPP prisoners who have mental health problems - and it should be remembered that IPP prisoners appear to suffer from significantly higher rates of mental health problems than other prisoners - although adapted programmes have recently been introduced in some high and medium secure hospitals for IPP offenders subject to hospital transfers."<sup>22</sup>

In addition, offenders who present a high risk of serious harm linked to severe forms of personality disorder (PD) present particularly difficult challenges and it is estimated that this affects approximately half of all IPP offenders<sup>[1]</sup>.

The proposals include work to make rehabilitative interventions in prison more tailored which can be delivered in a number of different ways to increase flexibility,

---

<sup>20</sup> Data from [www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm](http://www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm)

The data is from the Surveying Prisoner Crime Reduction prisoner survey and the exact question asked was "Can I check, did you have any longstanding illness, disability, or infirmity of any kind just before you came into custody? By longstanding I mean anything that has troubled you over a period of time or that is likely to affect you over a period of time. Please remember that your answer is treated in the strictest confidence and that none of this information will be passed to anyone in the prison or to any government agency that can identify you as an individual."

<sup>21</sup> 'In the dark: The mental health implications of Imprisonment for Public Protection' by Sainsbury Centre for Mental Health

<sup>22</sup> 'Unjust Deserts: imprisonment for public protection' by Jessica Jacobson and Mike Hough, Prison Reform Trust, 2010

access, and inclusion of offenders with more complex needs such as learning difficulties.

A new offender PD pathway will start to be jointly commissioned by the NHS and NOMS from April 2012 for those who present a high and very high risk of harm to others and where their offending is linked to severe forms of PD. It will include reinvesting in new PD pathway services across the prison estate.

Our current assessment, based on this evidence, is that there is the potential for differential impact in relation to disability.

#### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Marriage and Civil Partnership Impacts*

Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that 8 per cent of offenders sentenced to custodial sentences of one month to 4 years are married<sup>23</sup>. This compares to around a half of the general population aged 18 and over.

#### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Race Impacts*

Table 39 (Annex A) suggests that those sentenced to IPPs are slightly more likely to be from the Black ethnic group than those sentenced to custody for indictable offences.

#### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Sex Impacts*

Table 39 (Annex A) suggests that women are more likely than men to be released from an IPP in comparison to those given IPP sentences.

Table 39 (Annex A) suggests that those sentenced to IPPs are more likely to be male than those sentenced to custody for indictable offences.

Our current assessment, based on this evidence, is that there is the potential for the new sentences to have a differential impact in relation to sex.

---

<sup>23</sup> Table 2.18, [www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls](http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls)

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### Impact on those who would have previously been given EPPs

The future clarity over sentencing in regards to how long the offender is likely to spend in custody, and the proposals to make rehabilitative interventions in prison more tailored to individual need and circumstance, may also potentially be a positive impact on offenders. We cannot determine with certainty what sentences the courts will give in the future which mean it is difficult to identify whether there may potentially be negative impacts for offenders.

Although the sentences will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be given an EPP in comparison to those sentenced to custody for indictable offences, and therefore more likely to be given the new sentences. Although clear conclusions are difficult to draw from the available data, we have identified in the potential for these differential effects in respect of age, disability, race and sex.

### *Potential Age Impacts*

Table 39 (Annex A) suggests that those sentenced to EPPs are more likely to be aged 40 and over than those sentenced to custody for indictable offences.

Our current assessment, based on this evidence, is that there is the potential for the new sentences to have a differential impact in relation to age.

### *Potential Disability Impacts*

We do not hold information on the proportion of those on EPPs who are disabled. Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that around a third of prisoners aged 18 and over serving custodial sentences of less than 4 years classified themselves as having a 'longstanding illness, disability, or infirmity of any kind'<sup>24</sup> compared to around a fifth of the general population of adults aged 16 and over.

The proposals include work to make rehabilitative interventions in prison more tailored which can be delivered in a number of different ways to increase flexibility, access, and inclusion of offenders with more complex needs such as learning difficulties.

---

<sup>24</sup> Data from [www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm](http://www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm)

The data is from the Surveying Prisoner Crime Reduction prisoner survey and the exact question asked was "Can I check, did you have any longstanding illness, disability, or infirmity of any kind just before you came into custody? By longstanding I mean anything that has troubled you over a period of time or that is likely to affect you over a period of time. Please remember that your answer is treated in the strictest confidence and that none of this information will be passed to anyone in the prison or to any government agency that can identify you as an individual."

### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Marriage and Civil Partnership Impacts*

Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that 8 per cent of offenders sentenced to custodial sentences of one month to 4 years are married<sup>25</sup>. This compares to around a half of the general population aged 18 and over.

### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Race Impacts*

Table 39 (Annex A) suggests that those sentenced to EPPs are slightly more likely to be from the White ethnic group than those sentenced to custody for indictable offences, although the level of unknowns may account for these small differences.

### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Sex Impacts*

Table 39 (Annex A) suggests that those sentenced to EPPs are more likely to be male than those sentenced to custody for indictable offences.

Our current assessment, based on this evidence, is that there is the potential for the new sentences to have a differential impact in relation to sex.

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Analysis - Existing IPP population**

We believe a number of these proposals will have a positive impact upon equalities. Namely proposals to undertake work in a number of areas to improve the management of the existing population and the processes which lead to an effective Parole Board hearing, such as expanding the capacity of rehabilitative interventions for this group focusing priority interventions based upon risk. These measures will help us ensure more IPP offenders make progress and can demonstrate to the Parole Board that they can be safely released.

---

<sup>25</sup> Table 2.18, [www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls](http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls)

Although the proposals to improve the management of the existing population will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be in custody under an IPP sentence, in comparison to the general sentenced prison population, and therefore more likely to be affected by the proposals. We have identified in the potential for these differential effects in respect of age, disability, race and sex.

### *Potential Age Impacts*

Table 39 (Annex A) shows that the IPP population are more likely to be aged 21-49 compared to the sentenced prison population.

Our current assessment, based on this evidence, is that there is the potential for differential impact in relation to age.

### *Potential Disability Impacts*

We do not hold information on the proportion of those on IPPs who are disabled. Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that around a third of prisoners aged 18 and over serving custodial sentences of less than 4 years classified themselves as having a 'longstanding illness, disability, or infirmity of any kind'<sup>26</sup> compared to around a fifth of the general population of adults aged 16 and over.

Research suggests that in many cases IPP prisoners' mental health related issues may be pre-existing conditions, but at the same time, it seems very likely that the stress created by the uncertainties of indeterminate imprisonment lead directly to poor emotional and mental health<sup>27</sup>.

Research also suggests "that access to offending behaviour interventions is particularly difficult for IPP prisoners who have mental health problems - and it should be remembered that IPP prisoners appear to suffer from significantly higher rates of mental health problems than other prisoners - although adapted programmes have recently been introduced in some high and medium secure hospitals for IPP offenders subject to hospital transfers."<sup>28</sup>

In addition, offenders who present a high risk of serious harm linked to severe forms of personality disorder (PD) present particularly difficult challenges and it is estimated that this affects approximately half of all IPP offenders<sup>[1]</sup>.

---

<sup>26</sup> Data from [www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm](http://www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm).

The data is from the Surveying Prisoner Crime Reduction prisoner survey and the exact question asked was "Can I check, did you have any longstanding illness, disability, or infirmity of any kind just before you came into custody? By longstanding I mean anything that has troubled you over a period of time or that is likely to affect you over a period of time. Please remember that your answer is treated in the strictest confidence and that none of this information will be passed to anyone in the prison or to any government agency that can identify you as an individual."

<sup>27</sup> 'In the dark: The mental health implications of Imprisonment for Public Protection' by Sainsbury Centre for Mental Health

<sup>28</sup> 'Unjust Deserts: imprisonment for public protection' by Jessica Jacobson and Mike Hough, Prison Reform Trust, 2010

The proposals include work to make rehabilitative interventions - including those addressing mental health problems - in prison more tailored which can be delivered in a number of different ways to increase flexibility, access, and inclusion of offenders with more complex needs such as learning difficulties.

A new offender PD pathway will start to be jointly commissioned by the NHS and NOMS from April 2012 for those who present a high and very high risk of harm to others and where their offending is linked to severe forms of PD. It will include reinvesting in new PD pathway services across the prison estate.

Our current assessment, based on this evidence, is that there is the potential for differential impact in relation to disability.

#### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Marriage and Civil Partnership Impacts*

Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that 8 per cent of offenders sentenced to custodial sentences of one month to 4 years are married<sup>29</sup>. This compares to around a half of the general population aged 18 and over.

#### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Race Impacts*

Table 39 (Annex A) shows that the IPP population are more likely to be from the White or Black ethnic groups compared to the sentenced prison population.

Our current assessment, based on this evidence, is that there is the potential for differential impact in relation to race.

#### *Potential Religion or Belief Impacts*

Table 40 (Annex A) shows that there are only small differences in the religious make-up of the IPP population compared to the sentenced population.

#### *Potential Sex Impacts*

Table 39 (Annex A) shows that the IPP population are slightly more likely to be male compared to the sentenced population.

---

<sup>29</sup> Table 2.18, [www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls](http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls)

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### **Mitigation**

We will monitor implementation of these reforms to help mitigate any negative impacts, which may occur. However, as previously mentioned we believe these reforms will reduce negative impacts of the existing IPP regime.

# CHAPTER 7: OUT OF COURT DISPOSALS

## Juvenile penalty notices for disorder, youth cautions and youth conditional cautions

### Summary

We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

#### *Direct discrimination*

The policies are intended to reduce bureaucracy and increase flexibility in individual cases rather than impacting on the overall use of out-of-court disposals, and it will apply to all juveniles. There is therefore no direct discrimination within the meaning of the 2010 Act.

#### *Indirect discrimination*

The policies are intended to reduce bureaucracy and increase flexibility in individual cases; we do not believe that there is the potential for negative impacts on offenders.

#### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as this proposal extends to disabled offenders, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope of the proposals, but it is considered reasonable to ensure that effective communications are in place to explain the significance of out of court disposals to offenders with learning difficulties.

#### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

#### *Advancing equality of opportunity*

Wherever possible we have considered how these proposals impact on the duty to advance equality of opportunity by taking steps to meet offenders' needs.

#### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

#### *Conclusion*

Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to pursue reforms to youth out-of-court disposals as set out below.

## **Aims and outcomes for the policy**

LASPO contains provisions to:

- Repeal reprimands and warnings and introduce the Youth Caution
- Repeal juvenile Penalty Notices for Disorder (PNDs)
- Allow police to authorise a Youth Conditional Caution
- Remove restrictions to receiving an out-of-court disposal after a conviction and after a certain number of disposals have been received
- Stipulate that a child must be referred to a Youth Offending Team if they accept a Youth Conditional Caution

The aims of these provisions are to:

- Promote proportionality and professional discretion by removing the rigid 'escalator' of the existing Final Warning Scheme and the prohibition against receiving an out-of-court disposal following a conviction. This will allow police to decide which disposal is appropriate in individual circumstances as they do for adults; and
- Retain Youth Offending Team assessment and intervention as part of Youth Cautions to prevent further offending.
- Utilise youth conditional cautions with a streamlined decision making process to ensure that where a young person does not comply with rehabilitation and reparation they can be prosecuted.
- Ensure that where a young person accepts a Youth Conditional Caution they are formally referred to the Youth Offending Team so a Parenting Order can be made if necessary.
- Remove juvenile Penalty Notices for Disorder so that all available disposals provide opportunities to rehabilitate and provide reparation/restoration.

Disposals would be able to be used in any order and following a conviction, which brings the youth system in line with the adult framework. The minimum appropriate disposal should be used and guidance would support this. Where it meets the needs of justice and it is in the victim's interests we will promote the use of restorative alternatives to the criminal justice system.

The policies are intended to reduce bureaucracy and increase flexibility in individual cases rather than increase or decrease the overall use of out-of-court disposals for juveniles. Police practice and priorities will likely have a larger impact on this than the disposal framework.

## **Methodology**

In analysing the potential equalities impacts of these proposals, we have considered the impact on offenders, by comparing the characteristics of young people given out of court disposals against all disposals given to youths. Where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact.

## Analysis

The potential impacts are provided below.

### Impact on victims

These policies have the potential to provide benefits to victims through the expeditious resolution of cases compared to court proceedings and by providing greater opportunities for the use of restorative justice and reparation. Evidence indicates that restorative justice can be beneficial to victims and lead to greater satisfaction with the criminal justice system.

As most conditional cautions are reparative (usually requiring the offender to pay compensation to the victim) it is likely that increased use of conditional cautions will have the effect of making the criminal justice system more reparative. It is also possible that increased use of conditional cautions will make the system more restorative and increase victim satisfaction.

Information is not available on the characteristics of victims of those given out of court disposals. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential positive equality impacts of these proposals. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age.

### Impact on offenders

Merging reprimands and warnings into a consolidated Youth Caution should have a negligible impact on the overall use of out-of-court disposals. A young person who would previously have received one of these disposals will in future receive a Youth Caution.

Abolishing juvenile PNDs would necessitate the use of alternate disposals to deal with those offences currently resolved using PNDs. In the vast majority of cases this will be a Youth Caution or some form of informal community resolution. Due to the increased discretion that form the core of our proposals and the local flexibility that will continue in the use of informal resolutions it is difficult to predict what proportion of Youth Cautions and informal diversion will be used in place of PNDs and how this might vary according to police force. Due to the rapid falls in the numbers of reprimands given since 2007 it is difficult to disaggregate what the effect on PNDs has been in police forces that have implemented restorative diversions and therefore what effect the removal of PNDs and increased use of diversion will have.

### *Potential Age Impacts*

Table 41 (Annex A) shows that young people aged 12-14 account for a larger proportion of out of court disposals than all disposals.

Our proposals will mean that all statutory disposals will be available nationally and for all 10 to 17 year olds. At present Youth Conditional Cautions and Penalty Notices for disorder are only available for 16 and 17 year olds<sup>30</sup>. At present 10-15s who offend

---

<sup>30</sup> PNDs for 10-15 year olds are used in two areas.

and have received a warning could be disadvantaged as they would have to be prosecuted for an offence whilst a 16 year old could be offered a conditional caution.

Our current assessment, based on this evidence, is that there is the potential for differential impact in relation to age, and the policy should provide for a more consistent use of out of court disposals.

#### *Potential Disability Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Marriage and Civil Partnership Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Race Impacts*

Table 42 (Annex A) shows that a slightly higher proportion of out of court disposals are given to people from the White ethnic group compared to the proportion for all disposals.

#### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Sex Impacts*

Table 43 (Annex A) shows that a higher proportion of out of court disposals are given to females compared to the proportion for all disposals.

Our current assessment, based on this evidence, is that there is the potential for differential impact in relation to sex.

#### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

Taking into consideration the available evidence we consider that the potential impacts are justified on the basis that the policies are intended to reduce bureaucracy and increase flexibility in individual cases rather than increase or decrease the overall use of out-of-court disposals for juveniles.

In addition, responsible officers have a statutory duty to make any necessary arrangements in connection with offenders' requirements and to promote compliance, particularly in relation to reasonable adjustments for peoples' disabilities.

# Conditional cautions

## Summary

We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

### *Direct discrimination*

The proposals to give the police the power to authorise conditional cautions without referral to the Crown Prosecution Service (CPS) are intended to achieve consistency with police decision-making powers in relation to charging and other out-of-court disposals, reducing the administrative burden on both the police and the CPS and our desire to remove obstacles to greater use of conditional cautions in appropriate cases. There is therefore no direct discrimination within the meaning of the 2010 Act.

The proposals to remove rather than prosecute some foreign offenders with no leave to enter or remain in the UK, who admit to committing certain offences and agree to depart the UK and not return for a specified period will, by their nature, only apply to foreign nationals. This will enable the Ministry of Justice better to manage its prison accommodation and probation resources. It will expedite the removal from the UK those who have no leave to enter or remain. The courts have held that it is lawful to treat illegal immigrants differently from people with a right to stay in the country. We are therefore satisfied that there is therefore no direct discrimination within the meaning of the 2010 Act.

### *Indirect discrimination*

Although the proposal to remove rather than prosecute some foreign offenders with no leave to enter or remain in the UK, who admit to committing certain offences and agree to depart the UK and not return for a specified period, will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to receive a custodial sentence. We have identified in particular potential differential effects in respect of age, race and religion. However, even if it were established that these effects constituted a particular disadvantage, we believe that, administering a conditional caution rather than prosecuting some foreign national offenders who admit committing certain offences and agree to leave the UK, this is a proportionate measure to better managing prison accommodation and probation resources and expediting the removal from the UK of those who have no leave to remain.

### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as these proposals extend to disabled offenders, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope of the proposals, but it is considered reasonable to ensure that effective communications are in place to explain the significance of out of court disposals to offenders with learning difficulties.

### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

### *Advancing equality of opportunity*

Wherever possible we have considered how these proposals impact on the duty to advance equality of opportunity by taking steps to meet offenders' needs.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

### *Conclusion*

Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to offer conditional cautions for those foreign offenders who admit to committing a criminal offence, agree to accept a conditional caution with the conditions to depart and not return, and where it is not in the public interest to prosecute. We are satisfied that the proposals are fully justified and designed to help the Secretary of State best manage use of the prison estate and expedite the removal from the UK of those who have no leave to remain.

The government is also satisfied that the proposal to give the police the power to authorise conditional cautions without referral to the CPS is right as it is intended to reduce bureaucracy, better align police out-of-court disposals and charging powers and increase flexibility in individual cases and will apply to all offenders.

## **Aims and outcomes for the policy**

### *Conditional cautions: involvement of prosecutors*

The proposals are to amend the Criminal Justice Act 2003 in relation to the involvement of prosecutors as regards adult conditional cautions. Currently, the authorised person (usually a police officer) obtains evidence that an offender has committed an offence before the matter is passed to the 'relevant prosecutor' (usually the Crown Prosecution Service) who makes the decision. The proposal removes the requirement for the authorised person to refer the matter to the relevant prosecutor.

The proposals also enable the authorised person to vary conditions attached to the conditional caution without reference to the relevant prosecutor. The other requirements for giving a conditional caution remain unchanged, including that the offender admits that they committed the offence and that they consent to being given a conditional caution.

### *Conditional cautions: removal etc of certain foreign offenders*

The proposals are to make available new types of conditions that can be attached to a conditional caution given to an offender who is a foreign national and who does not have leave to enter or stay in the United Kingdom. The object of these conditions is to bring about the departure of the foreign national offender from the UK and ensure that they do not return to the UK for a specified period. These conditions may be

attached to a conditional caution instead of or in addition to the existing rehabilitative, reparative or punitive conditions.

This clause also defines the category of foreign offenders who could be offered such conditions as those offenders whose immigration status makes them liable for removal from the UK. This means a person who has no leave to enter or stay in the UK and in respect of whom there is a power to enforce their departure from the UK. As with all conditional cautions, the offender must admit the offence and agree to accept the conditional caution.

If the foreign offender does not comply with these conditions they may be prosecuted for the original offence.

## **Methodology**

In analysing the potential equalities impacts of these proposals, we have considered the impact on offenders by:

- comparing the characteristics of people given conditional cautions against all cautions given. Where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact;
- comparing the characteristics of foreign nationals received into prison under a custodial sentence compared to all nationalities received into prison under a custodial sentence. This is our best estimate of the characteristics of foreign nationals that might be given a conditional caution. Where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact.

## **Analysis**

The potential impacts are provided below.

### Impact on victims

The proposals to give the police the power to authorise conditional cautions may have a positive impact on victims. As most conditional cautions are reparative (usually requiring the offender to pay compensation to the victim) it is likely that any increased use of conditional cautions will have the effect of making the criminal justice system more reparative. It is also possible that increased use of conditional cautions will make the system more restorative and increase victim satisfaction. The victim's consent must be obtained where conditions involving the participation of a victim (for example direct reparation or restorative justice processes).

Information is not available on the characteristics of victims of those given conditional cautions. Using the British Crime Survey, we have considered wider information on the risk of becoming a victim of crime by demographic characteristics to further understand the potential positive equality impacts of these proposals. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age.

### Impact on offenders

The proposals to remove rather than prosecute some foreign offenders who admit committing certain offences and agree to leave the UK means that they will not be

convicted of the offence and will not receive a sentence, be it custodial or otherwise. However, if they fail to comply with the conditions attached to their caution, they could be prosecuted for the original offence.

#### *Potential Age Impacts*

Table 44 (Annex A) shows that foreign national sentenced prisoners received into prison are more likely to be aged 25-49 compared to all sentenced prisoners received into prison.

Our current assessment, based on this evidence, is that there is the potential for differential impact in relation to age.

#### *Potential Disability Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

Concern was also expressed about vulnerable adults fully understanding and being able to undertake an out of court disposal.

#### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Marriage and Civil Partnership Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Race Impacts*

Some concern was raised during the consultation on the use of conditional cautions for BAME groups.

Table 45 (Annex A) shows that foreign national sentenced prisoners received into prison are more likely to be from the Black, Asian or Chinese or Other ethnic groups compared to all sentenced prisoners received into prison.

Our current assessment, based on this evidence, is that there is the potential for differential impact in relation to race.

#### *Potential Religion or Belief Impacts*

Table 46 (Annex A) shows that foreign national sentenced prisoners received into prison are more likely to be Muslim compared to all sentenced prisoners received into prison.

Our current assessment, based on this evidence, is that there is the potential for differential impact in relation to religion.

#### *Potential Sex Impacts*

Table 46 (Annex A) shows that there is little difference in the proportion of foreign national sentenced prisoners received into prison who are female compared to all sentenced prisoners received into prison.

Table 48 (Annex A) shows that males account for a larger proportion of conditional cautions than all cautions.

Some concern was raised during the Breaking the Cycle consultation on the use of conditional cautions for women

#### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

The proposal to give the police the power to authorise conditional cautions without referral to the Crown Prosecution Service (CPS) is intended to achieve consistency with police decision-making powers in relation to charging and other out-of-court disposals, reducing the administrative burden on both the police and the CPS and our desire to remove obstacles to greater use of conditional cautions in appropriate cases.

Some concern was raised during the Breaking the Cycle consultation on the use of conditional cautions for BME groups and women. Concern was also expressed about vulnerable adults fully understanding and being able to comply with the conditions attached to a conditional caution. However, the existing Code of Practice for Conditional Cautions sets out detailed requirements concerning when conditional cautions should be given and how they should be administered. In offering a conditional caution the police or the CPS will need to be satisfied that it is appropriate to the offence and the offender, and meets the public interest. An offender must have made a clear and reliable admission of the offence, and must confirm that they understand and accept the consequences of a conditional caution. They must be given the opportunity to receive free and independent criminal legal advice. Only if an offender consents will a conditional caution be administered. Offenders will always have the right to decline the offer of a conditional caution or, if it has been accepted and administered, withdraw their previous agreement.

The proposal to remove rather than prosecute some foreign offenders who admit committing certain offences and agree to leave the UK will by its nature only apply to foreign nationals. This will enable the Ministry of Justice better to manage its prison accommodation and probation resources. It will expedite the removal from the UK of those who have no leave to remain, and the courts have held that it is lawful to treat illegal immigrants differently from people with a right to stay in the country.

## **CHAPTER 8: OFFENCES**

### **Offences of threatening with article with blade or point or offensive weapon in public or on school premises**

#### **Introduction**

This analysis relates to the minimum sentences for the new offences of threatening with an article with a blade or point or offensive weapon in public or on school premises.

#### **Summary**

We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

##### *Direct discrimination*

The new offences would apply to any person who has a bladed or pointed article or offensive weapon with them in a public place or school and goes on to threaten another person and cause an immediate risk of serious physical harm to that other person.

In relation to the minimum sentence requirement, there is different treatment between offenders of different ages. Such treatment will not amount to discrimination for the purposes of the 2010 Act where it can be justified as a proportionate means of achieving a legitimate aim. We consider that this is the case here.

In 2010, the peak age for people being convicted for possession of a knife or other offensive weapon was 17 years (1,277 offences) followed by those aged 18, with young people aged 16 years being the fifth most likely to be convicted after those aged 19 and 20 years (see Figure 1, Annex A). Therefore the government believes it is right to apply a minimum sentence to persons aged 16 and 17, but not to younger children, who have a lower level of proven involvement and for whom there is greater emphasis on addressing their offending behaviour within the community without necessarily displacing them from their family environment. The clause refers to courts' duties to have regard to the welfare of the offender when considering whether there are particular circumstances relating to the offence or the offender which would make the imposition of the minimum sentence unjust in all the circumstances. This is to emphasise the court's general duty to have regard to the welfare of a child who appears before it.

The different treatment of those aged 16 and above compared to those aged under 16 is therefore justified, and as such does not amount to direct discrimination within the meaning of the 2010 Act.

##### *Indirect discrimination*

Although the proposals will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be cautioned or convicted for the offences, and therefore more likely to be subject to the minimum sentence. We

have identified in particular potential differential effects in respect of age, race, religion and sex. However, we consider that any impact would be justified given the aims and objectives of the policy.

#### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the proposals extend to disabled offenders, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make any adjustment for disabled persons which did not extend the minimum sentence to them, given its aim. We do, however, recognise the need to ensure members of the public with learning difficulties understand the implications of the proposals.

#### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

#### *Advancing equality of opportunity*

We have had regard to this aspect of the equality duty but do not consider that the proposals will either positively advance equality or impact negatively on the advancement of equality of opportunity.

#### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

## **Aims and outcomes for the policy**

Under the current law there are three basic possession offences. Under section 1 of the Prevention of Crime Act 1953 it is an offence for a person to carry an offensive weapon in a public place without lawful authority or reasonable excuse. Under section 139 of the Criminal Justice Act 1988 ('the 1988 Act') it is an offence to have an article with a blade or point in a public place. Under section 139A of the 1988 Act it is an offence to have an article with a blade or point or an offensive weapon on school premises. It is a defence to both of the basic possession offences in the 1988 Act for a person to prove that they had good reason or lawful authority for having the article with them in the public place.

The LASPO Bill creates new offences for those who carry a bladed or pointed article or offensive weapon in a public place or school and go on to threaten another person and cause an immediate risk of serious physical harm to that other person. The offences carry maximum penalties on summary conviction of 12 months' imprisonment or a maximum fine of £5,000, or both, and on conviction on indictment, of 4 years' imprisonment or an unlimited fine, or both. A minimum sentence requirement of six months' imprisonment applies for adults and a 4 month Detention and Training Order (DTO) for 16 and 17 year olds. The Detention and Training Order is the main custodial sentence for under-18s and is served half in custody, half under supervision in the community. It is available for fixed periods of 4, 6, 8, 10, 12, 18 and 24 months only.

The government considers that the introduction of a minimum sentence sends a clear message to those who possess a bladed/pointed article (including knives) or offensive weapon and go on to threaten and cause an immediate risk of serious physical harm to another with it, and thus it may discourage knife crime. We believe that the seriousness of the offences that the minimum sentence targets justifies any differential impact on persons who share protected characteristics. We believe the introduction of minimum sentences may also add confidence to the public that such crimes will be dealt with firmly and may be beneficial to victims.

## Methodology

Information is not held on the characteristics of those who are victims of knife crime. We have considered two sources of wider information to further understand the potential equality impacts on **victims** of these proposals.

- Demographic characteristics of admissions to NHS hospitals in England involving wounds suffered as the result of assault with a sharp object. The Hospital Episode Statistics show that there overall were 4,770 admissions for assault by a sharp object in England that ended in 2009/10.
- The risk of becoming a victim of violent crime by demographic characteristics. Whilst information on offences involving a knife can be obtained from the British Crime Survey (BCS), the small number of incidents involving a knife reported (the 2010/11 BCS estimates that knives were used in six per cent of violent incidents) means that information cannot be broken down by the demographic characteristic of the victim.

We have considered the impact on **offenders** by comparing the characteristics of people cautioned or convicted of offences involving the possession of a knife or offensive weapon compared with the general population. Where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact.

## Analysis

The potential impacts of the new offences for those who carry a bladed or pointed article or offensive weapon in a public place or school and go on to threaten another person with it and cause an immediate risk of serious physical harm to that other person, are provided below.

### Impact on victims

There is the potential for positive impacts on victims. Table 49 (Annex A) shows that admissions to NHS hospitals as the result of assault with a sharp object, are more likely to be for those aged 15-59 and men, compared to the general population. Tables 2 and 5 (Annex A) shows that the proportion of adults who were a victim of violent crime varied by age and religion.

Our current assessment, based on these two sources of evidence, is that there is the potential for a differential impact in relation to age, religion and sex of victims in the introduction of minimum sentences.

### Impact on offenders

The legislation proposes to apply minimum sentences for the new offences of threatening with an article with blade or point or offensive weapon in public or on school premises to those aged 16 and over. We believe this may impact on race (people from the Black ethnic group account for a higher proportion cautioned or convicted of offences involving the possession of a knife or offensive weapon compared to the general population<sup>31</sup>); sex (those cautioned or convicted of offences involving the possession of a knife or offensive weapon, are more likely to be male compared to the general population); age and religion.

We have assumed that 500-600 offenders aged 18 and over will be affected by this policy, some who currently get shorter prison terms will get longer sentences and some offenders currently getting community sentences will now receive custody.

Imposing a minimum sentence for 16 and 17 year olds is estimated to impact on an additional 200-400 offenders who will get custodial sentences (over and above those for whom custody is already the sentence given).

#### *Potential Age Impacts*

Table 50 (Annex A) shows that those cautioned or convicted of offences involving the possession of a knife or offensive weapon, are more likely to be aged 16 to 39 compared to the general population.

Table 51 (Annex A) presents data on the age of the offender for those offences involving possession of a knife or offensive weapon which result in a caution or conviction. An unknown proportion of these offences will fall into the new offences category. There are already some age differences in the proportion of offenders sentenced to custody and the length of sentence given for these offences. These may, however, reflect differences in the aggravating factors taken into account by sentencers.

Our current assessment, based on this evidence, is that there is the potential for the new offences of threatening with an article with blade or point or offensive weapon in public or on school premises and minimum sentences to have a differential impact in relation to age.

#### *Potential Disability Impacts*

We do not hold information on the proportion of those on those sentenced for knife crime who are disabled. Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that around a third of prisoners aged 18 and over serving custodial sentences of less than 4 years classified themselves as having a 'longstanding illness, disability, or infirmity of any kind'<sup>32</sup> compared to around a fifth of the general population of adults aged 16 and over.

---

<sup>31</sup> It should be noted that the ethnicity figures for those cautioned or convicted are based on the police officer's judgement of the offender's ethnicity and do not include the Mixed category.

<sup>32</sup> Data from [www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm](http://www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm).

The data is from the Surveying Prisoner Crime Reduction prisoner survey and the exact question asked was "Can I check, did you have any longstanding illness, disability, or infirmity of any kind just before you came into custody? By longstanding I mean anything that has

### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Marriage and Civil Partnership Impacts*

Data from the Surveying Prisoner Crime Reduction prisoner survey suggests that 8 per cent of offenders sentenced to custodial sentences of one month to 4 years are married<sup>33</sup>. This compares to around a half of the general population aged 18 and over.

### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Race Impacts*

Table 52 (Annex A) shows that those cautioned or convicted of offences involving the possession of a knife or offensive weapon, are more likely to be from the Black ethnic group compared to the general population. The Black ethnic group accounts for a higher proportion of 16 and 17 year olds cautioned or convicted of offences involving the possession of a knife or offensive weapon compared to the general population aged 16 or 17 years old (22 per cent compared to 3 per cent). In comparison, 11 per cent of persons aged 18 and over cautioned or convicted of offences involving the possession of a knife or offensive weapon are from the Black ethnic group compared to 3 per cent of the general population<sup>34</sup>.

In Table 53 (Annex A) we present the data on the ethnicity of the offender for those offences involving the possession of a knife or offensive weapon which result in a caution or conviction. As before, an unknown proportion of these offences will fall into the new offence category. There are already differences, with respect to the ethnic background of offenders, in the proportions sentenced to custody and the length of sentence they are given. This may reflect differences in aggravating factors taken into account by sentencers.

Our current assessment, based on this evidence, is that there is the potential for the new offences and minimum sentences to have a differential impact in relation to race.

---

troubled you over a period of time or that is likely to affect you over a period of time. Please remember that your answer is treated in the strictest confidence and that none of this information will be passed to anyone in the prison or to any government agency that can identify you as an individual."

<sup>33</sup> Table 2.18, [www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls](http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls)

<sup>34</sup> It should be noted that the ethnicity figures for those cautioned or convicted are based on the police officer's judgement of the offender's ethnicity and do not include the Mixed category. Three per cent of the general population of 16-17 year olds belong to the Mixed ethnic category.

### *Potential Religion or Belief Impacts*

Table 54 (Annex A) presents data on the prison population sentenced for possession of an offensive weapon by religion. Muslims and people of no religion are overrepresented in custody compared with the general population.

Our current assessment, based on this evidence, is that there is the potential for the new offences and minimum sentences to have a differential impact in relation to religion.

### *Potential Sex Impacts*

Table 55 (Annex A) shows that those cautioned or convicted of offences involving the possession of a knife or offensive weapon, are more likely to be male compared to the general population.

Table 56 (Annex A) presents data on the gender of the offender for those offences involving possession of a knife or offensive weapon which result in a caution of conviction. As before, an unknown proportion of these offences will fall into the new offence category. There are already gender differences in the proportions sentenced to custody and the length of sentence given for these offences. These may however reflect differences in the aggravating factors taken into account by sentencers.

Our current assessment, based on this evidence, is that there is the potential for the new offences of threatening with an article with blade or point or offensive weapon in public or on school premises and minimum sentences to have a differential impact in relation to sex.

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

The government believes the introduction of these new sentences is a proportionate means of achieving a legitimate aim. The government considers that the introduction of minimum sentences send a clear message to those who possess a bladed/pointed article (including knives) or offensive weapon and go on to threaten another person and cause an immediate risk of serious physical harm to that other person, and thus it may discourage knife crime. We believe that the seriousness of the offences that the minimum sentence targets justifies any differential impact on persons who share protected characteristics. We believe the introduction of minimum sentences may also add confidence to the public that such crimes will be dealt with firmly and may be beneficial to victims.

The potential adverse impacts on 16 and 17 year olds may be reduced because the clause refers to courts' duties to have regard to particular circumstances relating to the offence or the offender which would make the imposition of the minimum sentence unjust in all the circumstances. In the context of persons under 18, express reference is made to the welfare of the offender. This is to emphasise to the court the generally applicable duty to have regard to welfare of a child when sentencing an under-18.

# Causing serious injury by dangerous driving

## Introduction

This analysis relates to the new offence of causing serious injury by dangerous driving.

## Summary

We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

### *Direct discrimination*

The new offence would apply to all members of the public in Great Britain who commit the offence of causing serious injury by dangerous driving. There is therefore no direct discrimination within the meaning of the 2010 Act.

### *Indirect discrimination*

Although the proposed new offence will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be convicted of the offence, and therefore more likely to be subject to a longer custodial sentence than at present. We have identified in particular potential differential effects in respect of age, race and sex. However, even if it were established that these effects constituted a particular disadvantage, we believe that the new offence represents a proportionate response to ensure that the criminal law is fully effective in addressing the most serious consequences of driving which falls far below the standard expected of a careful and competent driver (and is therefore already dangerous under the criminal law).

### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the offence extends to disabled people, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make any adjustment for disabled persons which did not extend the offence to them, given its aim. We have identified the policy may have potentially positive impacts for those disabled as a result of the offender's actions, in so far as prosecution for the new offence will permit the seriousness of their injuries to be more fully reflected at the point of sentence.

### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

### *Advancing equality of opportunity*

We have had regard to this aspect of the equality duty but do not consider that the proposals will either positively advance equality or impact negatively on the advancement of equality of opportunity.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

### *Conclusion*

Having had due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to take action to ensure that the criminal law is fully effective in addressing the most serious consequences of dangerous driving. There is the potential for positive impact because the victims of these dangerous driving offences, who may be disabled as a result of the offence, will see the offenders given sentences that reflect the consequences of a driver's actions.

### **Aims and outcomes for the policy**

For the vast majority of dangerous driving cases, the current maximum penalty of 2 years' imprisonment provides the courts with appropriate powers to punish offenders. The new offence will allow the courts to target their powers at the most serious and damaging end of the spectrum of dangerous driving incidents, giving them greater sentencing powers to reflect the more serious consequences of a driver's actions. The new offence would carry a maximum custodial sentence of 5 years' imprisonment on conviction on indictment. It is intended that victims who face life-changing injuries as a result of dangerous driving, their families, and society will feel better served by the level of punishment delivered by the criminal justice system

### **Methodology**

In order to assess the impact on offenders, we have looked at data on the cases involving cases of both section.20 Grievous Bodily Harm (GBH) and dangerous driving charges to give an indication of the number and characteristics of cases that may satisfy the elements of the new offence. Between 2008 and 2010, there were 67 cases where defendants were charged with both dangerous driving and GBH but only successfully convicted of dangerous driving. The fact that GBH charges were brought in these cases suggests that serious injury was caused. However, the difficulty in proving the required intent or recklessness may have prevented a successful GBH conviction, thereby limiting the courts to convicting for the offence of dangerous driving. It may also be that it was not proved in some of these cases that the dangerous driving caused the injury in question. This intent/recklessness would not be required to prove the new offence, so we believe these characteristics of those charged/convicted in these cases are our best estimate of the characteristics of cases that may be successfully convicted under the new offence, and thus receive a longer custodial sentence. However, as we are not able to identify exactly which cases will be covered by the new offence these estimates are only indicative of the likely impact. The offence will not criminalise any more people than is the case now.

### **Analysis**

#### Impact on victims

There is the potential for positive impacts because the victims of these dangerous driving offences will see the offenders given sentences that reflect the more serious consequences of a driver's actions. As these victims may be disabled as a result of the offence there are likely to be positive outcomes for disabled victims.

### Impact on offenders

Based on the 67 cases where defendants were charged with both dangerous driving and GBH, but only successfully convicted of the offence of dangerous driving, our estimates of the equality impacts are given below.

#### *Potential Age Impacts*

Table 57 (Annex A) shows that those successfully convicted of the offence of dangerous driving, but charged and not convicted of s.20 Grievous Bodily Harm (GBH) charges, are more likely to be aged 18 to 39 compared to the general population.

These data suggest that there may be a potential differential age impact arising from the availability of the new offence. However, even if such a differential impact were to give rise to a particular disadvantage, we consider that the higher maximum penalty for the new offence is justified for the reasons given above.

#### *Potential Disability Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Marriage and Civil Partnership Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Race Impacts*

Table 57 (Annex A) shows that those successfully convicted of the offence of dangerous driving, but charged and not convicted of s.20 Grievous Bodily Harm (GBH) charges, are more likely to be from a minority ethnic group compared to the general population.

These data suggest that there may be a potential differential impact arising from the availability of the new offence in relation to ethnicity. However, even if such a differential impact were to give rise to a particular disadvantage, we consider that the higher maximum penalty for the new offence is justified for the reasons given above.

### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Sex Impacts*

Table 57 (Annex A) shows that those successfully convicted of the offence of dangerous driving, but charged and not convicted of s.20 Grievous Bodily Harm (GBH) charges, are more likely to be male compared to the general population.

This suggests that there may be a potential differential impact on men arising from the availability of the new offence. However, even if such a differential impact were to give rise to a particular disadvantage, we consider that the higher maximum penalty for the new offence is justified for the reasons given above.

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

We consider the potential impacts to be justified on the basis it is a proportionate means of achieving the legitimate aim of ensuring that the criminal law is fully effective in addressing the most serious consequences of dangerous driving.

Having concluded that it is proportionate step to introduce a new offence, the sentence for which reflects the particular consequence of serious physical injury, it would not be appropriate for the offence to apply other than in respect of the population at large, even taking into account the potential for differential impacts identified by reference to those who are already convicted of the offence of dangerous driving.

# Offence of squatting in a residential building

## Introduction

This analysis relates to the new offence of squatting in a residential building.

## Summary

The government has become increasingly concerned about the harm that can be caused by squatters following correspondence from property owners and members of the public and reports in the press. The government consulted publicly on this issue between 13 July and 5 October 2011 to gain a better understanding of the scale and nature of squatting and to invite views on whether the law should be strengthened.

Following the conclusion of the consultation exercise and consideration of consultation responses, the government has decided that decisive action needs to be taken to reassure owners and lawful occupiers of property that the law can and will protect them from squatters occupying their premises. The government is concerned about the serious direct financial and emotional impact squatting can have on the owner and occupiers of property and believe that measures should be taken to deal with this issue.

We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

### *Direct discrimination*

The new offence would apply to all members of the public who commit the act of squatting (as defined in the legislation) in England and Wales. There is therefore no direct discrimination within the meaning of the 2010 Act.

### *Indirect discrimination*

Although the proposed new offence will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to squat, and therefore more likely to be criminalised, with the attendant consequences of criminalisation. Although clear conclusions are difficult to draw from the available data, we have identified in particular potential differential effects in respect of age, disability, race and sex. However, even if it were established that these effects constituted a particular disadvantage, we believe that the new offence represents a proportionate response to the problem of squatting and the aim of protecting the legitimate rights of residential property owners.

### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the offence extends to disabled people, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make any adjustment for disabled persons which did not extend the criminal offence to them, given its aim. We do, however, recognise the need to ensure squatters with learning difficulties and mental health issues understand the implications of the proposals.

### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

### *Advancing equality of opportunity*

We have had regard to this aspect of the equality duty but do not consider that the proposals will either positively advance equality or impact negatively on the advancement of equality of opportunity. However, it should be noted that some of the strategies discussed in the “Mitigation” section of this document, for example in relation to homelessness, could contribute to advancing equality of opportunity. Assessment of these policies is not the focus of this document.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

### *Conclusion*

Having had due regard to the potential differential impacts identified below, the government is satisfied that it is right to take action to criminalise squatting in residential buildings. Whilst action against squatting has the potential to give rise to differential impacts in relation to certain protected characteristics, the actions of squatters also impact on the rights and interests of whose property they occupy. Given the competing interests, the government is satisfied that it is justified to proceed to criminalise the act of squatting in residential buildings, and that the proposals it will put before Parliament strike an appropriate balance between those interests.

## **Aims and outcomes for the policy**

The government has become increasingly concerned by reports of squatting in buildings.

The main issue raised in relation to the existing law is that the act of squatting is not in itself currently a criminal offence (it is a form of trespass, which is normally regarded as a civil wrong). Residential occupiers who have effectively been made homeless by the actions of squatters have some protection under the existing criminal law - section 7 of the Criminal Law Act 1977 makes it an offence for a trespasser to refuse to leave a residential property when required to do so by a displaced residential occupier or a protected intending occupier of the property. However, the offence does not extend to owners or occupiers of non-residential property (e.g. commercial property) or owners of residential property who are not displaced or intending occupiers. This would include, for example, landlords and local authorities who find squatters in their properties in between tenancies, but it could also include second home owners or people who find squatters in the properties of deceased relatives during probate.

In these circumstances, unless there is evidence that squatters have committed other offences, such as criminal damage or burglary, the police may not be able to intervene. Even where there are visible signs of a break in or damage to the property, it may be difficult for the police to prove that the squatters inside the property were responsible, particularly if there are no eye witnesses and the

squatters claim the damage was caused by somebody else. The onus is therefore often on property owners to regain possession of their properties in the civil courts.

The government is concerned about the serious financial and emotional impact squatting can have on the owner or lawful occupier of a property. This prompted Ministers to consult publicly on options for addressing this issue. The consultation period ran from 13 July to 5 October 2011. The consultation document can be viewed on the [Justice website](#).

Following consideration of consultation responses, the government intends to include a new offence of squatting in residential property in the Legal Aid, Sentencing and Punishment of Offenders Bill at Commons Report. Of the respondents who had experienced difficulties in evicting squatters, the majority were residential property owners. Although the government does not propose to create a similar offence to protect non-residential property owners, it will continue to explore whether existing eviction processes and enforcement of criminal offences such as burglary and criminal damage could be improved to protect non-residential property owners.

## **Methodology**

Information is not available on the characteristics of defendants in cases relating to interim and full possession orders. Data is available on the sex of defendants proceeded against in the magistrates' courts in England and Wales for failure to leave residential premises when required to do so (under the Criminal Law Act 1977, section 7); failure to leave within 24 hours of an interim possession order or returning as a trespasser or attempting to do so within one year of the service of the order (under the Criminal Justice and Public Order Act 1994, section 76) ("the existing offences"). 37 defendants were proceeded against for offences in the period 2001-2010.

The following analysis about the potential impacts of the government's proposals draws on the Court Proceedings Database, available research reports and responses to the consultation. The relevant research evidence is mainly concerned with single homeless people, or with single homeless people who squat. There is no evidence on the number and characteristics of people who squat as a lifestyle choice, or on the numbers and characteristics of people who squat in residential properties. The research evidence on squatting is based on relatively small samples, and on a small number of geographical locations. For all these reasons it is difficult to draw conclusions on whether there is the potential for some groups to be differentially affected by the creation of the specific offence of squatting in residential property.

In order to attempt to identify differential effects, we have compared available data on:

- the percentage of those proceeded against in the magistrates' courts for the existing offences, who share a protected characteristics, with the percentage of the general population of England and Wales who share a protected characteristic;
- the percentage of homeless squatters who share a protected characteristic, with the percentage of the general population of England and Wales who share a protected characteristic;

- where this has not possible we have compared what is known about the protected characteristics of homeless squatters against the characteristics of the non-squatting homeless population.

Where certain groups are over-represented in the squatting population we have noted that the evidence we have available suggests the potential for a differential impact.

The government has considered the following evidence sources:

- 2,217 responses to the public consultation exercise on squatting. A summary of responses is being published alongside this document;
- Data on the number of applications for interim possession orders and full possession orders and the number of such orders granted;
- Data on the number proceeded against at magistrates' courts for the existing offences;
- Research evidence relating to squatting and homelessness. The research reports reviewed are as follows:
  - **'Squatting: a homelessness issue - an evidence review' by Keisa Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011);**
    - This report presents evidence from 'The hidden truth about homelessness: experience of single homelessness in England', 'Life on the Margins: The experiences of homeless people living in squats' and 2 other studies.
  - **'Homelessness among A8 Nationals in the UK' Paper presented at: Housing Studies Association Annual Conference by Dr Carol Corinne McNaughton, Centre for Housing Policy at the University of York (April 2008);**
    - This paper includes a literature review of relevant reports.
  - **'Homelessness among migrant groups: a survey of homelessness and refugee agencies across England' by Homeless Link Migration Project (March 2010);**
    - This report presents evidence from 160 organisations who responded to an on-line survey who said they provided help to migrant groups.
  - **'The hidden truth about homelessness: experience of single homelessness in England' by Kesia Reeve with Elaine Batty at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (May 2011);**
    - This research included a survey during July 2010 of 437 single homeless people in day centres in 11 towns and cities in England. 365 respondents were non-statutory homeless.
  - **'Squatting in residential properties, Standard Note SN/SP/355' by House of Commons Library (August 2011);**

- This note presents information on the nature of squatting mainly from the 1990s, and outlines the legal remedies that are available to landlords and homeowners to evict squatters from their properties in England and Wales.
- **‘Life on the Margins: The experiences of homeless people living in squats’ by Keisa Reeve with Sarah Coward for CRISIS and the Countryside Agency (March 2004);**
  - This research included a questionnaire survey of 165 single homeless people in 3 case study areas.
- **‘How Many, How Much? Single homelessness and the question of numbers and cost’ by Peter Kenway and Guy Palmer from the New Policy Institute for CRISIS (2003);**
  - This research assesses the number and cost of single homelessness.
- **‘Hidden in Plain Sight: Homelessness amongst lesbian and gay youth’ by William O’Connor and Donna Molloy, National Centre for Social Research in collaboration with Stonewall Housing (2001);**
  - This research included in-depth interviews with 33 young lesbian or gay people who were or had been homeless.
- Correspondence received from MPs and members of the public representing both sides of the argument;
- Media reports in relation to the arguments for and against criminalising squatting.

## Analysis

This analysis examines the proposal to create a new offence of squatting in residential buildings, which will be committed where a person is in a residential building as a trespasser (having entered as a trespasser), knows or ought to know he or she is a trespasser, and is living in the building or intends to live there for any period. The government recognises that this is a controversial area of policy and considers that its preferred option strikes the best balance in that it will protect those who are likely to suffer most from squatting – those with property rights in respect of residential property. We will continue to explore options in respect of commercial property.

### Impact on residential property owners

The government’s proposals are designed to reassure lawful occupiers of residential property that the law will protect them should trespassers occupy their properties. A ‘lawful occupier’ could be the owner of the property (e.g. somebody with a freehold or leasehold interest), but it could also be a tenant who has an agreement to live in somebody else’s property. As such, the proposals may benefit people belonging to any one of the nine protected equality groups (i.e. race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender identity, pregnancy and maternity) who are lawful occupiers of the residential property.

It is difficult to estimate the precise impact as there is no consensus on the true extent of squatting, and the proportion of squatting that is in residential buildings. There is a lack of official statistics or research on this issue which is likely to reflect

the challenges that government faces in collecting robust information on this group of people. Based on a number of assumptions we estimate that there might be between 200 and 2,100 criminal squatting cases in residential property across England and Wales. The creation of a new criminal offence of squatting would mean that residential property owners/occupiers could avoid the costs incurred in evicting squatters (legal fees etc) and repairing the damage that may have been caused to properties. It would allow them to regain possession of their properties more quickly, which again could limit the amount of damage they may face on re-entering the property. In general, residential property owners may feel more protected by the law if potential criminal sanctions apply to squatters. This may reduce the serious direct financial and emotional impacts suffered by residential property owners/occupiers. It has not been possible to quantify these impacts, but they may be significant. For example, members of a property litigation association reported costs incurred by their clients of between £3,000 and £8,000 to evict squatters from residential and commercial properties and those figures generally did not include the cost of repairing any damage to the properties. One respondent who claimed his property had been taken over by squatters said he had to spend over £20,000 on the case in total.

Consultation responses from local authorities and private providers of social housing indicated that squatting often occurs in social houses that have been left empty while they are awaiting renovation or refurbishment. The eviction process takes time and money, which can increase the length of time that people in priority need of social housing may have to wait for accommodation. One private provider of residential housing described an incident where 39 out of 45 residential flats temporarily leased to a borough council in South London were occupied by squatters. The council had to pay a significant sum of money to evict the squatters and restore the flats to good order before they could be returned to the provider. The council also had to compensate the provider for loss of rent for the period that the squatters remained in occupation after the expiry of the lease. The combined total cost incurred by the provider as a result of the squatters in this incident was approximately £900,000, the majority of which was recoverable from the council.

If criminalisation deters people from squatting in residential property or allows local authorities to regain possession of their properties more quickly, this could benefit the council taxpayer and people who are waiting for social housing. Section 189(1) of the Housing Act 1996 Act sets out the categories of homeless applicants who have priority need for accommodation, including, for example, a pregnant women, a person with whom dependent children reside, a person who is vulnerable as a result of old age or a person who is vulnerable as a result of mental illness or disability.

A number of residential landlords who responded to the consultation expressed concern about squatters occupying their properties in the void period in between lets. The cost of the eviction process and the loss of income arising from not being able to let the property varied in each case, but the British Property Federation said:

*“We would like it to be noted... that the financial cost and social strain of squatting can be huge, especially for smaller landlords. Many of our members have described feelings of helplessness when trying to deal with squatter situations and although the ultimate goal of getting rid of squatters is key in all landlords’ minds, the costs of the process can also be significant.”*

## Impacts on squatters

Regional and national homelessness charities have expressed concerns about any proposals to criminalise squatting. They argue that squatting is a symptom of a housing crisis: if homelessness were addressed through better provision of services and support, people would not squat. They add that for many homeless and vulnerable people, squatting is the only way of avoiding rough sleeping. They cite the evidence that up to 40 per cent of single homeless people had squatted at some point and that 6 per cent of single homeless people squatted on any one night<sup>35</sup>. There is no consensus about the total number of people who are squatting at any one time. However, a number of charities believe that the estimated figure of 20,000 which is often quoted in the media could be an underestimate<sup>36</sup>.

One national homelessness charity said in response to the consultation that:

*“There are a significant number of vulnerable homeless people squatting – people who have mental or physical ill health, disabilities, dependency issues and a history of being in care. Whilst homeless people have higher incidences of vulnerabilities and multiple needs than the non homeless population, homeless squatters were found to be yet more vulnerable still – with higher incidences of vulnerabilities than the wider homeless population.”*

A London-based charity added:

*“The people we meet who occupy squats are drawn from the street homeless population. Of people seen sleeping rough in London in 2010-11, 52 per cent had alcohol problems, 32 per cent had drug problems and 39 per cent were experiencing mental health problems. Their engagement in squatting in an unsafe environment increases the existing risks to their wellbeing.”*

The **SQUASH**<sup>37</sup> campaign, which generated around 2,000 individual responses to the consultation, echoed the views of the homeless charities, and also described dilapidated buildings being brought back to life by squatters and the positive impact, as they saw it, that this could have on a neighbourhood. They called for the government to do more to bring empty homes back into use and to tackle the shortage of affordable housing. They also criticised the consultation process for not reaching out to ‘hard to reach’ groups (such as asylum seekers, migrants, Gypsies and Travellers and people on low incomes who they say might be threatened by homelessness and forced to squat). Given the number of individuals and organisations who participated in the consultation process on behalf of these groups, including several major homelessness charities, the government does not accept this criticism.

Based on a number of assumptions set out in the Impact Assessment, the government estimates that there could be between 350 and 4,200 defendants

---

<sup>35</sup> ‘The hidden truth about homelessness: experience of single homelessness in England’ by Kesia Reeve with Elaine Batty at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (May 2011)

<sup>36</sup> The 1986 London Housing Survey (quoted in Squatting: A Home Office Consultation Paper, Home Office, October 1991 p3 para9) found that about 7,500 properties were occupied by 12,500 squatters in London. The position outside London was described as ‘not been examined in detail since the early 1980s [when] it was estimated that there were approximately 30,000 squatters in the remainder of England’. The media estimates quoted in the same report from 1991 estimated 50,000 squatters. (ibid.).

<sup>37</sup> Squatters’ Action for Secure Homes

proceeded against for the new offence of squatting in any one year. The threat of conviction may not deter some squatters and it is likely to be those squatters that are convicted who will be most negatively impacted by the proposals.

Some would-be squatters may be deterred from squatting as a result of a criminal offence. This could lead them to look for alternative forms of accommodation. The homelessness charities who responded to the consultation argued that it could also increase the likelihood of rough sleeping. However, it has not been possible to quantify these potential impacts and they may be mitigated by ongoing government initiatives to address the root causes of homelessness.

The Court Proceedings Database, the research evidence outlined above, and a number of consultation responses, provide some information on the demographic profile of squatters, including whether they share any of the nine protected characteristics. The potential impacts on people with any of these characteristics arising from the government's proposals to criminalise squatting in residential property are described in more detail below.

### *Potential Age Impacts*

'Squatting: a homelessness issue - an evidence review' states that the 2011 report on single homeless people found that a larger proportion of people who squat were aged 21-40. A substantial number (37 per cent) reported to be aged over 40<sup>38</sup>, but this is less than the proportion of the general population of England and Wales in 2010 (48 per cent). Therefore, this research suggests that those aged 40 or under may be over-represented in the single homeless squatting population in comparison to the general population of England and Wales.

Based on this evidence, we consider that there is the potential for the new offence to have a differential impact in relation to age.

We also note that a number of respondents to the consultation raised issues in relation to age. They suggested that people who squat might include vulnerable young adults leaving care; children and young people because of difficulties in finding housing; those aged under 16, and those aged under 18, because of limited access to housing benefits and hostels; students and young people who can no longer live with their families due to sexual abuse/domestic violence issues. These responses tend to support the evidence above that a large proportion of single homeless people who squat are young.

### *Potential Disability Impacts*

'Squatting: a homelessness issue - an evidence review' reports that the 2011 report on single homeless people found that that 41 per cent of single homeless people who squat had self reported mental health issues<sup>39</sup>. It is a reasonable assumption that at least some of these people will be disabled under the Equality Act 2010. The 2011 report also found that 32 per cent of single homeless people who have not squatted

---

<sup>38</sup>'Squatting: a homelessness issue - an evidence review' by K. Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011)

<sup>39</sup>'Squatting: a homelessness issue - an evidence review' by K. Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011) states that 'respondents in each study were presented with the statement 'I have mental health problems' and asked whether that statement applied to them. The term 'mental health' was not defined for them.

had self reported mental health issues<sup>40</sup>. Figures for the general population of England suggest that in 2007 18 per cent of people aged 16-64 in England had at least one common mental disorder, and 23 per cent had at least one psychiatric disorder<sup>41</sup>. These statistics are not directly comparable to the statistics on the prevalence of mental health issues in the homeless squatting population so comparisons should be made with caution.

The 2011 survey also found that 42 per cent of single homeless people who squat had physical ill health or a disability compared with 27 per cent of single homeless people who have not squatted<sup>42</sup>. Within this figure, it has not been possible to quantify the proportion who have a physical disability within the meaning of the Equality Act 2010.

Based on the evidence that suggests that those with mental health issues may be over-represented in the single homeless squatting population in comparison to the general population, we consider that there is the potential for the new offence to have a differential impact in relation to disability.

We note that a number of respondents to the consultation raised issues in relation to disability. These suggested that people who squat may include people who may have some difficulty in understanding the law if it is changed; people with physical disabilities which need to be taken into account in leaving a squat; and people with serious illnesses who should be given time to leave a squat. Again, this tends to support the data set out above.

#### *Potential Gender Reassignment Impacts*

We note comments raised during the consultation that those who squat might include transgender people who have been driven out of their families'/previous homes due to prejudiced parents or landlords. More widely, concern was raised that transgender people experience transphobia, harassment and domestic abuse in relation to housing and that there was a lack of emergency or shared accommodation suitable for transgender people.

Due to limitations in the available evidence we are unable to identify the potential for any differential impact. However, no statistical evidence was provided on the percentage of squatters who are transgender to permit further analysis of such an impact.

#### *Potential Marriage and Civil Partnership Impacts*

It was suggested by some consultees that squatting was likely to occur in the context of marital or relationship distribution.

However, although due to limitations in the available evidence we are unable to identify the potential for any differential impact, no statistical evidence was provided to permit further analysis of such an impact.

---

<sup>40</sup> *ibid*

<sup>41</sup> 'Adult psychiatric morbidity in England, 2007' by the NHS Information Centre

<sup>42</sup> 'Squatting: a homelessness issue - an evidence review' by K. Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011)

### *Potential Pregnancy and Maternity Impacts*

We note the comments raised during the consultation included concerns about the prospect of pregnant women or mothers with young children being asked to leave squats at short notice. As noted in the section on mitigation, families with children are counted as a social housing priority need group.

Due to limitations in the available evidence we are unable to identify the potential for any differential impact. However, no statistical evidence was provided to permit further analysis of such an impact.

### *Potential Race Impacts*

The research evidence we have reviewed suggests that a large proportion of single homeless people who squat are White British, but a substantial proportion are from other ethnic groups. 38 per cent of single homeless people squatting who were interviewed as part of the 'The Hidden truth about homelessness' research were from these other ethnic groups<sup>43</sup>, compared to 17 per cent of the general population of England and Wales in 2009.

We are aware of research evidence that suggests single homeless A8 (the accession of the 8 Central and Eastern European countries to the EU in 2004) nationals are more likely to be squatting than other groups. 'The hidden truth about homelessness' research suggested that 22 per cent of single homeless A8 nationals who were interviewed for this research were squatting on the night they were interviewed. This compares to 6 per cent of single homeless people interviewed. However, there was no difference in the proportion of single homeless A8 nationals reporting that they had ever squatted compared to all single homeless people interviewed for this research<sup>44</sup>. We do not have information on the proportion of single homeless people who squat who are migrants.

Based on the evidence that ethnic groups other than White British may be over-represented in the single homeless squatting population compared to the general population, there is the potential for the new offence to have a differential impact in relation to race.

We note that a number of respondents to the consultation raised issues in relation to race. They suggested that people who squat might include Gypsies and Travellers who use the land around disused or derelict buildings (e.g. former factories in urban areas). However, the new offence is targeted at trespassers who occupy residential buildings. It is not concerned with trespassers who occupy open land or land ancillary to buildings.

Consultation responses also suggested that people who squat include asylum seekers, who have no recourse to public funds or housing assistance and prohibited

---

<sup>43</sup> 'Squatting: a homelessness issue - an evidence review' by K. Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011)

<sup>44</sup> 'The hidden truth about homelessness: experience of single homelessness in England' by Kesia Reeve with Elaine Batty at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (May 2011)

from taking paid employment. Research by Oxfam was cited that showed many asylum seekers experience homelessness<sup>45</sup>.

Respondents to the consultation also suggested that many migrants squat, especially those from A8 countries, who have restricted access to benefits. For example, it was suggested that in London, migrants from accession countries account for half of the bed spaces in night shelters. Another respondent suggested A8 nationals may be in the UK to take advantage of the UK's "squatter status". Again these responses tend to support what data is available.

#### *Potential Religion or Belief Impacts*

Little evidence was provided on the linkages between religion and homelessness during the consultation, and the limited evidence available suggests that people who squat hold a range of religious beliefs.

Therefore, we do not consider that there is evidence for a potential differential impact.

#### *Potential Sex Impacts*

Of the 37 people proceeded against at magistrates' courts in 2001-2010 in respect of the existing offences, 86 per cent were male. This compares to 49 per cent of the general population of England and Wales in 2010.

The research evidence we have reviewed suggests that more homeless squatters are male than female. The 'Life on the Margins' research found that 87 per cent of single homeless squatters interviewed in that study were male<sup>46</sup>. This compares to 49 per cent of the general population in England and Wales in 2010.

'The hidden truth about homelessness' research suggests that single homeless men are more likely than single homeless women to have squatted (29 per cent of single homeless women had squatted compared to 42 per cent of single homeless men)<sup>47</sup>. Research also suggests that some women find squats unsafe. However, this research suggested that in some circumstances squatting is safer than rough sleeping for women<sup>48</sup>.

Responses to the consultation suggested that amongst those who squat were single women escaping violence. 'Squatting: a homelessness issue - an evidence review' also suggests a significant proportion of homeless street sex workers who were surveyed for the 'Complex Needs' research had squatted (59 per cent)<sup>49</sup>. The 2003 report by the New Policy Institute for Crisis cited research that found 40 per cent of

---

<sup>45</sup> 'Coping with destitution: survival and livelihood strategies of refused asylum seekers living in the UK' by Oxfam (February 2011)

<sup>46</sup> 'Life on the Margins: The experiences of homeless people living in squats' by Keisa Reeve with Sarah Coward for CRISIS and the Countryside Agency (March 2004)

<sup>47</sup> 'The hidden truth about homelessness: experience of single homelessness in England' by Kesia Reeve with Elaine Batty at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (May 2011)

<sup>48</sup> 'Life on the Margins: The experiences of homeless people living in squats' by Keisa Reeve with Sarah Coward for CRISIS and the Countryside Agency (March 2004)

<sup>49</sup> 'Squatting: a homelessness issue - an evidence review' by K. Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011)

homeless women had reported that domestic violence was connected to their homelessness<sup>50</sup>.

Our current assessment, based on this evidence, is that there is a potential for a differential impact in relation to sex, as in aggregated terms men are more likely to be affected than women in comparison to the general population. However, there may be specific issues that affect women.

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact. However, no statistical evidence was provided on the percentage of squatters by sexual orientation to permit further analysis of such an impact.

We note comments raised during the consultation that people who squat might include lesbian, gay and bisexual people who have been made homeless by prejudiced parents/landlords. More widely, concern was raised that lesbian, gay and bisexual people experience homophobia, harassment and domestic abuse in relation to housing and that there was a lack of emergency or shared accommodation suitable for them.

## **Mitigation and Justification**

The actions outlined below will mitigate some of the potential impacts on squatters. The government accepts, however, that not all potential differential effects will be mitigated.

Nonetheless, the government is satisfied that it is right to take action to criminalise squatting in residential buildings. Whilst action against squatting may create potential adverse impacts against individuals who share certain protected characteristics, the actions of squatters have a significant impact on those whose property they occupy. Given the competing interests, the government is satisfied that it is justified to proceed to criminalise the act of squatting in residential buildings, and that the proposals it will put before Parliament strike an appropriate balance between those interests.

If the legislation is passed, it should be noted that any adverse effects of criminalisation will only materialise if a squatter commits the offence once it is commenced. Steps will be taken to publicise the new law, in particular in relation to those who may be affected by it. Those affected will have a period before the new offence comes into force to change their behaviour.

The responses to the consultation document included those whose homes have been occupied thus rendering them impossible to live in, from both local authorities who have been unable to refurbish social houses to make them available for priority categories, and landlords who have been unable to let their property as a result of squatting. The latter are adversely affected financially; and they are prevented from reducing the numbers of homeless people as they are unable to offer those homes to legitimate prospective tenants.

---

<sup>50</sup> 'How Many, How Much? Single homelessness and the question of numbers and cost' by Peter Kenway and Guy Palmer from the New Policy Institute for CRISIS (2003)

Whilst there are various civil remedies available to property owners and occupiers, the government is persuaded that it is right that the criminal law should offer a greater degree of protection. However, the government has also listened to those who are concerned about the potential consequences in terms of homelessness, and it has therefore decided that it should in the first instance adopt a cautious approach. The government therefore proposed to criminalise squatting in residential premises. This will deal with what we understand to be the greatest mischief and the greatest distress to victims, that of being unable to use one's own home. At this stage the government will not seek to criminalise squatting in non-residential buildings, such as disused factories, warehouses or pubs as there does not appear to be the same level of concern about squatting that occurs in those premises. The government will continue to keep the law under review to measure the effects of the changes and to determine if any further action is needed.

The government recognises that it will need to work closely with the police, local authorities and homelessness charities to put those found squatting in touch with relevant support agencies. This specific point was raised by the law enforcement agencies and local government associations in response to the consultation and the government will consider this further prior to implementation of the new offence.

Through the Homelessness Ministerial Working Group, Department for Communities and Local Government (DCLG), Ministry of Justice and Home Office will work together to ensure that any local enforcement against squatting is carried out in partnership with local homelessness services to mitigate against an associated increase in rough sleeping.

#### *Publication of information about the new offence*

We will publish a departmental circular explaining the new offence, and will liaise with other interested departments, the enforcement authorities and key interest groups prior to commencement to consider the best way of disseminating information so that it reaches the people most likely to be affected.

#### *Addressing the root causes of homelessness*

The government has taken into account the evidence submitted by homeless charities that many people who squat may have mental health problems or suffer from drug or alcohol addiction or other vulnerabilities. The consultation responses illustrated that for many homeless people, squatting could be as precarious and damaging to health as sleeping on the streets. It is clearly not desirable for anybody to live in these conditions and the government will continue to provide funds to address the root causes of homelessness and to bring more empty homes back into use.

The government has prioritised spending on homelessness prevention, investing £400m over the next 4 years, with the Homelessness Grant being maintained at 2010-11 levels. We have also secured £6.5 billion investment for Supporting People services that help vulnerable people to live independently – this equates to an average annual reduction over the 4 years of the Spending Review of less than 1 per cent in cash terms.

We have also, for the first time, brought together 8 government departments through the Ministerial Working Group on Homelessness to tackle the complex causes of Homelessness. The Group published its first report "Vision to End Rough Sleeping" in July 2011, which sets out joint commitments to tackle homelessness, and ensure

nobody has to spend more than one night out on our streets – No Second Night Out. This includes actions to prevent homelessness for those people without a stable home who may be at risk of rough sleeping.

We have announced a new £20m Homelessness Transition Fund for the voluntary sector to help implement No Second Night Out. And we are providing an additional £10m to Crisis to support single homeless people, including priority client groups, such as recovering drug-users and ex-offenders, to access stable accommodation in the private rented sector.

### *Providing more housing*

The government intends to publish its strategy on housing later in the Autumn. The Strategy will set out our overall approach to housing policy, including how we are supporting an increase in the supply and quality of new private and social housing and helping those seeking a home of their own, whether to rent or buy.

For example, the government has already made available £4.5 billion to help deliver new affordable housing through the Affordable Homes Programme.

### *Bringing empty homes back into use*

The government wants to increase the number of empty homes that are brought back into use as a sustainable way of increasing the overall supply of housing, and to reduce the perception of neglect that can blight neighbourhoods. Reducing the number of empty homes will also help to reduce incidence of squatting.

That is why we have announced £100m capital funding within the Affordable Homes programme to tackle the ‘hardest to reach’ empty homes - properties that are likely to remain empty without extra direct financial from government. This programme will deliver at least 3,300 affordable homes by March 2015, as well as engaging local communities in dealing with empty homes in their area.

Empty homes brought back into use will qualify for the New Homes Bonus. Under this powerful new incentive scheme, government will match fund the council tax for 6 years, using the national average in each band, for any empty homes that become a new home for somebody, with an additional amount being provided for those brought back into use as new affordable homes.

This has already proved to be effective in encouraging more local authorities to tackle empty homes in their area. 42 per cent of Local Authority respondents to an online survey reported being “more supportive” or “significantly more supportive” of tackling empty homes as a result of the New Homes Bonus. In the first year alone, around 16,000 long term empty homes were brought back into use and rewarded through the New Homes Bonus scheme, with local authorities benefiting from around £19m additional funding as a result.

DCLG are also considering where this can go further, and plan to consult shortly on the option to levy an “empty homes premium” on the council tax payable on homes that have been left empty for a long time.

We have worked with the Homes and Communities Agency (HCA) to launch an online Empty Homes Toolkit and an interactive mapping toolkit which provide information and practical advice on tackling empty homes. The Empty Homes

Toolkit is the most popular resource on the HCA website and is one of the top10 most popular pages on the site.

Where long term empty properties have become dangerous or are causing a nuisance to neighbours, the local authority, as a last resort, can seek to take direct control of the management of the property. We are proposing some changes to Empty Dwelling Management Orders, to ensure that their use is limited to the very worst long term empty homes, while still ensuring Local Authorities have the power to act when needed.

Tackling empty homes will have a particular focus in London. From next year, the Mayor of London will have new housing and regeneration powers in line with the government's broader approach to housing and localism. The Mayor proposes to:

- maintain his target that no more than one per cent of London's homes should stand empty or unused for more than six months;
- maintain and update his empty homes audit, to help target action and investment to tackle abandoned and derelict homes;
- target a share of London's funding for empty homes to bring residential buildings on the English Heritage at risk register back into use and explore options to engage the public in this process;
- encourage boroughs to remove any financial incentives to leaving homes empty;
- encourage the involvement of the community in bringing empty homes back into use, for example self-help organisations;
- make investment decisions which prioritise bringing back into use homes for affordable housing.

### *Gypsies and travellers*

The offence is targeted at trespassers who occupy residential buildings. It is not concerned with trespassers who occupy open land or land ancillary to buildings. The SQUASH campaign argued that gypsies and travellers would be adversely affected by the government's proposals because they are known to occupy land around disused factories, etc. especially in urban areas, however, the offence will not cover this type of encampment. The only circumstances in which Gypsies and Travellers can be charged with this offence, is if they occupy residential buildings without the authority of the owner.

The government is working with local authorities to improve the provision of authorised sites for Gypsies and Travellers. Councils will be given incentives through the New Homes Bonus scheme to deliver new traveller sites and we have secured £60m funding to help councils and other registered providers build new traveller sites.

### *Asylum Seekers*

Asylum seekers are not entitled to mainstream benefits. However, asylum seekers who would otherwise be destitute can obtain support from the UK Border Agency (UKBA). This support comprises of rent, utility and council tax free accommodation

and cash subsistence to meet their essential living needs. Asylum seekers who need support to avoid destitution are given it from the time they arrive in the UK until their claim is fully determined (appeal rights exhausted). This support continues for destitute failed asylum seeking families with dependant minors until they leave the UK or are granted status.

In addition, failed asylum seekers who would otherwise be destitute can obtain support from the UK Border Agency if there is a legitimate reason which prevents their immediate return. This support comprises of rent, utility and council tax free accommodation and subsistence support to meet their essential living needs.

When UKBA and the courts have decided that an asylum seeker does not need international protection, and where there is no legitimate barrier to their return, support is discontinued and we expect the person to return home voluntarily. Returning home will provide these individuals with a long term sustainable solution to their situation.

Assistance to return home voluntarily can be provided by UKBA or by making an assisted voluntary return through Refugee Action's Choices service. Support can be provided for a period of three months whilst arrangements to return home voluntarily are made.

Those recognised as refugees obtain immediate access to mainstream benefits. UKBA continue to provide accommodation and support for 28 days, during which period the refugee can make arrangements to access mainstream support and find alternative accommodation.

This year, the UK Border Agency has cut the grants awarded to voluntary sector agencies to provide advisory services to asylum seekers and refugees. This reflects the tough financial climate and the fact that asylum intake has reduced significantly since grants were first put in place. However, this will not affect the provision of accommodation and support to asylum seekers in need. Accommodation will always be provided where the asylum applicant would otherwise be destitute.

### *Migrants*

The rights of EEA nationals and their family members to live and work in other European countries are set out under the Free Movement Directive (2004/38/EC), by which all EU Member States are bound. EEA nationals' free movement rights are not unlimited. Those who wish to live in the UK for longer than three months must be exercising a Treaty right as a worker, a self-employed person, a self-sufficient person or a student. Where EEA nationals do not meet one of these requirements, including those who are rough-sleepers, they will not have a right to reside in the UK and may be liable to removal.

The government is clear that EEA nationals who benefit from the right to free movement must adhere to the responsibilities this brings with it and abide by our laws.

# Reasonable force for the purposes of self-defence etc

## Introduction

This analysis relates to clarifying the existing law to give the public greater certainty about their rights when acting in self defence, to prevent crime or to protect property.

## Summary

There is a public perception that the existing law does not give people sufficient protection when defending themselves or their properties from intruders. The government believes that further clarification of the law would give members of the public greater confidence that the law is on their side.

We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

### *Direct discrimination*

The new clause which clarifies the law in relation to the use of reasonable force in self defence, defence of others, defence of property, and prevention of crime will apply equally to anyone who relies on these defences. There is therefore no direct discrimination within the meaning of the 2010 Act.

### *Indirect discrimination*

There is no evidence of indirect discrimination and there is the potential for positive impact for those who may be required to act in self defence, defence of others, defence of property or prevention of crime in clarifying the law.

### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the proposal extends to disabled people, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make any adjustment for disabled persons which did not extend the proposal to them, given its aim. We do, however, recognise the need to members of the public with learning difficulties and mental health issues to understand the implications of the proposals.

### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

### *Advancing equality of opportunity*

We have considered this objective but do not think it is of particular relevance to the proposals.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

## *Conclusion*

Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to clarify the law of self defence.

## **Aims and outcomes for the policy**

The aim is to clarify the existing law to give the public greater certainty about their rights when acting in self defence, to prevent crime or to protect property. The law will be clarified by importing existing common law principles into statute. The new provisions, which will be added to section 76 of the Criminal Justice and Immigration Act 2008, will:

- broaden the scope of section 76 so that as well as applying to self defence, defence of others and the prevention of crime, it also applies to defence of property;
- include provisions confirming that a person is under no duty to retreat when acting in self defence, defence of others, prevention of crime and defence of property. The fact that someone could have retreated is just one factor that can be taken into account when deciding whether the degree of force used was reasonable.

## **Methodology**

In analysing the potential equalities impacts of these proposals, we have considered:

- The impact on victims by considering the ways in which victims might benefit from the proposals. To do this we have used data on the risk of becoming a victim of violent or acquisitive crime by demographic characteristics;
- The impact on offenders (for violence against the person, robbery, burglary or theft and handling), by comparing the characteristics of those sentenced with the characteristics of the general population of England and Wales. Where certain groups are over-represented in those sentenced we have noted that the evidence we have available suggests the potential for a differential impact.

## **Analysis**

The potential impacts of the clarification of the law to give the public greater certainty about their rights when acting in self defence, to prevent crime or to protect property, are provided below.

### Impact on victims

The proposals are designed to have a positive impact on anyone who may need to defend themselves, other people or their properties, from crime by giving them greater confidence in the law. This could include homeowners or small shopkeepers who are confronted by intruders, but the law on self defence is not limited to people protecting themselves in those situations. It can also apply to people defending themselves or other people from crime on the street or in any other place. Consequently the impact is assessed on the basis of the likelihood of individuals with

particular protected characteristics being victims of theft from the person, robbery<sup>51</sup>, violent crime and burglary.

The data in tables 2-5 suggest that there is the potential for a differential impact in relation to age, race, religion and sex in the clarification of the position on self-defence. Those who are more likely to become a victim of crime may benefit more from the clarification than those that are less likely to be a victim.

### Impact on offenders

The proposals would potentially give people greater confidence to use reasonable force to defend themselves or other, protect property or prevent crime, which could have a potential impact on offenders committing the offences in question. This may result in an increase in the chances of an offender being challenged or apprehended. Offenders responsible for crimes against the person come from diverse backgrounds and the offence committed could be motivated by various reasons. Consequently the impact on offenders is assessed on the basis of the characteristics of those sentenced for violence against the person, robbery, burglary or theft and handling.

#### *Potential Age Impacts*

Table 58 (Annex A) shows that those offenders are more likely to be aged under 40 compared to the general population.

These data suggest that there is the potential for the clarification of the position on self-defence to have a differential impact in relation to age, as younger people are more likely to commit these offences.

#### *Potential Disability Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Marriage and Civil Partnership Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

#### *Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

---

<sup>51</sup> The number of robbery incidents picked up in the BCS is very small so the estimates themselves should be treated with caution. In addition, some of the differences reported for robbery are quite small and are unlikely to be statistically significant differences.

### *Potential Race Impacts*

Table 58 (Annex A) shows that those offenders are more likely to be from the Black ethnic group compared to the general population.

These data suggest that there is the potential for the clarification of the position on self-defence to have a differential impact in relation to ethnicity.

### *Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

### *Potential Sex Impacts*

Table 58 (Annex A) shows that those offenders are more likely to be male compared to the general population.

These data suggest that there is the potential for the clarification of the position on self-defence to have a differential impact in relation to sex.

### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact.

## **Mitigation and Justification**

Taking into consideration the available evidence, and recognising that there are a number of gaps in data, we consider that the potential impacts are justified on the basis that clarification is a proportionate means of achieving a legitimate aim of providing the public with a greater level of certainty about their rights when acting in self defence, to prevent crime or to protect property.

We will publicising the changes through press releases, and we will work with the enforcement authorities to publish new guidance for the public on what the use of reasonable force means in practice.

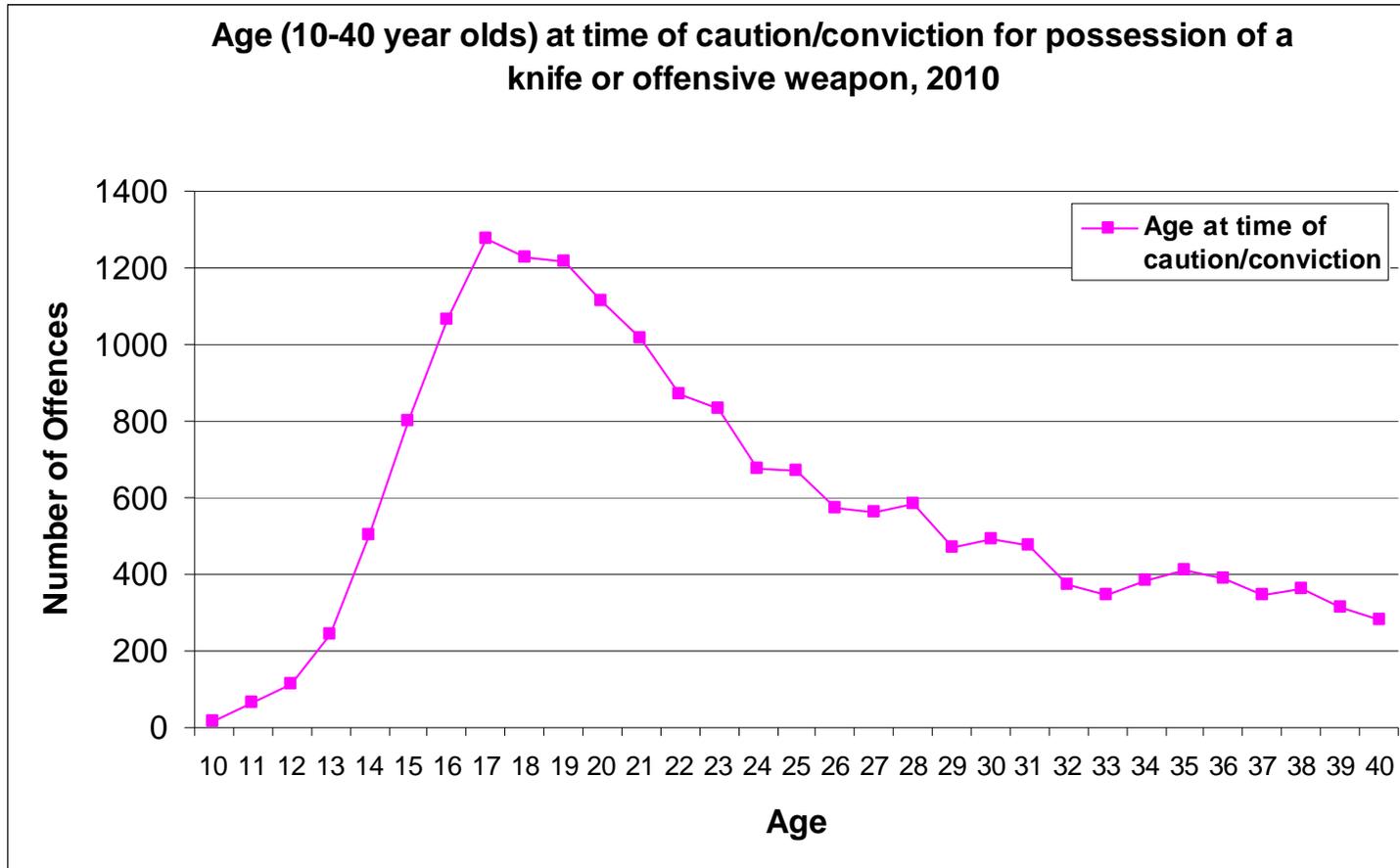
## **Monitoring**

We will be monitoring the implementation of these reforms for positive, negative and mixed equality effects. Royal Assent is expected in spring 2012, with implementation to follow at a later date. We would require a full year's data on a number of protected characteristics following implementation on which to base a review.

**Alternative versions of the document will be considered on request.**

# ANNEX A: EVIDENCE

Figure 1



**Table 1 Proportion of adults who were victims of all BCS crime and personal crime by personal characteristics**

Percentages	England and Wales, 2010/11 BCS		
	All BCS crime	Personal crime	Unweighted base
<i>% victims once or more:</i>			
<b>ALL ADULTS</b>	<b>21.5</b>	<b>5.9</b>	<b>46,754</b>
16-24	31.8	14.0	3,885
25-34	26.6	8.1	6,464
35-44	24.7	5.4	7,976
45-54	22.1	4.3	7,805
55-64	17.3	3.1	8,139
65-74	11.0	2.1	6,577
75+	7.8	1.4	5,908
<b>Men</b>	<b>22.6</b>	<b>6.5</b>	<b>21,076</b>
16-24	33.1	15.7	1,805
25-34	27.5	8.8	2,835
35-44	25.8	5.9	3,599
45-54	21.5	4.5	3,629
55-64	18.2	3.2	3,782
65-74	11.9	1.9	3,041
75+	8.6	0.8	2,385
<b>Women</b>	<b>20.5</b>	<b>5.3</b>	<b>25,678</b>
16-24	30.4	12.2	2,080
25-34	25.6	7.3	3,629
35-44	23.6	4.8	4,377
45-54	22.7	4.1	4,176
55-64	16.5	3.1	4,357
65-74	10.1	2.3	3,536
75+	7.2	1.9	3,523
<b>Ethnic group</b>			
White	21.1	5.6	42,991
Non-White	24.9	7.5	3,687
<i>Mixed</i>	29.5	10.8	350
<i>Asian or Asian British</i>	25.6	7.0	1,676
<i>Black or Black British</i>	22.7	6.9	1,006
<i>Chinese or other</i>	23.5	8.5	655
<b>Marital status</b>			
Married	18.8	3.3	21,755
Cohabiting	26.5	6.4	4,176
Single	27.9	11.6	9,828
Separated	24.4	7.7	1,560
Divorced	21.1	5.9	4,244
Widowed	9.2	2.5	5,173
<b>Long-standing illness or disability</b>			
Long-standing illness or disability	20.1	5.5	13,793
<i>Limits activities</i>	19.4	5.3	9,879
<i>Does not limit activities</i>	21.7	5.7	3,909
No long-standing illness or disability	22.0	6.0	32,883

Source:  
Crime in England and Wales 2010/11

**Table 2 Proportion of adults who were victims of violence by offence type and personal characteristics**

Percentages	England and Wales, 2010/11 BCS					Unweighted base
	All violence <sup>1</sup>	Wounding	Assault with minor injury	Assault without injury	Robbery	
<i>% victims once or more</i>						
<b>ALL ADULTS</b>	3.1	0.8	0.9	1.2	0.5	46,754
16-24	8.8	2.6	2.4	3.0	1.5	3,885
25-34	4.4	1.2	1.3	1.6	0.6	6,464
35-44	2.8	0.7	0.8	1.2	0.2	7,976
45-54	2.2	0.5	0.5	0.9	0.3	7,805
55-64	1.3	0.2	0.3	0.6	0.2	8,139
65-74	0.5	0.1	0.1	0.3	0.0	6,577
75+	0.2	0.0	0.0	0.1	0.0	5,908
<b>Men</b>	4.1	1.1	1.1	1.7	0.6	21,076
16-24	11.9	3.4	3.0	4.5	2.1	1,805
25-34	5.5	1.6	1.4	2.2	0.7	2,835
35-44	3.7	0.9	1.1	1.6	0.3	3,599
45-54	2.4	0.5	0.6	1.1	0.3	3,629
55-64	1.6	0.3	0.3	0.9	0.2	3,782
65-74	0.5	0.0	0.1	0.3	0.0	3,041
75+	0.3	0.1	0.0	0.2	0.0	2,385
<b>Women</b>	2.2	0.6	0.7	0.8	0.3	25,678
16-24	5.5	1.8	1.8	1.5	1.0	2,080
25-34	3.4	0.8	1.2	1.1	0.5	3,629
35-44	2.0	0.5	0.5	0.9	0.1	4,377
45-54	1.9	0.5	0.5	0.7	0.4	4,176
55-64	1.0	0.1	0.2	0.4	0.2	4,357
65-74	0.4	0.1	0.1	0.2	0.1	3,536
75+	0.2	0.0	0.1	0.0	0.0	3,523
<b>Ethnic group</b>						
White	3.0	0.8	0.9	1.2	0.4	42,991
Non-White	3.9	1.0	0.5	1.7	0.9	3,687
Mixed	7.1	1.0	1.2	3.3	2.2	350
Asian or Asian British	3.9	1.2	0.5	1.7	0.7	1,676
Black or Black British	3.2	1.0	0.5	0.8	0.8	1,006
Chinese or other	3.3	0.4	0.0	2.1	0.8	655
<b>Marital status</b>						
Married	1.5	0.3	0.4	0.7	0.2	21,755
Cohabiting	3.7	0.8	1.1	1.6	0.5	4,176
Single	6.8	2.1	1.9	2.4	1.1	9,828
Separated	4.0	1.2	1.3	1.2	0.2	1,560
Divorced	3.3	1.1	0.7	1.2	0.4	4,244
Widowed	0.5	0.1	0.1	0.2	0.1	5,173
<b>Long-standing illness or disability</b>						
Long-standing illness or disability	3.0	0.9	0.7	1.2	0.5	13,793
Limits activities	2.7	0.8	0.7	1.0	0.4	9,879
Does not limit activities	3.5	1.0	0.6	1.6	0.5	3,909
No long-standing illness or disability	3.2	0.8	0.9	1.2	0.4	32,883

Source:  
Crime in England and Wales 2010/11

**Table 3 Proportion of households that were victims of burglary by household characteristics**

Percentages	England and Wales, 2010/11 BCS			
	Burglary	Burglary with entry	Attempted burglary	Unweighted base
<b>ALL HOUSEHOLDS</b>	2.6	1.6	1.1	46,728
<b>Sex of household reference person</b>				
Male	2.4	1.4	1.0	28,086
Female	2.8	1.8	1.1	18,642
<b>Age of household reference person</b>				
16-24	6.4	4.6	2.1	1,631
25-34	3.4	1.9	1.6	5,868
35-44	2.9	1.7	1.3	8,458
45-54	2.6	1.6	1.1	9,111
55-64	2.1	1.3	0.9	8,603
65-74	1.2	0.8	0.4	6,703
75+	1.4	0.9	0.5	6,243
<b>Structure of household</b>				
Single adult & child(ren)	5.6	3.2	2.6	2,448
Adults & child(ren)	2.8	1.7	1.2	9,876
Adult(s) & no children	2.3	1.4	0.9	34,404

Source:  
Crime in England and Wales 2010/11

Table 4 Proportion of adults who were victims of theft from the person by personal characteristics

Percentages	England and Wales, 2010/11 BCS	
	Theft from person	Unweighted base
<b>ALL ADULTS</b>	1.1	46,754
<b>Age</b>		
16-24	2.5	3,885
25-34	1.5	6,464
35-44	0.9	7,976
45-54	0.7	7,805
55-64	0.7	8,139
65-74	0.8	6,577
75+	0.7	5,908
<b>Men</b>	0.9	21,076
16-24	2.0	1,805
25-34	1.5	2,835
35-44	0.8	3,599
45-54	0.5	3,629
55-64	0.4	3,782
65-74	0.5	3,041
75+	0.2	2,385
<b>Women</b>	1.4	25,678
16-24	3.0	2,080
25-34	1.5	3,629
35-44	1.0	4,377
45-54	1.0	4,176
55-64	0.9	4,357
65-74	1.0	3,536
75+	1.1	3,523
<b>Ethnic group</b>		
White	1.0	42,991
Non-White	2.1	3,687
Mixed	1.1	350
Asian or Asian British	1.7	1,676
Black or Black British	2.3	1,006
Chinese or other	3.4	655
<b>Marital status</b>		
Married	0.7	21,755
Cohabiting	1.0	4,176
Single	2.2	9,828
Separated	1.4	1,560
Divorced	1.0	4,244
Widowed	1.0	5,173
<b>Long-standing illness or disability</b>		
Long-standing illness or disability	1.1	13,793
Limits activities	1.2	9,879
Does not limit activities	0.9	3,909
No long-standing illness or disability	1.2	32,883

Source:  
Crime in England and Wales 2010/11

**Table 5 Proportion of adults who were victims of crime by religion**

Percentages	England and Wales, 2006/07 BCS			
	Violent crime	Personal crime	All BCS crime	Unweighted base <sup>1</sup>
<b>Religion</b>				
Christian	3	6	23	37,482
Buddhist	3	5	20	244
Hindu	2	4	22	389
Muslim	4	7	27	879
Other	5	9	27	849
No religion	6	9	29	7,132

1. Unweighted base relates to 'Personal crime'.

Source: Home Office Statistical Bulletin 19/07: Attitudes, Perceptions and Risks of Crime: Supplementary Volume 1 to Crime in England and Wales 2006/07

**Table 6 Proportion of adults who were victims of intimate violence by sexual orientation**

Percentages	England and Wales, 2007/08 and 2008/09 BCS			
	Domestic abuse <sup>1</sup>		Unweighted base	
	Men	Women	Men	Women
<b>Sexual Orientation</b>				
Heterosexual/straight	4	6	20,892	24,795
Gay or bisexual	9	17	512	473
Don't know/Don't wish to answer	8	7	705	886

1. Only covers victims aged 16-59. This data excludes stalking as questions on stalking were not included in the 2007/08 BCS.

Source: Home Office Statistical Bulletin 01/10: Homicides, Firearms offences and Intimate Violence 2008/09: Supplementary Volume 2 to Crime in England and Wales 2008/09

**Table 7 Proportion of children aged 10 to 15 who were victims of BCS personal crime once or more in the last year**

Percentages	England and Wales, 2010/11 BCS	
	Preferred measure <sup>1</sup>	Broad measure <sup>1</sup>
All violence	7	12
Personal theft	5	6
Vandalism to personal property <sup>2</sup>	0	2
<b>All crime experienced by children aged 10-15</b>	<b>12</b>	<b>17</b>
<i>Unweighted base</i>	<i>3,849</i>	<i>3,849</i>

1. The 'Preferred measure' takes into account factors identified as important in determining the severity of an incident (such as level of injury, value of item stolen or damaged, relationship with the perpetrator) while the 'Broad measure' counts all incidents which would be legally defined as crimes and therefore may include low-level incidents between children.

2. These offences are designated as 'household' offences for adults on the BCS (respondents reply on behalf of the household) but are presented here as 'personal' offences when the property stolen or damaged solely belonged to the child respondent. This broadens the scope of personal victimisation but may also result in double-counting of offences on the adult survey; the extent to which this happens will be evaluated in the future.

Source: Home Office Statistical Bulletin 10/11: Crime in England and Wales 2010/11: Findings from the British Crime Survey and Police Recorded Crime

**Table 8 Proportion of children aged 10 to 15 who were victims of BCS personal crime once or more in the last year, by age group**

Percentages	England and Wales, January to December 2009 BCS			
	All incidents that would be a crime in law		Incidents the victim perceived as a crime	
	Age 10 to 12	Age 13 to 15	Age 10 to 12	Age 13 to 15
Theft from the person	1	2	0	1
Other theft of personal property	5	5	2	3
All violence	21	19	3	4
<b>All personal crime</b>	<b>18</b>	<b>17</b>	<b>5</b>	<b>7</b>
<i>Unweighted base</i>	<i>1,733</i>	<i>1,928</i>	<i>1,733</i>	<i>1,928</i>

Source: Home office Statistical Bulletin 11/10: Experimental statistics on victimisation in children aged 10 to 15: Findings from the British Crime Survey for the year ending December 2009

**Table 9: Persons (18 and over) sentenced at all courts for indictable offences by age 2010**

England and Wales		
	Community Order	Total sentenced
<u>Age</u>		
18 - 20	18%	15%
21 - 24	18%	18%
25 - 29	19%	19%
30 - 39	26%	27%
40 - 49	14%	15%
50 - 59	4%	5%
60+	1%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 10: Persons (18 and over) sentenced at all courts for indictable offences by ethnicity 2010**

England and Wales		
	Community Order	Total sentenced
<b>Ethnicity</b>		
White	79%	75%
Black	7%	9%
Asian	4%	5%
Other	1%	2%
Unknown	9%	10%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 11: Persons (18 and over) sentenced at all courts for all offences by sex 2010**

England and Wales		
	Community Order	Total sentenced
<b>Sex</b>		
Male	83%	74%
Female	16%	23%
Non specified	1%	3%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 12: Court orders terminated in 2010, by reason for termination and age**

	18-20	21-24	25-29	30-39	40-49	50-59	60 and over	All
<b>Community Order</b>								
Expired (normal)	46%	50%	51%	56%	61%	64%	66%	53%
Completed (early good progress)	11%	12%	11%	11%	13%	16%	17%	12%
Revoked (failure to comply)	22%	18%	16%	13%	9%	5%	3%	15%
Revoked (further offence)	12%	10%	11%	11%	7%	5%	3%	10%
Terminated (other reasons)	10%	10%	10%	10%	9%	10%	10%	10%
<b>All</b>	<b>100%</b>							
<b>SSO</b>								
Expired (normal)	49%	54%	53%	56%	63%	67%	69%	56%
Completed (early good progress)	9%	10%	11%	11%	12%	14%	15%	11%
Revoked (failure to comply)	19%	15%	13%	10%	7%	4%	2%	12%
Revoked (further offence)	16%	15%	17%	16%	11%	7%	5%	15%
Terminated (other reasons)	7%	6%	7%	6%	7%	7%	10%	7%
<b>All</b>	<b>100%</b>							

Table 13: Court orders terminated in 2010, by reason for termination and ethnic group

	White	Mixed	Black or Black British	Asian or Asian British	Chinese and Other ethnic group	Refusal	No ethnic code	All
<b>Community Order</b>								
Expired (normal)	53%	53%	58%	58%	60%	59%	51%	53%
Completed (early good progress)	12%	9%	10%	14%	14%	7%	20%	12%
Revoked (failure to comply)	15%	19%	16%	12%	12%	17%	11%	15%
Revoked (further offence)	10%	10%	9%	8%	6%	8%	3%	10%
Terminated (other reasons)	10%	9%	7%	8%	8%	9%	14%	10%
<b>All</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>SSO</b>								
Expired (normal)	55%	53%	59%	59%	56%	67%	44%	56%
Completed (early good progress)	10%	9%	11%	13%	17%	9%	25%	11%
Revoked (failure to comply)	12%	14%	11%	10%	9%	10%	6%	12%
Revoked (further offence)	15%	16%	13%	12%	11%	10%	8%	15%
Terminated (other reasons)	7%	7%	5%	7%	7%	5%	17%	7%
<b>All</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Offender Management Caseload Statistics 2010

Table 14: Court orders terminated in 2010, by reason for termination and sex

	Community Order	Suspended Sentence Order
<b>Males and Females</b>		
Ran their full course	53%	56%
<b>Terminated early for:</b>		
Good progress	12%	11%
Failure to comply with requirements	15%	12%
Conviction of an offence	10%	15%
Other reasons	10%	7%
<b>All Community orders (=100%)</b>	<b>100%</b>	<b>100%</b>
<b>Males</b>		
Ran their full course	53%	55%
<b>Terminated early for:</b>		
Good progress	12%	11%
Failure to comply with requirements	15%	12%
Conviction of an offence	11%	16%
Other reasons	10%	7%
<b>All Community orders (=100%)</b>	<b>100%</b>	<b>100%</b>
<b>Females</b>		
Ran their full course	57%	62%
<b>Terminated early for:</b>		
Good progress	12%	12%
Failure to comply with requirements	14%	9%
Conviction of an offence	8%	11%
Other reasons	10%	6%
<b>All Community orders (=100%)</b>	<b>100%</b>	<b>100%</b>

Source: Offender Management Caseload Statistics 2010

**Table 15: Persons (18 and over) sentenced at all courts for indictable offences by age 2010**

England and Wales		
	<b>Suspended sentence</b>	<b>Total sentenced</b>
<u>Age</u>		
18 - 20	13%	15%
21 - 24	19%	18%
25 - 29	19%	19%
30 - 39	27%	27%
40 - 49	16%	15%
50 - 59	5%	5%
60+	2%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 16: Persons (18 and over) sentenced at all courts for indictable offences by ethnicity 2010**

England and Wales		
	<b>Suspended sentence</b>	<b>Total sentenced</b>
<u>Race</u>		
White	75%	75%
Black	8%	9%
Asian	5%	5%
Other	2%	2%
Unknown	10%	10%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 17: Persons (18 and over) sentenced at all courts for all offences by sex 2010**

England and Wales		
	<b>Suspended sentence</b>	<b>Total sentenced</b>
<u>Sex</u>		
Male	85%	74%
Female	15%	23%
Non specified	0%	3%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 18: Requirements commenced under Community Orders and Suspended Sentence Orders by age, 2010**

	18-20	21-24	25-29	30-39	40-49	50-59	60 and over	Total
<b>Community Order</b>	<b>18%</b>	<b>19%</b>	<b>18%</b>	<b>25%</b>	<b>14%</b>	<b>4%</b>	<b>1%</b>	<b>100%</b>
Accredited Program	17%	19%	19%	25%	15%	5%	2%	100%
Drug treatment	5%	14%	25%	40%	15%	2%	0%	100%
Alcohol treatment	8%	13%	16%	31%	24%	7%	1%	100%
Mental Health	10%	17%	17%	27%	20%	7%	2%	100%
<b>Suspended Sentence Order</b>	<b>16%</b>	<b>20%</b>	<b>19%</b>	<b>25%</b>	<b>14%</b>	<b>4%</b>	<b>1%</b>	<b>100%</b>
Accredited Program	17%	22%	20%	24%	13%	4%	1%	100%
Drug treatment	5%	13%	24%	44%	13%	1%	0%	100%
Alcohol treatment	7%	16%	17%	29%	23%	6%	1%	100%
Mental Health	9%	15%	21%	26%	23%	5%	2%	100%

Source: Further breakdown analysis of Offender Management Caseload Statistics 2010

**Table 19: Requirements commenced under Community Orders and Suspended Sentence Orders by ethnicity, 2010**

	White	Black or Black British	Asian or Asian British	Chinese or Other ethnic group	Mixed	Not Stated	Missing	Total
<b>Community Orders</b>	<b>85%</b>	<b>5%</b>	<b>4%</b>	<b>1%</b>	<b>3%</b>	<b>1%</b>	<b>1%</b>	<b>100%</b>
Accredited Program	86%	5%	4%	1%	3%	1%	1%	100%
Drug treatment	87%	5%	4%	1%	3%	1%	1%	100%
Alcohol treatment	91%	2%	2%	1%	2%	1%	1%	100%
Mental Health	73%	12%	7%	1%	3%	2%	1%	100%
<b>Suspended Sentence Orders</b>	<b>81%</b>	<b>7%</b>	<b>5%</b>	<b>1%</b>	<b>3%</b>	<b>1%</b>	<b>1%</b>	<b>100%</b>
Accredited Program	83%	7%	5%	1%	3%	1%	1%	100%
Drug treatment	85%	5%	4%	1%	4%	1%	0%	100%
Alcohol treatment	89%	3%	3%	1%	2%	1%	1%	100%
Mental Health	74%	13%	4%	2%	3%	2%	0%	100%

Source: Further breakdown analysis of Offender Management Caseload Statistics 2010

**Table 20: Requirements commenced under Community Orders and Suspended Sentence Orders by gender, 2010**

	Male	Female	Total
<b>Community Order</b>	<b>85%</b>	<b>15%</b>	<b>100%</b>
Accredited Program	91%	9%	100%
Drug treatment	79%	21%	100%
Alcohol treatment	83%	17%	100%
Mental Health	83%	17%	100%
<b>Suspended Sentence Order</b>	<b>87%</b>	<b>13%</b>	<b>100%</b>
Accredited Program	94%	6%	100%
Drug treatment	82%	18%	100%
Alcohol treatment	86%	14%	100%
Mental Health	84%	16%	100%

Source: Further breakdown analysis of Offender Management Caseload Statistics 2010

**Table 21: Young people sentenced for indictable offences by age 2010**

England and Wales			
	Referral Orders	Conditional Discharge	Total sentenced
<u>Age</u>			
10	0%	0%	0%
11	1%	0%	0%
12	2%	1%	1%
13	7%	2%	4%
14	14%	7%	10%
15	22%	17%	20%
16	26%	30%	28%
17	28%	43%	36%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 22: Young people sentenced for indictable offences by ethnicity 2010**

England and Wales			
	Referral Orders	Conditional Discharge	Total sentenced
<u>Ethnicity</u>			
White	71%	78%	73%
Black	14%	11%	13%
Asian	6%	3%	5%
Other	1%	1%	1%
Unknown	8%	7%	8%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 23: Young people sentenced for all offences by sex 2010**

England and Wales			
	Referral Orders	Conditional Discharge	Total sentenced
<u>Sex</u>			
Male	80%	85%	84%
Female	19%	15%	15%
Non specified	0%	0%	1%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 24: Young people sentenced for indictable offences by age 2010**

	<b>YROs</b>	<b>All sentences</b>
10	0%	0%
11	0%	0%
12	1%	1%
13	4%	4%
14	9%	10%
15	19%	20%
16	29%	28%
17	39%	36%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 25: Young people sentenced for indictable offences by ethnicity 2010**

	<b>YRO</b>	<b>All sentences</b>
White	77%	73%
Black	12%	13%
Asian	3%	5%
Other	1%	1%
Unknown	7%	8%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 26: Young people sentenced by sex 2010**

	<b>YRO</b>	<b>All sentences</b>
Male	85%	84%
Female	14%	15%
Not stated	1%	1%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Criminal Justice Statistics 2010

**Table 27: Persons sentenced to fines for indictable offences at the magistrates court in 2010 by age**

	Fines of £5,000 or more	All fines
<u>Age</u>		
Under 18	3%	3%
18 - 24	0%	34%
25 - 34	38%	32%
35 - 44	19%	19%
45 - 54	21%	8%
55 - 64	13%	2%
65 +	7%	1%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Fines issued to organisations have been excluded  
1% of all fines in the magistrates court and around 60% of all fines of £5,000 or over in the magistrates court are issued to organisations

Source:  
Further analysis of Criminal Justice Statistics 2010

**Table 28: Persons sentenced to fines in the magistrates court in 2010 by gender**

	Fines of £5,000 or more	All fines
<u>Sex</u>		
Female	10%	26%
Male	78%	70%
Non Specified	12%	4%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Fines issued to organisations have been excluded  
1% of all fines in the magistrates court and around 60% of all fines of £5,000 or over in the magistrates court are issued to organisations

Source:  
Further analysis of Criminal Justice Statistics 2010

**Table 29: Defendants aged 18 and over remanded in custody by age**

England and Wales		
	Remanded in custody and not subsequently given an immediate custodial sentence	All remands
Age		
18 - 20	16%	15%
21 - 24	18%	19%
25 - 29	20%	20%
30 - 39	27%	27%
40 - 49	14%	14%
50 - 59	4%	4%
60+	1%	1%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

**Table 30: Defendants aged 18 and over remanded in custody by ethnicity**

England and Wales		
	Remanded in custody and not subsequently given an immediate custodial sentence	All remands
Race		
White	71%	70%
Black	12%	12%
Asian	6%	6%
Other	2%	3%
Unknown	8%	9%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

**Table 31: Defendants aged 18 and over remanded in custody by sex**

England and Wales

	Remanded in custody and not subsequently given an immediate custodial sentence	All remands
<u>Sex</u>		
Male	92%	93%
Female	8%	7%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

**Table 32: Defendants under 18 remanded in custody by age**

England and Wales

	Remanded in custody and not subsequently given an immediate custodial sentence	All remands
<u>Age</u>		
10	-	-
11	0%	0%
12	-	-
13	0%	0%
14	0%	1%
15	9%	11%
16	26%	27%
17	64%	61%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

**Table 33: Defendants under 18 remanded in custody by ethnic appearance**

England and Wales

	<b>Remanded in custody and not subsequently given an immediate custodial sentence</b>	<b>All remands</b>
<u>Race</u>		
White	63%	62%
Black	22%	21%
Asian	6%	6%
Other	2%	2%
Unknown	7%	8%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

**Table 34: Defendants under 18 remanded in custody by sex**

England and Wales

	<b>Remanded in custody and not subsequently given an immediate custodial sentence</b>	<b>All remands</b>
<u>Sex</u>		
Male	97%	97%
Female	3%	3%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

Table 35: Prison population by custody type, nationality and age group, as at 31 March 2011 (England and Wales)

		15 - 17	18 - 20	21 - 24	25 - 29	30 - 39	40 - 49	50 - 59	60 and over	Total
<b>IPP</b>	UK National	0%	3%	17%	22%	27%	20%	7%	3%	100%
	Foreign National	0%	4%	17%	21%	32%	17%	7%	3%	100%
	Not Recorded	0%	4%	15%	27%	27%	15%	4%	8%	100%
<b>All nationalities</b>		<b>0%</b>	<b>3%</b>	<b>17%</b>	<b>22%</b>	<b>27%</b>	<b>20%</b>	<b>7%</b>	<b>3%</b>	<b>100%</b>
<b>Lifers</b>	UK National	0%	2%	7%	12%	26%	30%	16%	8%	100%
	Foreign National	0%	3%	7%	15%	36%	19%	14%	5%	100%
	Not Recorded	0%	0%	11%	11%	25%	42%	11%	0%	100%
<b>All nationalities</b>		<b>0%</b>	<b>2%</b>	<b>7%</b>	<b>12%</b>	<b>27%</b>	<b>29%</b>	<b>16%</b>	<b>7%</b>	<b>100%</b>

Source: Further analysis of Offender Management Caseload Statistics

Table 36: Prison population by custody type, nationality and ethnicity, as at 31 March 2011 (England and Wales)

		White	Mixed	Asian or Asian British	Black or Black British	Chinese or Other	Not stated	Unrecorded	Total
<b>IPP</b>	UK National	79%	4%	3%	13%	0%	0%	1%	100%
	Foreign National	35%	3%	15%	40%	5%	0%	1%	100%
	Not Recorded	65%	4%	0%	27%	0%	0%	4%	100%
<b>All nationalities</b>		<b>76%</b>	<b>4%</b>	<b>4%</b>	<b>15%</b>	<b>1%</b>	<b>0%</b>	<b>1%</b>	<b>100%</b>
<b>Lifers</b>	UK National	80%	3%	5%	11%	0%	0%	0%	100%
	Foreign National	34%	3%	22%	33%	6%	1%	1%	100%
	Not Recorded	69%	3%	8%	8%	3%	3%	6%	100%
<b>All nationalities</b>		<b>75%</b>	<b>3%</b>	<b>7%</b>	<b>13%</b>	<b>1%</b>	<b>0%</b>	<b>0%</b>	<b>100%</b>

Source: Further analysis of Offender Management Caseload Statistics

Table 37: Prison population by custody type, nationality and religion, as at 31 March 2011 (England and Wales)

	IPP				Lifers			
	UK National	Foreign National	Not Recorded	Total	UK National	Foreign National	Not Recorded	Total
Anglican	29%	11%	8%	28%	32%	10%	19%	30%
Free Church	1%	2%	0%	1%	3%	3%	0%	3%
Roman Catholic	17%	24%	19%	18%	16%	21%	6%	17%
Other Christian	3%	5%	4%	3%	3%	6%	6%	3%
Muslim	11%	41%	12%	13%	12%	34%	19%	14%
Hindu	0%	1%	4%	0%	0%	3%	0%	1%
Sikh	0%	1%	0%	0%	1%	5%	0%	1%
Buddhist	4%	2%	0%	3%	6%	5%	11%	6%
Jewish	0%	0%	0%	0%	1%	1%	0%	1%
Mormons	2%	0%	0%	2%	1%	0%	0%	1%
Pagan	1%	0%	4%	1%	2%	1%	0%	2%
Rastafarians	0%	1%	0%	0%	0%	1%	0%	1%
Other non-recognised	0%	0%	0%	0%	0%	0%	0%	0%
No religion	30%	9%	27%	28%	22%	10%	17%	21%
All Others	0%	1%	23%	0%	1%	1%	22%	1%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Offender Management Caseload Statistics

**Table 38: Prison population by custody type, nationality and sex, as at 31 March 2011 (England and Wales)**

		Female	Male	Total
<b>IPP</b>	<b>UK National</b>	2%	98%	100%
	<b>Foreign National</b>	2%	98%	100%
	<b>Not Recorded</b>	0%	100%	100%
<b>All nationalities</b>		2%	98%	100%
<b>Lifers</b>	<b>UK National</b>	3%	97%	100%
	<b>Foreign National</b>	2%	98%	100%
	<b>Not Recorded</b>	0%	100%	100%
	<b>All nationalities</b>	3%	97%	100%

Source: Further analysis of Offender Management Caseload Statistics

**Table 39: IPPs and EPP sentences in 2010, England and Wales**

	Offenders sentenced to custodial sentences for indictable offences 2010	Offenders sentenced to IPPs in 2010	Offenders sentenced to EPPs in 2010	Sentenced prison population (excluding recalls) at 31st March 2011	IPP population at 31st March 2011	IPP releases in 2010
<b>Age</b>						
Under 21	17%	15%	15%	10%	4%	4%
21-24	18%	18%	16%	16%	17%	15%
25-29	20%	16%	18%	18%	22%	32%
30-39	27%	24%	24%	26%	27%	22%
40-49	13%	19%	17%	18%	20%	15%
50+	6%	8%	10%	11%	10%	11%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>Gender</b>						
M	91%	97%	97%	95%	98%	93%
F	9%	3%	3%	5%	2%	7%
Unknown	0%	n/a	n/a	n/a	n/a	n/a
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>Ethnicity</b>						
White	72%	72%	74%	73%	76%	n/a
Mixed	n/a	n/a	n/a	4%	4%	n/a
Black	10%	13%	11%	13%	15%	n/a
Asian	6%	4%	6%	7%	4%	n/a
Other	3%	2%	3%	1%	1%	n/a
Unknown	9%	9%	6%	2%	1%	n/a
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>n/a</b>

Note:

Figures by age for the IPP population are for males only.

Source:

Offenders sentenced to custodial sentences, IPPs and EPPs - Court Proceedings Data  
 Sentenced prison population - Offender Management Caseload Statistics  
 IPP population - Offender Management Caseload Statistics and Public Protection Database  
 IPP releases - Public Protection Database

**Table 40: IPP prison population by religion 31 March 2011  
England and Wales**

Religion	IPP	Sentenced (excluding recalls)
Anglican	28%	25%
Free Church	1%	1%
Roman Catholic	18%	17%
Other Christian	3%	6%
Muslim	13%	12%
Hindu	0%	1%
Sikh	0%	1%
Buddhist	3%	2%
Jewish	0%	0%
Mormons	2%	1%
Pagan	1%	1%
Rastafarians	0%	0%
Other non-recognised	0%	0%
No religion	28%	30%
All Others	0%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source:

Further analysis of Offender Management Caseload Statistics

**Table 41: Disposals given to young people by type and age, 2009/10**

	10	11	12	13	14	15	16	17	Total
<b>Pre-Court</b>									
Police Reprimand	2%	3%	8%	12%	18%	21%	19%	17%	100%
Final Warning	1%	2%	5%	10%	16%	22%	23%	21%	100%
Conditional caution	2%	4%	0%	15%	13%	15%	24%	29%	100%
<b>Total pre-court disposals</b>	<b>1%</b>	<b>3%</b>	<b>7%</b>	<b>11%</b>	<b>18%</b>	<b>21%</b>	<b>21%</b>	<b>19%</b>	<b>100%</b>
<b>Total</b>	<b>1%</b>	<b>1%</b>	<b>4%</b>	<b>7%</b>	<b>13%</b>	<b>20%</b>	<b>24%</b>	<b>28%</b>	<b>100%</b>

Source: Youth Justice Board's Workload Statistics

**Table 42: Disposals given to young people by type and ethnicity, 2009/10**

Disposal type	White	Mixed	Black	Asian	Other	Not Known	Total
<b>Pre-Court</b>							
Reprimand	87%	2%	4%	4%	1%	2%	100%
Final Warning	88%	3%	4%	3%	0%	2%	100%
Conditional Caution	76%	7%	4%	7%	0%	5%	100%
<b>Total pre-court disposals</b>	<b>87%</b>	<b>2%</b>	<b>4%</b>	<b>4%</b>	<b>0%</b>	<b>2%</b>	<b>100%</b>
<b>Total</b>	<b>84%</b>	<b>4%</b>	<b>6%</b>	<b>4%</b>	<b>0%</b>	<b>2%</b>	<b>100%</b>

Source: Youth Justice Board's Workload Statistics

**Table 43: Disposals given to young people by type and sex, 2009/10**

Disposal type	Female	Male	Total
<b>Pre-Court</b>			
Reprimand	35%	65%	100%
Final Warning	26%	74%	100%
Conditional Caution	15%	85%	100%
<b>Total pre-court disposals</b>	<b>32%</b>	<b>68%</b>	<b>100%</b>
<b>Total</b>	<b>22%</b>	<b>78%</b>	<b>100%</b>

Source: Youth Justice Board's Workload Statistics

**Table 44: Sentenced prison reception by nationality and age group, 2008 (England and Wales)**

	15 - 17	18 - 20	21 - 24	25 - 29	30 - 39	40 - 49	50 - 59	60 and over	Total
<b>Total</b>	5%	14%	18%	19%	26%	13%	4%	1%	100%
<b>UK National</b>	6%	15%	18%	19%	25%	13%	3%	1%	100%
<b>Foreign National</b>	2%	8%	16%	22%	32%	15%	4%	1%	100%
<b>Not Recorded</b>	1%	7%	19%	21%	28%	16%	7%	1%	100%

Source: Further analysis of Offender Management Caseload Statistics

**Table 45: Sentenced prison receptions by nationality and ethnicity, 2008 (England and Wales)**

	White	Mixed	Asian or Asian British	Black or Black British	Chinese or Other	Not Stated	Unrecorded	1991 census codes	Total
<b>Total</b>	79%	3%	6%	10%	1%	0%	0%	0%	100%
<b>UK National</b>	84%	3%	5%	8%	0%	0%	0%	0%	100%
<b>Foreign National</b>	42%	3%	17%	28%	9%	0%	0%	0%	100%
<b>Not Recorded</b>	37%	3%	18%	30%	7%	5%	0%	0%	100%

Source: Further analysis of Offender Management Caseload Statistics

**Table 46: Sentenced prison receptions by nationality and religion, 2008 (England and Wales)**

	UK National	Foreign National	Not Recorded	Total
Anglican	27%	12%	18%	25%
Free Church	1%	2%	2%	1%
Roman Catholic	16%	28%	20%	17%
Other Christian	2%	10%	7%	3%
Muslim	6%	23%	25%	8%
Hindu	0%	2%	1%	1%
Sikh	1%	2%	2%	1%
Buddhist	1%	4%	2%	1%
Jewish	0%	0%	1%	0%
Mormons	1%	0%	1%	1%
Pagan	0%	0%	0%	0%
Rastafarians	0%	0%	0%	0%
Other non-recognised	0%	0%	0%	0%
No religion	46%	16%	20%	42%
All Others	0%	0%	1%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Further analysis of Offender Management Caseload Statistics

**Table 47: Sentenced prison reception by nationality and sex, 2008 (England and Wales)**

	Male	Female	Total
<b>Total</b>	91%	9%	100%
<b>UK National</b>	91%	9%	100%
<b>Foreign National</b>	90%	10%	100%
<b>Not Recorded</b>	90%	10%	100%

**Table 48: Persons given cautions by sex 2010/11, England and Wales**

	Conditional cautions	All cautions (excluding motoring offences)
Female	14%	25%
Male	86%	75%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: CPS Conditional Cautioning Data and further analysis of Criminal Justice Statistics

**Table 49: Admissions to NHS hospitals as the result of assault with a sharp object episodes of admitted patient care that ended during 2009-10, England**

	Hospital admissions	General population, E&W (all ages)
<u>Sex</u>		
Female	11%	51%
Male	89%	49%
<b>Total</b>	<b>100%</b>	<b>100%</b>
<u>Age group</u>		
Age 0-14	2%	17%
Age 15-59	96%	60%
Age 60-74	1%	15%
Age 75+	1%	8%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source:

NHS Information Centre Hospital Episode Statistics.

General population figures are 2010 mid-year population estimates (age and gender), Office for National Statistics.

**Table 50: Offences by persons aged 16 and over involving the possession of a knife or offensive weapon resulting in a caution or conviction, by age group, 2010 England and Wales**

Age group	Cautioned or convicted	General population - E&W (aged 16+)
16-17	12%	3%
18-20	18%	5%
21-24	17%	7%
25-29	15%	8%
30-39	20%	16%
40-49	13%	18%
50-59	4%	15%
60+	2%	28%
<b>All</b>	<b>100%</b>	<b>100%</b>

Further breakdown of statistics published in Knife Possession sentencing quarterly brief, April to June 2011

Figures are for England and Wales, and include all 43 police force areas and the British Transport Police

Figures are counts of number of offences

Offences relate to possession offences rather than offences where a knife was used

General population figures are from the mid-2010 population estimates, Office for National Statistics

**Table 51: Offences by persons aged 16 and over involving the possession of a knife or offensive weapon resulting in a caution or conviction by age group, 2010  
England and Wales**

	16-17	18-20	21-24	25-29	30-39	40-49	50-59	60+	Total
Caution	21%	23%	19%	18%	16%	18%	30%	45%	20%
Absolute/conditional discharge	3%	4%	4%	4%	4%	6%	5%	14%	4%
Fine	0%	4%	5%	5%	6%	6%	5%	5%	4%
Community Sentence	60%	28%	28%	25%	25%	26%	21%	10%	30%
Suspended Sentence	0%	14%	15%	16%	16%	18%	15%	13%	14%
Immediate Custody - less than or equal to 6 months	8%	16%	17%	19%	20%	15%	14%	7%	16%
Immediate Custody - greater than 6 months	4%	9%	8%	10%	8%	6%	6%	2%	8%
Other	5%	3%	4%	4%	4%	5%	4%	5%	4%
<b>Total</b>	<b>100%</b>								

Further breakdown of statistics published in Knife Possession sentencing quarterly brief, April to June 2011

Figures are for England and Wales, and include all 43 police force areas and the British Transport Police

Figures are counts of number of offences

Offences relate to possession offences rather than offences where a knife was used

**Table 52: Offences by persons aged 16 and over involving the possession of a knife or offensive weapon resulting in a caution or conviction, by ethnic group, 2010  
England and Wales**

Ethnic	Cautioned or convicted			General population E&W		
	Aged 16-17	Aged 18+	Aged 16+	Aged 16-17	Aged 18+	Aged 16+
White	70%	82%	81%	86%	89%	89%
Mixed	n/a	n/a	n/a	3%	1%	1%
Black	22%	11%	12%	3%	3%	3%
Asian	7%	5%	5%	6%	6%	6%
Other	1%	1%	1%	1%	2%	2%
Unknown	1%	1%	1%	n/a	n/a	n/a
<b>All</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Further breakdown of statistics published in Knife Possession sentencing quarterly brief, April to June 2011

Figures are for England and Wales, and include all 43 police force areas and the British Transport Police

Figures are counts of number of offences

Offences relate to possession offences rather than offences where a knife was used

Ethnicity is based on the police officer's judgement of the offender's ethnicity

General population figures are from the mid-2009 population estimates, Office for National Statistics

As experimental estimates, work on the quality of these statistics is ongoing; these figures are indicative only.

**Table 53: Offences by persons aged 16 and over involving the possession of a knife or offensive weapon resulting in a caution or conviction by ethnic group, 2010  
England and Wales**

	White	Black	Asian	Other	Unknown	Total
Caution	21%	11%	25%	25%	40%	20%
Absolute/conditional discharge	4%	4%	4%	7%	3%	4%
Fine	5%	3%	3%	5%	3%	4%
Community Sentence	29%	35%	28%	20%	29%	30%
Suspended Sentence	14%	15%	12%	18%	10%	14%
Immediate Custody - less than or equal to 6 months	16%	18%	14%	15%	9%	16%
Immediate Custody - greater than 6 months	7%	9%	10%	5%	2%	8%
Other	4%	4%	4%	4%	4%	4%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Further breakdown of statistics published in Knife Possession sentencing quarterly brief, April to June 2011

Figures are for England and Wales, and include all 43 police force areas and the British Transport Police

Figures are counts of number of offences

Offences relate to possession offences rather than offences where a knife was used

Ethnicity is based on the police officer's judgement of the offender's ethnicity

**Table 54: Prison population sentenced with possession of an offensive weapon by religion, 30 June 2011, England and Wales**

Religion	Sentenced prison population	General population	
		England	Wales
Christian	45.2%	68.5%	66.1%
Buddhist	2.2%	0.4%	0.3%
Hindu	0.4%	1.5%	0.5%
Jewish	0.4%	0.5%	0.1%
Muslim	11.5%	4.9%	1.2%
Sikh	0.7%	0.8%	0.1%
Other religious groups	0.4%	1.1%	1.2%
Non-recognised	1.6%	n/a	n/a
Missing	1.4%	n/a	n/a
No religion	36.3%	22.4%	30.6%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Note: Excludes recalls

Source: Further analysis of Offender Management Statistics

General population figures are for all ages and are from the Integrated Household Survey, Office for National Statistics.

Respondents were asked the question 'What is your religion, even if you are not currently practising?'

**Table 55: Offences by persons aged 16 and over involving the possession of a knife or offensive weapon resulting in a caution or conviction, by gender, 2010  
England and Wales**

	Cautioned or convicted			General population E&W		
	Aged 16-17	Aged 18+	Aged 16+	Aged 16-17	Aged 18+	Aged 16+
Male	93%	92%	92%	51%	49%	49%
Female	7%	8%	8%	49%	51%	51%
All	100%	100%	100%	100%	100%	100%

Further breakdown of statistics published in Knife Possession sentencing quarterly brief, April to June 2011

Figures are for England and Wales, and include all 43 police force areas and the British Transport Police

Figures are counts of number of offences

Offences relate to possession offences rather than offences where a knife was used

General population figures are from the mid-2010 population estimates, Office for National Statistics

**Table 56: Offences by persons aged 16 and over involving the possession of a knife or offensive weapon resulting in a caution or conviction, by gender, 2010  
England and Wales**

	Male	Female	Total
Caution	19%	30%	20%
Absolute/conditional discharge	4%	8%	4%
Fine	5%	2%	4%
Community Sentence	30%	30%	30%
Suspended Sentence	14%	11%	14%
Immediate Custody - less than or equal to 6 months	16%	11%	16%
Immediate Custody - greater than 6 months	8%	3%	8%
Other	4%	5%	4%
Total	100%	100%	100%

Further breakdown of statistics published in Knife Possession sentencing quarterly brief, April to June 2011

Figures are for England and Wales, and include all 43 police force areas and the British Transport Police

Figures are counts of number of offences

Offences relate to possession offences rather than offences where a knife was used

**Table 57: Offenders sentenced for dangerous driving who were also proceeded against, but not convicted of, inflicting grievous bodily harm, 2008-2010, England and Wales**

	Offenders sentenced (p)	General population, E&W (aged 10+)
<u>Sex</u>		
Female	4%	51%
Male	96%	49%
<b>Total</b>	<b>100%</b>	<b>100%</b>
<u>Age group</u>		
Under 18	1%	11%
18-20	19%	5%
21-24	24%	6%
25-29	10%	8%
30-39	25%	15%
40-49	13%	17%
50-59	4%	14%
60+	1%	26%
<b>Total</b>	<b>100%</b>	<b>100%</b>
<u>Ethnicity<sup>(1)</sup></u>		
White	69%	89%
Mixed	n/a	1%
Black	6%	3%
Asian	9%	6%
Other	n/a	2%
Unknown	16%	n/a
<b>Total</b>	<b>100%</b>	<b>100%</b>

(p) Provisional data

(1) Officer observed ethnicity

Source:

Further analysis of Criminal Justice Statistics 2010.

General population figures are 2010 mid-year population estimates (age and gender), and 2009 mid-year population estimates (ethnicity), Office for National Statistics.

As experimental estimates, work on the quality of the ethnicity general population statistics is ongoing; these figures are indicative only.

**Table 58: Offenders sentenced for Violence Against the Person, Burglary, Robbery or Theft and Handling; England and Wales, 2010**

	Offenders sentenced	General population, E&W (aged 10+)
<u>Sex</u>		
Female	17%	51%
Male	83%	49%
Not stated	0%	n/a
<b>Total</b>	<b>100%</b>	<b>100%</b>
<u>Age group</u>		
Under 18	14%	11%
18-20	13%	5%
21-24	15%	6%
25-29	17%	8%
30-39	24%	15%
40-49	12%	17%
50-59	3%	14%
60+	1%	26%
<b>Total</b>	<b>100%</b>	<b>100%</b>
<u>Ethnicity<sup>(1)</sup></u>		
White	80%	89%
Mixed	n/a	1%
Black	8%	3%
Asian	4%	6%
Other	1%	2%
Unknown	7%	n/a
<b>Total</b>	<b>100%</b>	<b>100%</b>

(1) Officer observed ethnicity

Source:

Further analysis of Criminal Justice Statistics 2010.

General population figures are 2010 mid-year population estimates (age and gender), and 2009 mid-year population estimates (ethnicity), Office for National Statistics.

As experimental estimates, work on the quality of the ethnicity general population statistics is ongoing; these figures are indicative only.