

Title: Sentencing and Criminal Justice Components of the Legal Aid, Sentencing and Punishment of Offenders Bill IA No: MoJ 119 Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)
	Date: 14/11/2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	Yes/No
			£m In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary?

Despite the ambition and determination of those working within the justice system, too many people reoffend and too much money is spent on dealing with the consequences of high levels of reoffending. Government intervention is required to ensure punishments are robust and demanding and to reduce the level of reoffending. The sentencing framework requires simplification as it is complex, expensive and time-consuming to interpret and administer and is also difficult for the public to understand.

What are the policy objectives and the intended effects?

Our central objectives are to ensure offenders face robust and demanding punishments and to make the public safer by breaking the cycle of crime.

The intended effects of these policies are to ensure that offenders: are punished effectively; pay back to victims and society; and are rehabilitated effectively.

The sentencing framework will seek to achieve a better balance across the purposes of sentencing to support these objectives, maintain fairness and trust in the system and improve value for money.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The policy options which have been considered in this Impact Assessment are:

- Option 0: Do Nothing.
- Implement the proposals set out in part 3 of the Legal Aid, Sentencing and Punishment of Offenders Bill.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?				Yes / No / N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:	
				Non-traded:	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ Lord McNally _____ Date: 16/11/2011

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	Unknown	Unknown	Unknown

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	Unknown	Unknown	Unknown

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO? Yes/No	Measure qualifies as IN/OUT/Zero net cost
Costs:	Benefits:	Net:		

Introduction

1. 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 offenders are punished, sentenced and rehabilitated. 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 impact assessment accompanies introduction of the bill to the House of Lords in October 2011.
2. 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.
3. There have been 6 Impact Assessments (IAs)¹ published on the sentencing and criminal justice provisions of the LASPO bill:
 - Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders consultation IA
 - Consultation response IA
 - Dangerous driving IA
 - Options for dealing with squatting IA
 - Review of Indeterminate Sentences for Public Protection IA
 - Estimated cost impact of a minimum sentence for aggravated knife offences IA

This IA consolidates these previous IAs, summarising them and updating with the most recent data.

4. This IA is intended as a companion document to the Legal Aid, Sentencing and Punishment of Offenders Bill Explanatory Notes document. The IA follows the structure of the bill as it enters the Lords with the policies arranged under the headings in the bill.
5. This IA should be seen as supporting the development of the LASPO Bill as it is introduced to the House of Lords.

Principles Underpinning CBA

6. This Impact Assessment identifies, as far as possible, both monetised and non-monetised impacts with the aim of understanding what the net impact on society might be from the sentencing and criminal justice proposals included in the Legal Aid, Sentencing and Punishment of Offenders Bill.
7. Cost benefit analysis in this Impact Assessment is interpreted broadly, to include both monetised and non-monetised costs and benefits, with due weight given to those that are non-monetised.

Organisations in the Scope of the Proposals

8. The main groups affected by these proposals are:
 - Ministry of Justice (MoJ) and arms length bodies, including:
 - National Offender Management Service (Prison and Probation services)
 - Her Majesty's Courts and Tribunals Service
 - Legal Services Commission

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

- Sentencing Council
- Crown Prosecution Service
- Home Office
- Department for Work and Pensions
- Department of Health
- National Health Service
- HM Treasury
- Police Forces
- The Judiciary
- National Treatment Agency
- Local Authorities in England and Wales
- National Assembly for Wales
- Potential non-public sector rehabilitation service providers
- Potential victims of crime (individuals, households and businesses)
- Members of the public
- Offenders
- Squatters*
- Homelessness charities*
- Property owners*
- Bailiffs*
- Court enforcement officers*
- Live-in-guardians*

Rationale

9. Despite the ambition and determination of those working within the justice system, too many people reoffend and too much money is spent on dealing with the consequences of high levels of reoffending. Government intervention is required to ensure punishments are robust and demanding and to reduce the level of reoffending. The sentencing framework requires simplification as it is complex, expensive and time-consuming to interpret and administer and is also difficult for the public to understand.
10. The provisions in Part 3 of the Bill are designed to deliver a more robust, transparent and sensible sentencing framework – one that punishes offenders severely and protects the public properly.
11. For the public to have any confidence in the penal system, they need to see transparent, open and honest justice being done. But for the system to work, it needs to free up those who work within to focus on what really matters: tackling the reoffending that creates new victims of crime every day.
12. These proposals are designed to balance a desire to see increasing public confidence in the system by enabling courts to impose tougher sanctions, with sensible reform to make the system more efficient and effective. The bill provisions will lead to increased protection for our citizens, and enable people to break free from the vicious cycle of offending and re-offending, which does so much to damage public confidence in our system of justice.

Structure of the Impact Assessment

13. The impact assessment follows the structure of part 3 of the LASPO bill and presents the clauses in the order in which they appear in the Bill.

* These groups are affected by the squatting policy.

Base Case / Option 0

14. The 'base case' sets out the assumptions the government has made about future trends if no action is taken and the policy proposals as set out in 'Breaking the Cycle' and in subsequent amendments are not implemented.
15. The prison projections published on 27th October 2011 reflect past trends in defendant volumes, characteristics and use of the Criminal Justice System (CJS) and different assumptions about future sentencing behaviour. The projections publication produces projections under three scenarios:
 - lower – where the percentage of convictions which are custodial decreases;
 - medium – where the percentages of convictions which are custody is unchanged; and
 - higher – where the percentage of convictions which are custody increases
16. The medium prison population projection is used as the base case.
17. Using the medium projection of prison population, without any policy changes, the prison population is expected to reach 87,800 by the end of the current spending review period (end of 2014/15).²

BILL PROPOSALS

1) Sentencing

a) General

The provisions will:

- create a positive duty for courts to consider making a compensation order in all cases where harm, damage or loss is caused to an identified victim; and
- simplify the duties on courts to give reasons for and explain the effect of a sentence for both adults and young offenders.

b) Community Orders

The provisions will:

- extend the current provision specifying when the requirements of a community order must have been complied with to include an express provision about when the order itself comes to an end; and
- provide courts with an additional option of imposing a fine of up to £2,500 for breach of the order.

c) Suspended sentences

The provisions will:

- provide courts with greater discretion in using suspended sentences so that they are able to suspend a sentence for a period of up to two years,
- provide courts with discretion as to whether or not to impose community requirements; and
- provide courts with additional option of imposing a fine for breach of the order.

d) Requirements under community orders and suspended sentence orders

We will:

- reduce the number of matters the court must specify when imposing a programme requirement;
- create a single set of rules for the operation of Home Detention Curfew. Increase the number of hours in any day for which the court may impose a curfew from 12 to 16 hours and the maximum period for which a curfew may be imposed from 6 to 12 months;
- create a new requirement which may be imposed as part of a community order or suspended sentence order to prohibit travel outside the UK;

² MoJ (2011) Prison Population Projections 2011-17

- remove the need for the court to have evidence from a medical practitioner approved in accordance with s12 of the Mental Health Act 1983 before the court can impose a mental health treatment requirement for a community order or a suspended sentence to allow for a wider range of medical practitioners to advise the court on this basis;
- provide greater discretion to courts in imposing a drug rehabilitation requirement by removing the minimum treatment and testing period; and
- provide greater discretion to courts in imposing an alcohol rehabilitation requirement by removing the minimum treatment and testing period.

e) Overseas community orders and service community orders

We will:

- make changes in armed forces legislation in line with the changes made to community orders and suspended sentence orders.

f) Youth Sentences

We Will:

- Remove the current restrictions on the repeated use of the Referral order and allow courts greater flexibility to give a young person who pleads guilty to their first offence, a conditional discharge as an alternative to a referral order;
- Provide further powers to the courts to deal with breach of a Detention and Training Order;
- Increase the number of hours in any day for which the court may impose a youth rehabilitation order curfew requirement from 12 to 16 hours and the maximum duration of a curfew from 6 to 12 months;
- Remove the condition that a court can only impose a mental health treatment requirement for a youth rehabilitation order on the evidence of an approved section 12 of the Mental Health Act medical practitioner;
- Allow the courts to extend a youth rehabilitation order by up to six months in order to allow additional time for requirements to be completed; and
- Increase the maximum fine that can be imposed by the courts for breach of a youth rehabilitation order to £2,500.

g) Fines

We will:

- Remove the maximum fine limit in the magistrates' court for offences which carry a £5,000 maximum penalty;
- Provide the power to increase certain other fines on conviction by a magistrates' court; and
- Provide the power to amend the standard scale of fines for summary offences.

h) Repeal of Uncommenced Provisions

We will:

- Repeal those sections of the Criminal Justice Act 2003 Act which would have introduced custody plus and intermittent custody orders.

Costs

18. Where policies have significant costs and benefits to the CJS, these have been identified and where appropriate monetised. All other policies outlined are not expected to impose significant costs and benefits.

Suspended Sentence Orders

19. The Sentencing Council³ undertook a resource assessment of the potential impacts of the extension of the maximum length of sentence that can be suspended, modelling two possible extreme scenarios.

³ Sentencing Council (2011) "Section 132 report: Resource Impact of the Government's proposals on Suspended Sentence Orders"

- In scenario one, the report looks at the effect of a move away from the use of immediate custodial sentences for one to two year sentences towards SSOs. This is estimated to produce a prison saving of £14m per year and a probation cost of £3m a year.
- In scenario two, the report looks at the effect of an increase in the custodial term attached to a SSO for some offenders who might have received a SSO of one year. This is estimated to lead to £0.5m increase in prison costs a year through breach and a negligible impact on probation costs.

20. However, there is mixed evidence from the research undertaken by the Sentencing Council about whether the increased sentence length will be used widely and whether there will be significant shifts from other sentence disposals. Therefore, our best estimate is that while there is a possibility that there could be resource impacts of this policy, we expect that increasing the maximum sentence that can be suspended will have a negligible impact.

Curfews

21. It is likely that there will be a minimal additional cost through increasing the maximum numbers of hours per day and the maximum period for which a curfew can be imposed. However there is the potential for costs to be incurred. 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 (approximately 2,500 adults and 500 juveniles in 2010/11) now receive longer under the new maxima, it is estimated that this might impose a cost of up to approximately £1.5m a year through increased monitoring and caseload. This does not take into account the possibility of increased levels of breach which could lead to increased court and disposal costs. Similarly it does not take into account the possibility that sentencers might issue these longer curfews in place of more expensive disposals.

22. Therefore, our best estimate is that there will be minimal additional cost.

Benefits

23. The sentencing policy proposals are expected to deliver a wide range of benefits to the CJS:

Suspended Sentence orders

24. The suspended sentence proposal will provide greater choice for sentencers. It could also lead to financial savings due to reduced pressure on probation services from a reduced number of community requirements imposed. However, as stated above, there is mixed evidence about whether the increased sentence length will be used widely, and therefore any savings are unlikely to be substantial. The benefits of this policy are therefore to provide sentencers with greater discretion.

Curfews

25. The curfew proposal will provide increased flexibility for sentencers to impose a punishment that is suitably long or intensive.

Magistrates' Court fine limits

26. In the absence of general changes in sentencers' behaviour, only those fines currently at maximum are expected to be affected. Analysis of Magistrates' Court fines in 2010 found that substantially less than 1% of fines are at or close to the maximum. For this small number of offenders or organisations fined by the court there could be increased revenue, although with the potential for additional enforcement costs. Therefore, it is not anticipated that there will be a significant impact of raising the fine limits at the magistrates' court.

Youth Sentencing

27. On youth sentencing, our proposals will allow greater discretion for sentencers to sentence young people based upon the individual case. The proposals may lead to some savings should they result in increased use of conditional discharges where referral orders would previously have been handed down, or should they lead to repeated use of referral orders instead of the Youth Rehabilitation Order.

Other Policies

28. The other policies in the sentencing section are not expected to have major costs and benefits.

2) Bail

We will:

- Amend the Bail Act 1976 so that the certain exceptions to the presumption that bail should be granted to an adult defendant will not apply where there is no real prospect that the defendant will be sentenced to a custodial sentence. Courts will still have the power to remand a defendant in custody in cases where there is a risk of domestic violence.

Costs

29. We do not expect there to be any costs associated with the proposal concerning remand.

Benefits

30. Our best evidence to date suggests that reform of remand will save £40m p.a. by the final year of the spending period through a reduction in demand for prison places of around 1,300 places.

31. Our best evidence to date suggests that reform of remand could result in 9,200 fewer defendants being remanded. This estimate was 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.

3) Remands of Children Otherwise than on Bail

a) Remands

We will:

- Reform secure remand for young people so that all children under 18 are treated in the same way for remand purposes, rather than treating 17 year olds as adults.

b) Remands of youths to local authority accommodation

We will:

- Amend arrangements for remand to local authority accommodation;
- Allow courts to impose conditions on a child remanded to local authority accommodation;
- Amend the requirements for electronic monitoring in non extradition cases;

- Amend the requirements for electronic monitoring in extradition cases;
- Restate further provisions about electronic monitoring relating to who is responsible for the monitoring; and
- Restate the power of arrest without a warrant a child for whom there is reasonable grounds for suspecting breach of conditions of remand to local authority care.

c) Remands to Youth Detention Accommodation

We will:

- Set out the conditions for a remand to youth detention accommodation for young people concerned in either criminal or extradition proceedings;
- Set out the general provisions for arrangements when a child is remanded to youth detention accommodation;
- Provide the Secretary of State with the power to direct that a child who is remanded to youth detention accommodation be accommodated in a specific establishment; and
- Provide that any child remanded to youth detention accommodation is treated as 'looked after'.

d) Supplementary youth remand

We will:

- Make various amendments and repeals which are consequential on the new scheme for remands of children otherwise than on bail; and
- Allow the Secretary of State to put in place financial arrangements so that local authorities may be given greater financial responsibility for the costs associated with remands to youth detention accommodation.

Costs

32. Where policies have significant costs and benefits to the CJS, these have been identified and where appropriate monetised. All other policies outlined are not expected to impose significant costs and benefits.
33. The provision of looked after child status to all remanded young people, rather than only those currently remanded under Court Ordered Secure Remand, will lead to additional costs flowing from the provision of care services to those who are remanded in Young Offender Institutions. For some of these there will also be additional costs of care leaver services upon leaving custody. Ministry of Justice is continuing work to assess the likely level of these additional costs.

Benefits

34. 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 second set of conditions set out in the provisions require sentencers to make informed predictions of the likelihood of a young person receiving a custodial sentence at an early stage in the process. Therefore, there is some uncertainty over the overall impact this may have. In addition local authorities will have both the incentive and the financial freedom to try to influence custodial remand levels. To help reduce existing levels of remand local authorities would have the discretion, for example, to use the remand budget so that YOTs can present improved bail packages to the court and investigate improved ways of working.
35. The provision of Looked After Child status to all young people will lead to benefits for children. 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.

4) Release on Licence

a) Calculation of days to be served

We will:

- Clarify the crediting of periods of remand in custody; and
- Clarify the crediting of periods of remand on bail

b) Release

We will:

- Clarify the existing provisions that mean prisoners serving sentences of less than 12 months are unconditionally released at the half way point; and
- Exclude categories of offenders from early release on Home Detention Curfew. Specifically, those sentenced to 4 years or more, those previously released and recalled under the scheme for breach of licence conditions and those previously returned to prison under 116 of the Powers of Criminal Courts (Sentencing) Act 2000 for committing a further offence before the expiry of a previous sentence.

c) Further release after recall

We will:

- Amend section 254 of the 2003 Act to provide that when prisoners have been recalled erroneously, a licence revocation may be cancelled; and
- Amend further release of prisoners after recall.

d) Other provisions about release

We will:

- Amend the 2003 Act to include a provision for the supervision of young adult prisoners released from a sentence of Detention in a Young Offenders Institution (DYOI) available for 18 to 20 year olds ensuring prisoners released from a DYOI sentence of less than 12 months will receive 3 months supervision; and
- Repeal uncommenced provisions of the 2003 Act.

e) Life Sentence Prisoners

We will:

- Allows for the removal of foreign national prisoners serving life and indeterminate sentences once they have served their minimum custodial term.

Costs

36. Where policies have significant costs and benefits to the CJS, these have been identified and where appropriate monetised. All other policies outlined are not expected to impose significant costs and benefits.
37. We do not expect there to be any costs associated with the proposals concerning fixed term recall and executive re-release.
38. There will be some costs to the UKBA associated with removing Foreign Nationals currently serving an IPP or life sentence, as there will also be some small costs brought forward to agencies such the Police and UKBA in the implementation of policies to reduce the number of foreign national offenders by removing these individuals earlier than they would have been. Ministry of Justice, Home Office and UKBA have worked together to understand the likely scale of these costs.

Benefits

39. The benefits associated with the recall proposals are that we estimate that there will financial savings of £10m per year due to a reduced demand in prison places of around 250. Modelling of widening of eligibility of fixed term recall and executive re-release assumed that on removing the fixed term recall exclusion, 70% of the additional eligible offenders are deemed suitable for fixed term recall with 50% of these offenders subsequently being recalled.
40. There will be financial savings associated with deporting foreign national IPP prisoners on tariff expiry of £10m by the end of the Spending Review period, as a result of a reduction in demand for prison places of approximately 300. This modelling is based on the number of foreign national prisoners sentenced to IPPs who reach tariff expiry each year.

5) Dangerous Offenders

We will:

- Abolish sentences of imprisonment and detention for public protection and extended sentences for public protection;
- Introduce a new life sentence for a second listed offence which has received / would justify a sentence of 10 years' imprisonment or more;
- Introduce new extended sentences for dangerous offenders who commit serious violent or sexual offences, where offenders 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;
- Introduce new provisions for release on extended licence for the new extended sentences; and
- Introduce a power to change the Parole Board test for release on licence of IPP prisoners and extended sentence prisoners.

Costs

41. We do not estimate any additional monetised costs or impacts incurred by the Government as a result of these policy options. There may be some non-monetised costs to NOMS through implementing non-legislative recommendations which are already set in train; these will be absorbed within existing capacity. Other non-monetised impacts will be handled as part of future work to implement the LASPO Bill provision e.g. judicial training for all Bill provisions.

Benefits

42. We estimate that there will be no impact on prison places in this SR period or the next SR period (to March 2019). It is estimated to slow the growth in the demand for prison places by approximately 2,500 places in longer term. On the simple assumption of the cost of a prison places in the longer term being £40,000 a year⁴, this would lead to longer term, annual steady state, savings of £100m. However, actual financial costs of prison places in the longer term may differ from this affecting the potential savings.
43. We estimate that there will be a reduced demand for parole hearings. Approximately 100 fewer per year eligible for referral to the parole board at the end of this SR period, 700 fewer at the end of the next SR period and 3,500 fewer in the longer term. We have not monetised these impacts at this stage.

⁴ MoJ (2011) National Offender Management Service annual report and accounts 2010-11 Management Information Addendum

44. These policies should lead to a sentencing framework that is coherent and understandable providing certainty to victims and ensuring that justice is clearly seen to be done. It is not possible to monetise these impacts. By reforming the sentencing framework in this way, we will remove existing uncertainty around the indefinite nature of IPPs.
45. Ensuring that all offenders under the new sentence are required to follow a sentence plan including undertaking a range of targeted rehabilitative interventions, aimed at reducing their risk will ensure that they 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.
46. Increasing the use of life sentences for the most serious sexual and violent offenders, and ensuring that other serious offenders spend long periods in custody - in many cases the full term of their sentence length - and imposing long licence periods will ensure that there are sufficient provisions in place to effectively manage risk and uphold public protection arrangements.

6) Prisoners etc.

We will:

- Make amendments to the Prison Act 1952 in respect of the employment of prisoners and persons required to be detained in remand centres, secure training centres and young offender institutions;
- Reform prisoner transfer arrangements, to ensure that EU nationals sentenced here serve their sentences in their country of origin. This will come into force from December 2011; and
- Allow countries with which the UK has prisoner transfer agreements to transfer, via an airport in England, Wales or Northern Ireland, a prisoner serving a sentence of imprisonment to or from a third country, for the purpose of serving that sentence.

Costs

47. Where policies have significant costs and benefits to the CJS, these have been identified and where appropriate monetised. All other policies outlined are not expected to impose significant costs and benefits.

Prisoner Transfer Agreements

48. The EU prisoner transfer agreement will lead to a slow build up of costs associated with the administration of the framework decision which will be absorbed by NOMS. A casework section is already in place in NOMS which deals with the transfer of foreign national prisoners. It has capacity to take up the increased casework. There could be a small increase in escort costs of around £500,000 (assuming a transfer rate of around 300 prisoners per year – the upper estimate of possible transfers).

Benefits

Prisoner Transfer Agreements

49. There will be no direct cash savings attached to the prisoner transfer arrangements. Around 600 EU nationals a year receive sentences of 2 years or more and would fall within the ambit of the framework decision. While it is our intention to seek the transfer of these prisoners we do not know how many of these will have been ordinarily resident in the UK and who cannot be deported. Such prisoners would not qualify for compulsory transfer. In the long-term it is possible that this will be offset by British nationals returning to the UK from other EU Member States.

7) Out of Court Disposals

a) Penalty Notices

We will:

- Amend the penalty notice for disorder scheme to allow suspects to pay to attend appropriate educational courses as an alternative to paying a financial penalty; and
- Repeal penalty notices for disorder for under 18s

b) Adult Conditional Cautions

We will:

- Reduce unnecessary bureaucracy by removing the requirement for an authorised person (usually the police) to refer the matter to the relevant prosecutor (usually the Crown Prosecution Service) before offering a conditional caution to an offender; and
- make available new types of conditions attached to a conditional caution the objects of which are to bring about the departure of a foreign offender with no leave to enter or remain in the UK and ensure that the offender does not return for a specified period.

c) Youth cautions

We will:

- Replace the reprimand and warnings system with a system of youth cautions, and youth conditional cautions; and
- Reduce unnecessary bureaucracy by giving the police the power to authorise a youth conditional caution without referral to the Crown Prosecution Service.

Costs

50. Where policies have significant costs and benefits to the CJS, these have been identified and where appropriate monetised. All other policies outlined are not expected to impose significant costs and benefits.
51. There is the potential for there to be a small cost from increased police workload if the proposals lead to greater use of conditional cautions. However, as use will remain at the discretion of the local police force, we would only expect there to be greater use of conditional cautions if this could be absorbed by efficiencies, meaning that the policies would be financially cost neutral. Using conditional cautions for foreign offenders has potential for creating operational costs for the United Kingdom Border Agency (UKBA) in providing police and prosecutors with information to allow a decision on suitability for a conditional caution to be made.

Youth cautions and abolition of PNDs for under-18s

52. Merging reprimands and warnings into a consolidated Youth Caution should have a negligible impact on the Criminal Justice System (CJS). A young person who would previously have received one of these disposals will in future receive a Youth Caution. The threshold for assessment and intervention by the local YOT will remain the same so there should be no additional burden on YOTs. There will be a small initial impact in introducing the disposal due to the need to update the PNC and to update training materials.
53. 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.

Benefits

Penalty notices for disorder

54. In the instance where educational requirements are attached to a PND, it is possible that recipients of a penalty notice for disorder will be rehabilitated more effectively through attending educational courses instead of simply paying a financial penalty. It is possible that the reduced reoffending will generate potential cashable savings; however these are unlikely to be realised in the spending review period. It is also possible that offering offenders an additional way to discharge their liability to conviction for a penalty offence might result in an increase to the initial PND payment rate.

Conditional cautions

55. Giving the police the power to authorise conditional cautions without referral to the CPS will better align police powers to use simple and conditional cautions and to charge suspects. This could simplify the operational processes involved in the use of out-of-court disposals. This could also result in small but not necessarily cashable savings. 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.

Foreign offender conditional cautions-

56. We estimate that financial savings of around £10m can be generated through the conditional cautioning of foreign national offenders, through a reduction in demand of around 250 prison places.

Youth conditional cautions

57. Giving the police the power to authorise youth conditional cautions without referral to the CPS will better align police powers to use youth cautions and conditional cautions and to charge suspects. This could simplify the operational processes involved in the use of out-of-court disposals. 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

58. Transference to informal diversions is expected to lead to a small but decreased burden to all agencies.

8) Offences

We will:

- Create a criminal offence of threatening with article with blade or point or offensive weapon in public or on school premises;
- Create a criminal offence of causing serious injury by dangerous driving;
- Clarify the law on reasonable force for the purposes of self defence etc.; and
- Create a criminal offence of squatting in a residential building.

Costs

New offences related to bladed or pointed articles, or offensive weapons

59. We estimate that the proposal to introduce a minimum prison sentence of 6 months for adults for those who possess a knife to threaten and cause immediate risk of serious physical harm to another will lead to additional costs of £5m per year from 2013/14, due to an increased demand for prison places of around 100. This estimate assumes that 500-600 offenders 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.
60. The additional impact of imposing a minimum sentence for 16 and 17 year olds is estimated at between £2m and £4m per year. This is based on an estimated additional 200 to 400 custodial sentences per year for these offences (over and above those for whom custody is already the sentence given), resulting in an additional requirement for 30 to 60 beds in the secure estate for young people.
61. This is an initial assessment of the potential cost impact of this policy, based on the current available evidence. As this estimate is based on assumptions, around which there is significant uncertainty, it should be treated as illustrative.

Dangerous driving

62. The creation of a new offence will close a gap between the current 2 year maximum sentence available for the offence of dangerous driving and the 14 year maximum for the offence of causing death by dangerous driving to ensure that cases resulting in serious injury can be dealt with more effectively by the courts. This will result in additional costs, as some dangerous driving cases will fall under the new offence, with a higher maximum custodial sentence. It is difficult to estimate the precise impact, due to a lack of data on how many current dangerous driving cases involve the causing of serious injury.
63. In 2010, there were approximately 20 cases where defendants were charged with both dangerous driving and GBH, but only successfully convicted of the offence of dangerous driving. We believe these 20 or so cases would be our best estimate of the number of cases per year that may be successfully convicted under the new offence. This would lead to an upward pressure of around 20 prison and probation places in steady state, with a marginal impact on MOJ costs of around £1m.
64. There are, however, a number of uncertainties surrounding this estimate, and given the risks associated with the potential for (a) additional cases being charged under the new offence, (b) average sentences for the new offence being closer to the 5 year maximum than the 3 years assumed, and (c) an associated up-tariffing in sentences for the offence of dangerous driving; we estimate that costs could rise by up to £5m per annum.

Self defence

65. There is likely to be no or negligible impact on the CJS of the self defence provision as this seeks to clarify the law rather than making material changes.

Squatting

66. There would be some one-off costs for all affected parties associated with familiarisation with the new offence. In particular, there could be one-off costs to the police of training/issuing guidance on the new offence. These costs have not been quantified.
67. The option of criminalising squatting, but limiting the offence to residential properties is expected to lead to increased costs across the Criminal Justice System:

- Police: £0.3m - £3.6m
- CPS: £0.1m - £0.6m
- HMCTS: £0.2m- £2.8m
- LSC: £0.1m - £1.5m
- Prisons: £0- £0.4m
- Probation: £0- £0.1m

68. We expect between 200 and 2100 additional cases, in relation to between 350 and 4200 defendants. The upper bound is based on the numbers of full possession orders (FPO's) and lower bound on the number of interim possession orders (IPO's). There is a risk that the true proportion may be higher or lower.
69. The creation of a new offence would impose costs on those who currently squat. In response to the threat of conviction under the new offence, some squatters may continue to squat and ultimately be convicted under the new offence. Any convicted squatter is likely to be worse off under the proposals. However, in line with Impact Assessment guidance costs and benefits are not typically scored for parties that have broken the law. It should be noted, that if legislation is passed, that any adverse effects of criminalisation on squatters 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.
70. Alternatively, some current squatters may be deterred from squatting as a result of a criminal offence. They could end up living in alternative accommodation or sleeping rough which may result in additional costs to squatters. 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.

Benefits

New offences related to bladed or pointed articles, or offensive weapons

71. The benefits associated with these proposals are that the level of public protection, and hence public confidence, could be increased. The policy also aims to send a strong message that knife crime is unacceptable.

Dangerous driving

72. The creation of a new offence should enable the courts to deal with cases resulting in serious injury more effectively. 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. This will give them access to greater sentencing powers to reflect the more serious consequences of a driver's actions. It is hoped that victims who face life-changing injuries as a result of dangerous driving, their families, and society in general will feel better served by the level of punishment delivered by the CJS. These benefits have not been quantified.

Self defence

73. The provision to clarify the existing law on self defence should give the public greater certainty about acting in self defence, and defence of others, to prevent crime or to protect property and could lead to increased confidence in the CJS. The law will be clarified by importing existing common law principles into statute.

Squatting

74. The creation of a new criminal offence may be perceived as strengthening the rights of residential property owners. Society may also prefer squatting to be more robustly tackled through criminal sanctions as this could reduce the serious direct financial and emotional impact suffered by residential property owners/occupiers. In addition, it could lead to increased confidence in the CJS. It has not been possible to quantify these impacts.
75. There is the possibility of civil savings for Her Majesty's Courts and Tribunals Service (HMCTS), if those individuals who currently use existing civil routes to regain possession of their property from squatters, no longer use those routes. It has not been possible to quantify any civil savings, but they may partially offset the increase in criminal costs
76. As a result of the measures, there may be a fall in legal aid expenses in relation to the civil FPO/ IPO process. However, this has not been quantified as it is already accounted for in the baseline as the Legal Aid Reform Package proposes to remove squatting from the scope of civil legal aid. Hence any savings have already been accounted for elsewhere in the Legal Aid, Sentencing and Punishment of Offenders Bill.

Estimated prison place and financial savings arising from sentencing policy and CJS proposals

77. The following table presents our best estimates of the financial implications per year at the end of the current spending review period. The policies included in the table are those with the greatest expected financial savings or costs.
78. It is estimated that the effects of the policies contained within the bill and the Green Paper will lead to a reduction in the prison population, relative to the medium prison projection, of 2,600 places by the end of the current spending review period.

Final Year of spending review (2014/15)		
Policy proposal	Estimated prison place impacts	Total estimated financial savings
Reducing use of remand in custody	Our central estimate is a 1,300 place reduction but actual savings could be between 1,200 and 1,400.	£40m.
Deporting foreign national IPP prisoners on tariff expiry	300 place reduction	£10m
Conditional cautions for foreign national offenders	0-500. Emerging evidence from pilots suggests our best estimate is a reduction of around 250.	£10m
Recall	Our central estimate is a reduction of 250 but it could be between 200 and 300	£10m
Minimum custodial sentence for new bladed/pointed article and offensive weapon offences (adults)	We estimate that this will lead to an upward pressure of up to 100 prison places	£5m
Minimum custodial sentence for new bladed/pointed article and offensive weapon offences (juveniles)	We estimate that this will lead to an upward pressure of around 30-60 places	£2m to £4m
Create a new offence of 'causing serious injury by dangerous driving'	We estimate that this will lead to an upward pressure of at least 20 places	£5m
Introduce a new offence of squatting in a residential building	We estimate that this will lead to an upward pressure of around 10 places	£5m
Reform of indeterminate sentences for public protection	There are no anticipated savings in this SR, but we estimate that there will be savings in the long run	0
Total	1,950	£50m
Additional Policy from "Breaking the Cycle" Green Paper		
Diversion from custody of offenders with mental health problems ⁵	Our best estimate is 650 prison places however the actual number achieved could be as high as 750.	£20m
Total including GP Policies	2,600	£70m

⁵ See for an explanation of this policy: MoJ (2011) 'Breaking the Cycle' – Government Response Impact Assessment