

Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act (2012)

Equality Impact Assessment

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Introduction

Part 3 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act focuses mainly on the government's reforms to change the way offenders are managed sentenced or rehabilitated. It also creates a number of new criminal offences

The Ministry of Justice (MoJ) published a consultation document entitled 'Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' (Breaking the Cycle) on 7th December 2010 and published its response to consultation exercise in June 2011. The LASPO Bill was published in June 2011; it passed through the House of Commons in September and October 2011 and through the House of Lords in December 2011 – April 2012 and gained royal assent on 1st May 2012. This equality impact assessment (EIA) is intended as an accompanying guide for readers to understand the equalities impact of Part 3 of the LASPO Act and consolidates all the individual EIA's that the Ministry of Justice has published, these are:

- Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders Consultation EIA;
- Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders government Response EIA;
- Increasing magistrates' courts fine limit EIA;
- Clarification of the law on self defence EIA;
- Knife crime and dangerous driving EIA;
- Review of Indeterminate Sentences for Public Protection EIA;
- Options for dealing with squatting 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;
- Sentencing and Punishment of Offenders: LASPO bill;
- Hate Crimes and appeals against bail;
- Reform of the Rehabilitation of Offenders Act;
- Alcohol abstinence and monitoring requirement;

These EIA's can all be located on the LASPO Bill website which contains all the background documents, IA's and EIA's - (<http://www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information>).

In addition, the Home Office have produced an equality analysis of the provisions relating to metal theft – prohibiting cash payments and higher fines.

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

This EIA also presents additional information, identified as part of our on-going monitoring, that has become available since the previous EIAs were published. This additional information does not change the nature of the equalities impacts previously identified.

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 protected 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.

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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 Crime Survey for England and Wales (CSEW). The CSEW includes data on race, disability, gender, age, religion, sexual orientation and marital status for victims of crime. The CSEW 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, 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, all courts would need to be contacted to confirm whether this information is collected and, if so, whether it is comparable across courts. It has not been possible to do this for this Equality Impact Assessment because of the cost and resource implications associated.

Data on the disability, marital status, household income, main activity and caring responsibilities of offenders starting community orders are drawn from the first wave of the Offender Management Community Cohort Study (OMCCS), a multi-methods study which employs longitudinal survey methods to track a cohort of adult offenders who commenced a community order between October 2009 and December 2010. The data presented is based on an interim dataset of the survey responses from the 'start of order' baseline interviews. The figures may change when the data is finalised. A total of 2,595 interviews are included in the Wave 1 dataset, representing a response rate of 39 per cent. The results have been weighted to be national representative for offenders at tier 2 and above. The statistics presented in this document have not undergone significance testing¹.

Data on recorded hate crime from police forces in England, Wales and Northern Ireland during the calendar year 2010 are from the Association of Chief Police Officers (ACPO).

Data on the prison population and receptions 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.

¹ Significance testing involves standard statistical tests to conclude whether differences in results from a sample survey are likely to be due to chance or represent a real difference.

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 reconvictions by age and sex are based on further analysis of the 2000 Reconviction Cohort.

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);
- ‘Prisoners’ childhood and family backgrounds Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners’ by the Ministry of Justice (March 2012);
- ‘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);
- ‘Engendered Penalties: Transgender and Transsexual Peoples Experiences of Inequality and Discrimination’, Whittle, Turner and Al-Alami (2007);
- Headline Findings from Transgender E-Surveys, Government Equality Office, (2011);
- ‘Getting Away With Murder. Disabled people’s experiences of hate crime in the UK’, Disability Now, the UK’s Disabled People’s Council and Scope (2008);

- Hate Crime and Crimes Against Older People Annual report 2009-2010, Crown Prosecution Service (2010).

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 reforms in relation to the groups affected by the reforms. 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”².

² www.justice.gov.uk/publications/statistics-and-data/criminal-justice/race.htm
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.

Transgender hate crime

The 'Breaking the Cycle' Green Paper outlined proposals to review hate crime provisions and, in particular, asked for views on whether or not there should be a generic provision dealing with hate crime. These proposals received a mixed response, with concerns raised that they may water down the current provision and render it meaningless. There was, however, support for adding the transgender group to those groups attracting a statutory aggravating factor in sentencing for any offence where the offender was motivated by hostility towards the victim on certain grounds – currently, race, religion, sexual orientation and disability. In addition to the Green Paper responses, there has been a steady lobby for reform. For example, the Independent Advisory Group, which advises government and CJS responses to hate crime, has repeatedly advocated this change. There has also been steady pressure in Ministerial meetings with lobby groups and MPs to address an anomaly in the guidance to courts for determining the minimum term for a life sentence for murder in relation to murders aggravated on the basis of the victim's disability. The Equality and Human Rights Commission has also made recommendations in this area in their

report 'Hidden in plain sight: the inquiry into disability related harassment' (2011) and available at:

www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-disability-related-harassment/hidden-in-plain-sight-the-inquiry-final-report/

Alcohol abstinence and monitoring requirement

Through legislative provisions, the government will pilot use of the alcohol abstinence and monitoring requirement in a limited number of areas. The government will carry out a 'proof of concept' pilot which will provide us with evidence of the likely scale of take-up and the technical processes for running a sobriety scheme; any unintended consequences; the experience of offenders on the scheme and to what extent they felt it changed their behaviour, through qualitative research.

In addition, we believe the pilots will provide us with information on compliance and breaches of those on the scheme; offending behaviour of those on the scheme and costs.

At the same time, we will be consulting with sentencers and other key stakeholders on the use and purpose of sobriety schemes as part of the government's forthcoming consultation on community sentences to help inform our work further in this area.

The pilots and consultation will test and inform the processes and practicalities of sobriety schemes, and help build the confidence of the police officers and sentencers who will operate them. Once the pilots have been evaluated and lessons learnt we will be in a position to develop work further with the aim of future roll out.

Appeal against bail

The consultation process included discussions with the Crown Prosecution Service, the Attorney General's Office, the Serious Fraud Office, and senior judiciary.

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 reforms have the potential for a positive impact on victims, and a summary of these are provided under each policy reform. These are drawn from the analysis in this section of the risk of experiencing certain crimes from the 2010/11 CSEW, 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 CSEW:

- Overall crime;
- Violent crime (excluding sexual offences);
- Burglary³;
- 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 CSEW data across the two age groups provided, though,

³ 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 CSEW 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.

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).

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 CSEW 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 crime⁴.

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.

⁴ 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.

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

Due to the relatively small number of respondents to the CSEW who identify as being from certain religious groups data from the 2009/10 and 2010/11 CSEW have been combined for the purposes of analysis. This data is presented in Table 5. There is little difference in the risk of being a victim across religious groups, although Christians were less likely to be a victim of all CSEW crime than those from other groups (with the exception of Hindus), and they were less likely to be victims of personal crime than people who said they had no religion or people from the 'other' religion group. People who said they had no religion were more likely to be a victim of violent crime than Christians, Buddhists, Hindus and Muslims.

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 CSEW 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 CSEW who identify as gay, lesbian or bisexual, data from the 2009/10 and 2010/11 CSEW have been combined for the purposes of analysis, which is presented in table 6. This shows that people who were gay or lesbian were more likely to be victims of all CSEW crime, personal crime, or violent crime than heterosexual people. A similar pattern was found for bisexual people, when compared with heterosexual people.

The higher level of victimisation amongst gay, lesbian and bisexual people may be due, at least in part, to the younger age profile of individuals identifying themselves as in this group; 30 per cent of those reporting to be lesbian, gay or bisexual were aged 16 to 24 compared to 21 per cent who identified as heterosexual or straight.

Impact on Offenders

Many of the sentencing and punishment reforms 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 reform. These assessments draw on information outlined in the section on 'evidence sources' as well as responses to consultations.

Chapter 1: Sentencing

Chapter 1 sets out changes to some general sentencing provisions contained in the 2003 Act and other legislation. In particular it does the following:

- It imposes a duty on courts to consider the imposition of compensation orders for certain types of offence;
- It simplifies the provision setting out the court's duty to give reasons for and to explain the effect of a sentence imposed by the court;
- It adds transgender identity to the personal characteristics which will be statutory aggravating factors in sentencing where any offence is motivated by hostility to the victim on this basis. It also provides for a starting point of 30 years for the minimum term for a life sentence for murder aggravated on the grounds of the victim's disability or transgender identity;
- It makes a number of changes in relation to community orders for adults. These are non-custodial sentences with specific treatment or behaviour requirements attached. It clarifies when community orders come to an end and enables a court to impose a fine for breach of a community order. It makes amendments to certain requirements that may be imposed as part of community orders and suspended sentence orders, in particular curfew requirements and mental health, drug rehabilitation and alcohol treatment requirements. It also creates new powers to prohibit foreign travel and to impose alcohol abstinence and monitoring requirements as part of an order.
- It amends the court's power to suspend a prison sentence by increasing the length of sentences that can be suspended, giving the court discretion not to impose community requirements as part of the sentence and enabling it to impose a fine for breach of a suspended sentence order.
- It provides for offences currently punishable by the magistrates' court on summary conviction with a maximum fine of £5,000 to be punishable by an unlimited fine instead and gives the Secretary of State power to increase the maximum sentences of certain other fines and the sums specified as levels 1- 4 on the standard scale of fines.

Chapter 1 amends the sentencing provisions of the Powers of Criminal Courts (Sentencing) Act 2000 that apply to youths. These will enable a court to impose a penalty for breach of a detention and training order even where the order has finished its term. The Chapter amends provisions about referral orders to provide more flexibility and discretion for their repeated use. It also applies a number of the changes made in relation to community orders to youth rehabilitation orders.

Chapter 1 repeals an unimplemented provision in the 2003 Act relating to "custody plus", which was a new type of sentence for offenders sentenced to less than 12 months imprisonment, and intermittent custody, which would have enabled offenders to spend part of their sentence in prison and part in the community.

Hate crime

Summary

The reforms are to treat all five monitored strands of hate crime equally in relation to statutory aggravating factors in sentencing for any offence and in the starting point a murder case should attract where it is aggravated on the basis of race, religion, sexual orientation, disability or transgender. So the reforms mean an:

- Amendment to section 146 of the Criminal Justice Act (2003) so that a statutory aggravating factor in sentencing would be applied to crimes motivated by hostility on the basis of the victim's transgender identity; and
- Amendment to schedule 21 of the Criminal Justice Act (2003) so that the starting point for life sentences for murder would be 30 years for murders motivated by hostility on the basis of the victim's transgender identity or disability.

Direct discrimination

Our assessment based on the available evidence is that these reforms are not directly discriminatory within the meaning of the Equality Act 2010 as they will provide parity for transgender and disability related hate crime, in that these crimes will be treated in the same way as the other strands of monitored hate crime. There may be some benefits in terms of increased victim confidence in the criminal justice system, and greater reporting of such crimes.

Indirect discrimination

The reforms will apply equally to those who share a protected characteristic and those who do not. Due to a lack of data on offenders convicted of transgender and disability related hate crime we have been unable to identify any differential impacts. However, if there are differential impacts on those offenders convicted of transgender and disability related hate crime, the government considers that these reforms are a proportionate means to seek to bring the way in which transgender and disability related hate crime offences are dealt with, in line with the other strands of monitored hate crime.

Discrimination arising from disability and the duty to make reasonable adjustments

We do not consider there to be a risk of discrimination arising from disability and the duty to make reasonable adjustments within the meaning of the Equality Act 2010 as a result of these reforms.

Harassment and victimisation

We do not consider there to be a major risk of harassment or victimisation within the meaning of the Equality Act 2010 as a result of these reforms. If anything we believe that these reforms are likely to reduce incidents of harassment and victimisation as perpetrators realise that this form of hate crime is being treated in the same way as the other monitored strands.

Advancing equality of opportunity

It is possible that these reforms will impact positively on the duty to advance equality of opportunity if victims of transgender related hate crime know that perpetrators will face an aggravating factor added to their sentence.

It is also possible that awareness of harsher penalties for murders motivated by hostility on the basis of a victim's transgender identity or disability would reduce the frequency of these heinous crimes being committed.

Fostering good relations

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

Conclusion

Having paid due regard to the potential impacts identified in the 'analysis' section below, the government is satisfied that it is right to table these amendments.

Aims and outcomes for the policy

Sections 145 and 146 of the Criminal Justice Act 2003 provide for statutory aggravating factors in sentencing for any offence where it is shown that the offender demonstrated hostility towards the victim on the basis of the victim's race, religion, sexual orientation or disability. Schedule 21 provides a 30 year starting point for determining the tariff for a life sentence for murder where the offence is aggravated on the basis of the victim's race, religion or sexual orientation. There is pressure to widen these hate crime provisions so that all five monitored strands of hate crime are treated equally under these provisions. This requires changes to primary legislation.

The policy objectives are as follows;

- To treat all five monitored strands of hate crime equally in relation to statutory aggravating factors in sentencing for any offence and in the starting point a murder case should attract where it is aggravated on the basis of the victim's race, religion, sexual orientation, disability or transgender;
- To send a strong message that hate crimes will not be tolerated; and
- To ensure that similar hate crimes should be punished in a similar way. The courts should already treat hate crime of any kind as an aggravating factor but the amendments should ensure that the courts sentence hate crime on a more consistent basis.

Methodology

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

- **Victims:** We have examined relevant research to consider the qualitative impact on victims. Statistics are not available centrally on the protected characteristics of victims of transgender and only limited statistics are available on the gender of victims of disability related hate crime. However, by the nature of these offences, victims will have protected characteristics regarding transgender or disability. There is also a lack of nationally

accessible data on the number of murders motivated by hostility on the grounds of transgender identity or disability;

- **Offenders:** We have examined statistics on the number of transgender related hate crimes in England, Wales and Northern Ireland. Information is not available on the protected characteristics of offenders sentenced to transgender hate crime separately from homophobic crime.⁵ The 2009/10 CPS report on Hate Crime does present data on hate crime towards people with disabilities. However, it should be noted that the proposed change in relation to disability hate crime refers specifically to homicide cases (i.e. increasing the minimum sentence to 30 years where there are aggravating factors on grounds of disability hate crime).

Analysis

Impact on victims

These reforms will ensure that all monitored strands of hate crime are treated equally under these particular provisions. There may be some benefits in terms of increased victim confidence in the criminal justice system, and greater reporting of such crimes. These changes will have the greatest impact on victims of transgender related hate crime who by the nature of the offence have the protected characteristic of transgender identity. It is anticipated that the impact of these proposed changes will be positive for this group of victims and their families.

Statistics for 2010 show that there were 357 transgender hate crime incidents recorded by police forces in England, Wales and Northern Ireland (Table 9, Annex A). While the level of hate crime recorded by the police may reflect the confidence that victims have in reporting to the police, and the measures being taken to improve confidence and reporting, victims groups say that this is still greatly under-reported.

Respondents to surveys report that transgender people fear for their safety, to the extent that those not yet living permanently in their new role do not go out into public spaces in their preferred gender. A small scale online survey of 872 self-identified trans people suggested that almost three quarters had experienced harassment, with one in ten being victims of threatening behaviour when out in public spaces.⁶

Three small-scale e-surveys carried out reported similar concerns amongst those participating. Respondents feared most for their safety on the streets and using public transport. Nearly half of respondents (47 per cent) said they were most worried about being a victim of a violent crime or harassment.⁷

Statistics for 2010 show that there were 1,569 disability hate crimes recorded by police forces in England, Wales and Northern Ireland (Table 9, Annex A). Statistics on murders motivated by hostility on the grounds of disability are not available nationally. However, CPS data on those victims involved in prosecutions for disability hate crimes whose gender had been identified (76 per cent in 2009/10), showed 51 per cent were men. Much evidence has been reviewed and presented by leading

⁵ For the first time, the CPS published combined data on offenders charged with homophobic and transphobic hate crime in their 2009-10 report *Hate Crime and Crimes Against Older People Annual report 2009-2010*, Crown Prosecution Service (2010)..

⁶ *Engendered Penalties: Transgender and Transsexual Peoples Experiences of Inequality and Discrimination*, Whittle, Turner and Al-Alami 2007.

⁷ *Headline Findings from Transgender E-Surveys*, GEO, 2011.

disability organisations to focus on the differences in sentences for those convicted of homicide where race, religion or sexual orientation is an aggravating factor compared to those where hostility was shown to the victim on the basis of his or her disability. The following three quotes sum up the views expressed:

Julie Newman, acting Chair of the United Kingdom's Disabled Peoples' Council, says: "*The matter of sentencing for those who are convicted of disability hate crime will be of concern as long as there continues to be a difference between this and other forms of hate crime.*"

Liz Sayce, chief executive of RADAR, says: "*These despicable crimes – up to and including murder – that are perpetrated against disabled people must be treated with exactly the same gravity as crimes motivated by racial or homophobic hatred. Only a consistent sentencing regime...will send that message.*"

Robin Van Den Hende, from VOICE UK, adds: "*If the criminal justice system is to tackle disability hate crime then courts must increase sentences in all disablist crimes and clearly state when a disability hate crime has occurred. We would be deeply worried if murders motivated by disability hatred did not lead to a longer sentence.*"⁸

Impact on offenders

These changes will have a negative impact on perpetrators of transgender and disability related hate crime who are convicted of such offences as they may be given longer sentences.

Due to limitations in the available evidence we are unable to identify the potential for any differential equality impacts, as no statistical evidence is available on the protected characteristics of persons sentenced for transgender related hate crime separately from homophobic hate crime or homicide aggravated on grounds of disability related hate crime. However, the most recent CPS report (2010) suggests that, across the current hate crime strands, 83 per cent of defendants in 2009/10 were male, 75 per cent were identified as belonging to the White British category, 50 per cent were aged between 25-59 and 30 per cent between 18-24.

Mitigation and justification

Whilst sentencing guidelines provide for an aggravating factor in sentencing where the offence is motivated by hostility towards a minority group, the current legislation is not consistent and there is the longstanding anomaly that murders aggravated by hostility on the basis of the victim's disability have a 15 year starting point whereas murders aggravated on the basis of race, religion and sexual orientation have a 30 year starting point. The government does not consider it defensible to leave this anomaly in place. We have explored the possibility of creating a generic hate crime provision but consider that it raises significant drafting difficulties, with the risk of watering down the provisions to the extent that they become meaningless.

The government believes that hate crime, of any kind, is abhorrent and offenders should be in no doubt that sentencing will be more severe for these cases. Victims should feel confident in reporting such crimes knowing that the courts will take a serious view of these offences. By making the changes, the government is sending a strong message that such behaviour will not be tolerated. The changes to section 146 and Schedule 21 mean that all five recorded strands of hate crime will be dealt

⁸ *Getting Away With Murder. Disabled people's experiences of hate crime in the UK*, Disability Now, the UK's Disabled People's Council and Scope in 2008

with equality under these provisions. This will encourage consistency of sentencing practice and address a long standing anomaly in the guidance for determining the minimum term for life sentences for murder. The starting point for murders where the offence was aggravated by hostility towards the victim based on the victim's disability, and now transgender identity, will attract a 30 year starting point.

Community orders

Summary

The reforms 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 reforms against the statutory obligations under the Equality Act 2010.

Direct discrimination

The reforms 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 reforms 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 reforms 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 reforms 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 reforms, 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 reforms.

Advancing equality of opportunity

Wherever possible we have considered how these reforms 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 reforms.

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 extends 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 reforms, we have considered the impact on:

- **Victims:** Information is not available on characteristics of victims of those who breach COs. Using the Crime Survey for England and Wales, 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 reforms;
- **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:** comparing the household income of offenders starting community orders by protected characteristics. This data gives us an indication of the groups that, due to their lower average incomes, may be differentially affected by the introduction of a fine for failure to comply.

Analysis

This analysis looks at the potential impacts of the reforms 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 reforms 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 reforms also include 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 Crime Survey for England and Wales, 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 reforms. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age, religion and sexual orientation.

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

Table 11 (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.

There are no clear patterns in the household income of offenders starting community orders by age. (Table 12, Annex A).

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

Potential Disability Impacts

Evidence suggests that a large proportion of offenders on community orders identify as having a long standing illness or disability. 51 per cent of the OMCCS sample of 2,595 people starting community orders stated that they had a longstanding illness, disability, or infirmity of some kind⁹ (Table 13, Annex A). It is a reasonable assumption that at least some of these people will be disabled under the Equality Act

⁹ A wide range of disabilities and illness were included in the definition used at interview, including: problem with arms, legs, hands, feet, back or neck (including arthritis or rheumatism); difficulty in seeing; difficulty in hearing; skin conditions, allergies; chest, breathing problem, asthma, bronchitis; heart, blood pressure or blood circulation problems; stomach, liver, kidney or digestive problems; diabetes; depression, bad nerves; mental illness or suffer from phobia, panics or other nervous disorders; learning difficulties; epilepsy; other health problems or disabilities.

2010¹⁰. 33 per cent of the total OMCCS sample stated that they had a health condition or disability that limits their ability to carry out everyday activities a great deal or to some extent (Table 13, Annex A), and 14 per cent of the total OMCCS sample stated that they needed help with a physical health condition or disability (Table 14, Annex A).

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. A higher proportion of offenders in the OMCCS sample who stated that they had a longstanding illness, disability, or infirmity of some kind were in the lower household income bands. For example, 43 per cent of offenders with a longstanding illness, disability, or infirmity of some kind, had a household income of less than £5,000 compared to 36 per cent of those without a disability (Table 15, Annex A).

Therefore there is the potential for the reforms 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

Evidence suggests that a small proportion of offenders on community orders are married, with 8 per cent of the OMCCS sample stating that they were married (Table 16, Annex A).

A higher proportion of single, never married, divorced or separated offenders were in the lowest household income band, compared to those married or living with a partner. For example, 49 per cent of single people had a household income of less than £5,000 compared to 11 per cent of married people. (Table 17, Annex A).

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 18 (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 19 (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.

¹⁰ The Equality Act 2010 definition is that a person (P) has a disability if (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

A higher proportion of BME offenders starting community sentences were in the lowest household income band, compared to offenders in the White ethnic group. For example, 48 per cent of BME offenders had a household income of less than £5,000 compared to 39 per cent of White offenders. (Table 20, Annex A).

Therefore there is the potential for the 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 21 (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 22 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. In the OMCCS sample, a smaller proportion of female offenders starting community orders were in the higher household income bands, compared to male offenders. For example, 18 per cent of females offenders had a household income of £15,000 or more compared to 28 per cent of male offenders. (Table 23, Annex A).

A higher proportion of females compared to males are looking after children. For example, 16 per cent of the females in the OMCCS sample were looking after a child/children (during the week, during the day), compared to 4 per cent of males (Table 24, Annex A). The OMCCS data also suggests that a higher proportion of single females live with dependant children. 34 per cent of single, (never married), divorced, separated or widowed females lived with dependant children, compared to 3 per cent of single, (never married), divorced, separated or widowed males. However, included in these figures may be offenders who live with another adult who shares parenting responsibility for their children.

Therefore there is the potential for the 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 believes that these reforms 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 concerned 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 reforms, 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 reforms 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 reforms. We have considered the impact of the reforms against the statutory obligations under the Equality Act 2010, which are outlined below.

Direct discrimination

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

Indirect discrimination

Although the reforms 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 reforms 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 reforms, 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 reforms.

Advancing equality of opportunity

Wherever possible we have considered how these reforms 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 reforms.

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 reforms 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 reforms 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 reform 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 reforms, we have considered the impact on:

- **Victims:** Information is not available on characteristics of the victims of offenders given SSOs. Using the Crime Survey for England and Wales, 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 reforms;

- **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:** comparing the household income of offenders starting community orders by protected characteristics. We are aware that the demographics of those starting community orders may differ from those offenders who breach suspended sentence orders. This data gives us an indication of the groups that, due to their lower average incomes, may be differentially affected by the introduction of a fine for breach of a suspended sentence order..

Analysis

This analysis looks at the potential impacts of the reforms 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 reforms 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 Crime Survey for England and Wales, 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 reforms. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age, religion and sexual orientation.

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 25 (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 11 (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.

There are no clear patterns in the household income of offenders starting community orders by age. (Table 12, Annex A).

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

Potential Disability Impacts

Evidence suggests that a large proportion of offenders on community orders identify as having a long standing illness or disability. 51 per cent of the OMCCS sample of 2,595 people starting community orders stated that they had a longstanding illness, disability, or infirmity of some kind¹¹ (Table 13, Annex A). It is a reasonable assumption that at least some of these people will be disabled under the Equality Act 2010¹². 33 per cent of the total OMCCS sample stated that they had a health condition or disability that limits their ability to carry out everyday activities a great deal or to some extent (Table 13, Annex A), and 14 per cent of the total OMCCS sample stated that they needed help with a physical health condition or disability (Table 14, Annex A).

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. A higher proportion of offenders in the OMCCS sample who stated that they had a longstanding illness, disability, or infirmity of some kind were in the lower household income bands. For example, 43 per cent of offenders with a longstanding illness, disability, or infirmity of some kind, had a household income of less than £5,000 compared to 36 per cent of those without a disability (Table 15, Annex A).

¹¹ A wide range of disabilities and illness were included in the definition used at interview, including: problem with arms, legs, hands, feet, back or neck (including arthritis or rheumatism); difficulty in seeing; difficulty in hearing; skin conditions, allergies; chest, breathing problem, asthma, bronchitis; heart, blood pressure or blood circulation problems; stomach, liver, kidney or digestive problems; diabetes; depression, bad nerves; mental illness or suffer from phobia, panics or other nervous disorders; learning difficulties; epilepsy; other health problems or disabilities.

¹² The Equality Act 2010 definition is that a person (P) has a disability if (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

The data suggests there is the potential for SSO reforms 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

Evidence suggests that a small proportion of offenders on community orders are married, with 8 per cent of the OMCCS sample stating that they were married (Table 16, Annex A).

A higher proportion of single, never married, divorced or separated offenders were in the lowest household income band, compared to those married or living with a partner. For example, 49 per cent of single people had a household income of less than £5,000 compared to 11 per cent of married people. (Table 17, Annex A).

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 26 (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 19 (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.

A higher proportion of BME offenders starting community sentences were in the lowest household income band, compared to offenders in the White ethnic group. For example, 48 per cent of BME offenders had a household income of less than £5,000 compared to 39 per cent of White offenders. (Table 20, Annex A).

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 27 (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 22 (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. In the OMCCS sample, a smaller proportion of female offenders starting community orders were in the higher household income bands, compared to male offenders. For example, 18 per cent of females offenders had a household income of £15,000 or more compared to 28 per cent of male offenders. (Table 23, Annex A).

A higher proportion of females compared to males are looking after children. For example, whilst 16 per cent of the females in the OMCCS sample were looking after a child/children (during the week, during the day), compared to 4 per cent of males (Table 24, Annex A). The OMCCS data also suggests that a higher proportion of single females live with dependant children. 34 per cent of single, (never married), divorced, separated or widowed females lived with dependant children, compared to 3 per cent of single, (never married), divorced, separated or widowed males. However, included in these figures may be offenders who live with another adult who shares parenting responsibility for their children.

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 reform 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 reform 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 concern 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 reforms, when an SSO has been breached the court has a range of options open to them; they could decide 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.

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

Direct discrimination

The reforms 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 reforms 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.

With respect to the alcohol abstinence and monitoring requirement, we have in this analysis identified how those who share a certain characteristic may be more likely to be given community orders for (i) assault occasioning actual bodily harm (ii) common assault (iii) criminal damage under £5000 and (iv) fear or provocation of violence. Whilst not all the offenders sentenced to these offences will have committed the offence under the influence of alcohol, the characteristics of offenders sentenced for these offences provide one estimate of the potential equality impacts. We have identified in particular potential differential effects in respect of age, race and sex. To the extent that certain groups that share a protected characteristic are more likely to be given a community order and suspended sentence order for these offences they may also be more likely to be subject to these reforms. However, we consider that any differential impact would be justified. The reforms amount to a proportionate means of achieving the legitimate aim of effectively tackling alcohol related crime and preventing further such offending.

Discrimination arising from disability and duty to make reasonable adjustments

In so far as this reforms 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 reforms, 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 reforms.

Advancing equality of opportunity

Wherever possible we have considered how these reforms 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 reforms.

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. The government is also satisfied that it is right to give the courts the power to impose a new alcohol abstinence and monitoring requirement as part of a community order or suspended sentence order. The requirement could only be imposed in cases where alcohol has acted as a contributing factor to the offence committed. This requirement, however, will specifically exclude individuals who are considered to be alcohol dependent.

While compulsory alcohol requirements may reduce the number of offenders under the influence of alcohol, the extent to which compulsory alcohol requirements reduce crime is not clear. If there was to be a reduction in crime, using data from the Crime Survey for England and Wales, we have identified the potential for differential impacts for victims in relation to age, religion and sex.

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 reform 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 reform 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 reform 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 reform 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 reform 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 reform 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 reform 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.

Alcohol abstinence and monitoring requirement

The government considers that the alcohol abstinence and monitoring requirement could support its objectives to:

- reduce the level of alcohol related crime;
- ensure that offenders face robust and demanding consequences which deter them from committing further alcohol-related crime in the future; and
- make the public safer by breaking the cycle of alcohol-related crime.

The government's reform gives the courts the power to impose a new alcohol abstinence and monitoring requirement as part of a community order or suspended sentence order. The requirement could only be imposed in cases where alcohol has acted as a contributing factor to the offence committed. This requirement, however, will specifically exclude individuals who are considered to be alcohol dependent. As part of this requirement, the Court would order the offender not to drink alcohol for a specified period of time. It would require the offender to submit to testing at times and places and by methods imposed by the Court. The reform specifies that the requirement would only be available to the Court where a notification from the Secretary of State for Justice that facilities and provision were available was provided in relation to the relevant area. The government will pilot the compulsory alcohol abstinence and monitoring requirements in certain geographical areas; these will take the form of 'proof of concept' pilots to test out the principles and practicalities of delivering this requirement. The reform also specifies a power for the Secretary of State for Justice to make regulations by statutory instrument about the details of the requirement e.g. monitoring method.

Methodology

In analysing the potential equalities impacts of these reforms, 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 Crime Survey for England and Wales, 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 reforms;
- **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.

With regard to alcohol abstinence and monitoring requirements we have considered the following information:

- **Victims:** Information is not available on characteristics of victims of those sentenced to community orders for the specific offences we are interested in. Using the Crime Survey for England and Wales (CSEW), we have considered wider information on the risk of becoming a victim of violent crime by demographic characteristics to further understand the potential equality impacts of these reforms;
- **Offenders:** we have considered the impact on offenders by comparing the characteristics of offenders given community orders for (i) assault occasioning actual bodily harm (ii) common assault (iii) criminal damage under £5000 and (iv) fear or provocation of violence, against all those given community orders, and where certain groups are over-represented we have noted that the evidence we have available suggests the potential for a differential impact. Whilst not all the offenders sentenced to these offences will have committed the offence under the influence of alcohol, the characteristics of offenders sentenced for these offences provide one estimate of the potential equality impacts.

Analysis

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

Impact on victims

There are potential benefits to victims as these reforms 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 Crime Survey for England and Wales, 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 reforms. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age, religion and sexual orientation.

For crimes committed while an offender is under the influence of alcohol, it is not clear whether these offences would have happened or would have reached the same level of seriousness, had the offender not been under the influence of alcohol. While compulsory alcohol requirements may reduce the number of offenders under the influence of alcohol, the extent to which compulsory alcohol requirements reduce crime is not clear.

In 2010/11 in 44 per cent of CSEW violent incidents (around 930,000) the victim believed the offender to be under the influence of alcohol. If an alcohol abstinence and monitoring requirement reduces the number of alcohol related offences then there may be social benefits in terms of lower social costs of crime. The extent to which any re-offending is directly related to these alcohol abstinence and monitoring requirements will be difficult to measure as many offenders receive more than one requirement. We also cannot know how often the courts may impose this requirement and whether it will be used as a complement to or substitute for existing requirements. If the requirement is used as a substitute for other rehabilitative requirements, then some of the rehabilitative effect of existing requirements on offenders may be lost.

As this provision will only be commenced in certain geographic areas at the pilot stage, the government will keep these areas under review to monitor the effectiveness of this policy in reducing alcohol related re-offending.

Information is not available on the characteristics of victims of those sentenced to community orders for the specific offences we are interested in. Using the CSEW, we have considered wider information on the risk of becoming a victim of violent crime by demographic characteristics to further understand the potential equality impacts of these reforms. The results are presented in Tables 1- 4 (Annex A). The analysis presented assumes there may be a greater impact on those groups that are currently at greatest risk of experiencing violent crime. We have identified the potential for differential impacts in relation to age, religion and sex.

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 upturning 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 reforms will help to ensure that assessments are carried out more promptly and reduce court delay.

Offenders for whom the alcohol abstinence and monitoring requirement would apply to would be subject to compulsory alcohol monitoring. In the event that they fail, they would be liable to sanctions for breach.

Potential Age Impacts

The data on use of requirements by age are given in Table 28 (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.

Table 29 (Annex A) shows the age distribution for offenders sentenced to a community order for the 4 specified offences ((i) assault occasioning actual bodily harm (ii) common assault (iii) criminal damage under £5000 and (iv) fear or provocation of violence); this shows that younger age groups are over-represented amongst these 4 offences compared to all offenders sentenced to a community sentence.

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

Potential Disability Impacts

Evidence suggests that a large proportion of offenders on community orders identify as having a long standing illness or disability. 51 per cent of the OMCCS sample of 2,595 people starting community orders stated that they had a longstanding illness, disability, or infirmity of some kind¹³ (Table 13, Annex A). It is a reasonable assumption that at least some of these people will be disabled under the Equality Act 2010¹⁴. 33 per cent of the total OMCCS sample stated that they had a health condition or disability that limits their ability to carry out everyday activities a great deal or to some extent (Table 13, Annex A), and 14 per cent of the total OMCCS sample stated that they needed help with a physical health condition or disability (Table 14, Annex A).

With regard to the alcohol abstinence and monitoring requirement, due to limitations in the available evidence we are unable to quantify the potential for any differential impact, as no comprehensive statistical evidence is available on whether persons sentenced to the specific offences we have identified have a disability.

We are aware that people with learning disabilities or mental health issues may require increased support to enable them to understand the community order/suspended sentence order and meet the terms of the requirement (including with mobility issues), and the focus should be on ensuring that the additional support is available through reasonable adjustments.

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

Evidence suggests that a small proportion of offenders on community orders are married, with 8 per cent of the OMCCS sample stating that they were married (Table 16, Annex A).

¹³ A wide range of disabilities and illness were included in the definition used at interview, including: problem with arms, legs, hands, feet, back or neck (including arthritis or rheumatism); difficulty in seeing; difficulty in hearing; skin conditions, allergies; chest, breathing problem, asthma, bronchitis; heart, blood pressure or blood circulation problems; stomach, liver, kidney or digestive problems; diabetes; depression, bad nerves; mental illness or suffer from phobia, panics or other nervous disorders; learning difficulties; epilepsy; other health problems or disabilities.

¹⁴ The Equality Act 2010 definition is that a person (P) has a disability if (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

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 30 (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.

With respect to the alcohol abstinence and monitoring requirement, table 31 (Annex A) shows the ethnic distribution for offenders sentenced to a community order for the 4 specified offences; this shows that the White ethnic group is over-represented amongst these 4 offences compared to all offenders sentenced to a community sentence, especially amongst those sentenced for criminal damage under £5000.

Therefore there is the potential of a differential impact in reforming requirements 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

The data on use of requirements by sex are given in Table 32 (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.

With respect to alcohol abstinence and monitoring requirements, table 33 (Annex A) shows that men are over-represented across the 4 offences compared to all offenders sentenced to a community order.

The reforms 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. CSEW 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

For offenders with learning disabilities or mental health issues reasonable adjustments will be made to ensure the community order or suspended sentence order is understood and that the severity of breaches is explained. 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.

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 reform 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 reform 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.

Alcohol abstinence and monitoring requirement

Through the legislative provisions, the government will initially pilot use of the alcohol abstinence and monitoring requirement in a limited number of areas. This is necessary before the provisions can be generally commenced and rolled out further.

This will allow the government to carry out a 'proof of concept' pilot which will provide us with evidence of the likely scale of take-up and the technical processes for running a sobriety scheme; any unintended consequences; the experience of offenders on the scheme and to what extent they felt it changed their behaviour, through qualitative research. This will provide sufficient safeguards to ensure the potential

impacts of the new provisions are carefully monitoring and any adverse consequences are sufficiently restricted. An added safeguard of stopping the pilots will also be built in if adverse consequences result. In addition, the legislative provisions provide a power for the Secretary of State to amend the requirement if evidence from the pilots proves that specific changes should be made to improve the effectiveness of the requirement.

Referral orders for young offenders

Summary

The reforms 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 reforms against the statutory obligations under the Equality Act 2010. These are outlined below.

Direct discrimination

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

Indirect discrimination

Although the reforms 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 reform gives courts greater flexibility and discretion when sentencing.

Discrimination arising from disability and duty to make reasonable adjustments

In so far as this reforms 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 reforms, 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 reforms.

Advancing equality of opportunity

Wherever possible we have considered how these reforms 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 reforms.

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 reforms widen this power to include an additional option for the court to pass a conditional discharge.

The reforms 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 reforms, 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 reforms, we have considered the impact on:

- **Victims:** Information is not available on characteristics of victims of those given referral orders. Using the Crime Survey for England and Wales, 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 reforms;
- **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 reforms 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 reforms 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 Crime Survey for England and Wales, 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 reforms. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age, religion and sexual orientation.

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 34 (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 35 (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 36 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 reforms against the statutory obligations under the Equality Act 2010. These are outlined below.

Direct discrimination

The reforms 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 reforms 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 reforms 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 reforms 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 reforms, 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 reforms.

Advancing equality of opportunity

Wherever possible we have considered how these reforms 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 reforms.

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.

The reforms 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 reform 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 reforms, we have considered the impact on:

- **Victims:** Information is not available on characteristics of victims of those given YROs. Using the Crime Survey for England and Wales, 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 reforms;
- **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 reforms 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 Crime Survey for England and Wales, 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 reforms. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age, religion and sexual orientation.

Impact on offenders

There is the potential for adverse impacts on offenders in relation to the reform of curfew requirements. Without a general upturning 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 37 (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 38 (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 39 (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 reforms against the statutory obligations under the Equality Act 2010. These are outlined below.

Direct discrimination

The reforms 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 reforms 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 reforms 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 reforms.

Advancing equality of opportunity

We don't think these reforms 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 reforms.

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 reform 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 Act 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 Act 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 Act 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 Act'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 reforms, 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 reform 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 40 (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 41 (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

Chapter 2 makes a number of changes (contained in Schedule 11) to restrict the court's powers to remand adult unconvicted defendants in custody where it is apparent that there is no real prospect that the defendant would receive a custodial sentence if convicted. A court would still be able to remand in custody for the defendant's own protection, or where there was a risk of further offending involving domestic violence.

A similar restriction on the remand to youth detention accommodation of defendants under 18 is made by Chapter 3 of Part 3 of the Act.

The definition of 'young person' in the Bail Act 1976 is amended to include 17 year olds. This amendment is made as a consequence of changes to the provisions about remands for youths, the provisions for which are set out in Chapter 3 of Part 3 of the Act.

In addition, the Bail (Amendment) Act 1993 is amended so that the prosecution may appeal to the High Court against the decision of the judge of a Crown Court to grant bail to a person charged with or convicted of an imprisonable offence.

Adult remands

Summary

The Ministry of Justice reforms in the Act 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 reforms against the statutory obligations under the Equality Act 2010. These are outlined below.

Direct discrimination

The reforms 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 reforms 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 reforms 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 reforms, 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 reforms.

Advancing equality of opportunity

Wherever possible we have considered how these reforms 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 reforms.

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 reforms 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 reforms, 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 reforms 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 reform 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 42 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

Whilst we do not have information on the number of people remanded in custody with a disability, information is available on those starting custodial or community sentences.

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'¹⁵ compared to around a fifth of the general population of adults aged 16 and over.

Evidence suggests that a large proportion of offenders on community orders identify as having a long standing illness or disability. 51 per cent of the OMCCS sample of 2,595 people starting community orders stated that they had a longstanding illness, disability, or infirmity of some kind¹⁶ (Table 13, Annex A). It is a reasonable assumption that at least some of these people will be disabled under the Equality Act 2010¹⁷. 33 per cent of the total OMCCS sample stated that they had a health condition or disability that limits their ability to carry out everyday activities a great deal or to some extent (Table 13, Annex A), and 14 per cent of the total OMCCS sample stated that they needed help with a physical health condition or disability (Table 14, Annex A).

Potential Gender Reassignment Impacts

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

¹⁵ Data from, 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."

¹⁶ A wide range of disabilities and illness were included in the definition used at interview, including: problem with arms, legs, hands, feet, back or neck (including arthritis or rheumatism); difficulty in seeing; difficulty in hearing; skin conditions, allergies; chest, breathing problem, asthma, bronchitis; heart, blood pressure or blood circulation problems; stomach, liver, kidney or digestive problems; diabetes; depression, bad nerves; mental illness or suffer from phobia, panics or other nervous disorders; learning difficulties; epilepsy; other health problems or disabilities.

¹⁷ The Equality Act 2010 definition is that a person (P) has a disability if (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

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 married¹⁸. This compares to around a half of the general population aged 18 and over.

Evidence suggests that a small proportion of offenders on community orders are married, with 8 per cent of the OMCCS sample stating that they were married (Table 16, Annex A).

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 43 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.

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 44 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.

Female prisoners are more likely to have lived on their own with dependent children than men prior to custody. In the 2003 Resettlement Survey, around half of women living with dependent children reported living alone with these children, compared to less than one in ten men. The 2004 survey found this to be around one-third of women compared to around one in twenty men¹⁹.

For those on community orders, a higher proportion of females compared to males are looking after children. For example, whilst 16 per cent of the females in the OMCCS sample were looking after a child/children (during the week, during the day), compared to 4 per cent of males (Table 24, Annex A). The OMCCS data also

¹⁸ Table 2.18, www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls

¹⁹ Prisoners' childhood and family backgrounds: Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners

suggests that a higher proportion of single females live with dependant children. 34 per cent of single, (never married), divorced, separated or widowed females lived with dependant children, compared to 3 per cent of single, (never married), divorced, separated or widowed males. However, included in these figures may be offenders who live with another adult who shares parenting responsibility for their children.

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 reform 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.

Appeal against bail

Summary

The reform will enable the prosecution permission to appeal against the decision of a Crown Court judge to grant bail.

Direct discrimination

The reform applies to all defendants. There is therefore no direct discrimination within the meaning of the Equality Act 2010.

Indirect discrimination

The reforms will apply equally to those who share a protected characteristic and those who do not. However, to the extent that certain groups that share a protected characteristic are more likely to be subject to proceedings in the Crown Court and bailed, they would also be more likely to be subject to this reform (which enables the prosecution to appeal a decision of a Crown Court judge to grant bail). Nevertheless the government considers that any differential impact would be justified, on the basis that these reforms amount to a proportionate means of achieving a legitimate aim of ensuring that the public are protected on the rare occasion that a Crown Court judge grants bail to a defendant who should remain in custody.

Discrimination arising from disability and the duty to make reasonable adjustments

We do not consider there to be a risk of discrimination arising from disability and the duty to make reasonable adjustments within the meaning of the Equality Act 2010 as a result of these reforms.

Harassment and victimisation

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act 2010 as a result of these reforms.

Advancing equality of opportunity

We have had regard to this aspect of the equality duty but do not consider that the reforms 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 reforms.

Conclusion

Having paid due regard to the potential impacts identified in the ‘analysis’ section below, the government is satisfied that it is right to table these amendments.

Aims and outcomes for the policy

At present, the prosecution can only appeal against a decision of a magistrates’ court to grant bail. The prosecution cannot appeal against the decision of a Crown Court judge to grant of bail, even if the prosecution believes that there is evidence of a risk to public safety. The government accepts, that there may be rare instances in which an inappropriate bail decision is made by a Crown Court judge to grant bail to a defendant and that the need to protect the public requires that the prosecution should be permitted to challenge that decision by way of appeal to a High Court judge. The prosecution’s decision to appeal a decision of Crown Court judge should not be done lightly.

The appeal would only be permitted where the appeal was made almost immediately after the decision, as is the case currently with an appeal by the prosecution against the decision of a magistrates court. The defendant would be entitled to representation at the hearing but would not be entitled to a corresponding right of appeal against being refused bail.

It is assumed that there will be very few occasions in which a prosecuting authority believes it is necessary to appeal against a Crown Court judge’s bail decision. In order to ensure that decisions to appeal are carefully considered, guidance will be issued requiring that the decision to appeal should be made by a senior official in the prosecuting authority.

Methodology

In analysing the potential equalities impacts of these reforms, we have considered the impact on offenders.

Analysis

Impact on offenders

The pool of defendants who are potentially affected by the new provision are those to whom the Crown Court has granted bail. The question is in which of those cases the prosecution decides to appeal.

As the policy change introduces a new process, there are limitations in the available evidence to fully assess the potential for any differential equality impacts. However, we know that, of all those defendants tried or sentenced at the Crown Court for indictable offences in 2010, 67 per cent of defendants of White ethnicity were bailed at the point of committal for trial or sentence, 55 per cent of defendants of Black ethnicity, 67 per cent Asian, 54 per cent Other and 65 per cent of those of unknown ethnicity (see Table 45 in Annex A); 76 per cent of those aged 50-59 and 81 per cent of those aged 60 and over were bailed at committal for trial or sentence compared with between 62 per cent and 69 per cent in other age bands (see Table 46 in Annex A); and 63 per cent of males and 81 per cent of females (see Table 47 in Annex A).

Mitigation and justification

There are no accessible data to determine any likely differential impact on groups with protected characteristics who would be subject to appeals against Crown Court bail decisions. Once the reforms are implemented, we will monitor impacts across all protected characteristics where data are available. If differences are identified, we will take appropriate mitigating action as necessary. Consistency and fairness in making such decisions will be ensured by the issue of guidance by the Director of Public Prosecutions and other prosecuting authorities, which will require that any decision to appeal must be approved at a senior level.

Chapter 3: Remands of Children Otherwise Than on Bail

Chapter 3 creates new custodial remand provisions for under 18s who are charged with or convicted of a criminal offence or concerned in extradition proceedings. It repeals the existing framework set out in the Children and Young Persons Act 1969 and removes provisions under which 17 year olds are currently remanded in prison.

This Chapter makes provision for all under 18s who have been refused bail to be remanded in custody according to the same tests. It removes the existing distinctions based on age and gender and imposes a more rigorous test before under 18s can be remanded to youth detention accommodation.

Remands of Children Otherwise Than on Bail

Summary

The Act reforms 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 reforms against the statutory obligations under the Equality Act 2010. These are outlined below.

Direct discrimination

The reforms 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 reform 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 reforms 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 reforms, 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 reforms.

Advancing equality of opportunity

Wherever possible we have considered how these reforms 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 reforms.

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 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 Act 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.

- ii. ‘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 Act 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 Act provisions 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 reforms, 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 reform 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 48 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 reform to 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 households²⁰.

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.

²⁰ 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 49 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 50 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

Chapter 4 makes amendments to the 2003 Act provisions about the release and recall of prisoners. As amended by this Chapter, the 2003 Act will apply to all sentences to be imposed for offences whenever they were committed and whenever the sentence was passed. Schedules 16 and 17 insert Schedules 20A and 20B into the 2003 Act and save the release and licence provisions for offences committed before 4 April 2005 where such provisions differ from those in Chapter 6 of Part 12 of the 2003 Act. Further amendments to the 2003 Act will:

- make the crediting of remand time an administrative function (rather than dependent on a direction of the court);
- simplify the calculation of crediting periods of remand on bail;
- provide for the unconditional release of prisoners serving sentences of less than 12 months at the half-way point of sentence;
- provide for additional restrictions for early release on Home Detention Curfew ("HDC");
- make provision for a revocation of a licence to be cancelled where a mistake was made;
- remove some of the restrictions on the use of recalls subject to automatic release;
- allow for the executive release of recalled extended sentence prisoners (subject to a risk test);
- make it clear that, where a prisoner is released on HDC before their automatic release date, a recall under section 254 during the HDC period will override automatic release when that date arrives, so that prisoners who have been recalled for misbehaviour may be detained beyond that date;
- prevent prisoners recalled during their HDC period being re-released prior to their automatic release date unless satisfactory arrangements for further HDC electronic monitoring can be put in place;
- provide for supervision of young adult prisoners on release from sentences of less than 12 months; and
- allow for foreign national prisoners serving indeterminate sentences to be removed from the United Kingdom when the tariff set by the court expires.

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 reforms 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 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 reforms 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 reforms 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 reforms, 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 reforms. 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 reforms 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 reforms.

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 reform 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 reforms, 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 51 (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'²¹ compared to around a fifth of the general population of adults aged 16 and over.

²¹ Data from 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 married²². 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 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 53 (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 54 (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.

Potential Sexual Orientation Impacts

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

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.”

²² Table 2.18, www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls

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 reforms 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

Chapter 5 repeals provisions in the 2003 Act creating indeterminate sentences for public protection and extended sentences and replaces them with provisions for life sentences to be imposed on conviction for a second serious offence and new provision for extended sentences. Equivalent provision is made for service law. The Chapter also creates a new power for the Secretary of State to amend the Parole Board release test for prisoners serving Indeterminate Sentences for Public Protection (“IPP”), extended sentence prisoners and determinate sentence prisoners subject to transitional provisions.

Dangerous 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. We are therefore replacing 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 reforms 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 reforms 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 reforms.

Advancing equality of opportunity

The proposed future clarity in sentencing through a new, more determinate sentencing framework, and the reforms 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 reforms.

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 reforms 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 requirement of the reforms are the abolition of IPPs and the creation of 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 reforms effectively address the criteria set out above.

Under a new sentencing framework there will be 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.

There will be 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 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 reforms to make rehabilitative interventions in prison more tailored to individual need and circumstance.

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

- The impact on **victims**, by considering the ways in which victims might benefit from the reforms; 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 reforms in terms of expected impact on their sentence length, and access to offender management programmes. The future clarity in sentencing, and the reforms 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 reforms 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;
- Reforms 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 reforms aim to ensure that all offenders undertake rehabilitative activity as part of their sentence plan; this is an enhanced reform 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 Crime Survey for England and Wales, 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 reforms. The results are presented in Tables 2 and 5 and we have identified the potential for differential effects in respect of age, religion, sex and sexual orientation.

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 reforms 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 55 (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 55 (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'²³ 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 health²⁴.

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."²⁵

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^[1].

²³ Data from 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."

²⁴ 'In the dark: The mental health implications of Imprisonment for Public Protection' by Sainsbury Centre for Mental Health

²⁵ 'Unjust Deserts: imprisonment for public protection' by Jessica Jacobson and Mike Hough, Prison Reform Trust, 2010

The reforms 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.

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 married²⁶. 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 55 (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 55 (Annex A) suggests that women are more likely than men to be released from an IPP in comparison to those given IPP sentences.

Table 55 (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.

²⁶ Table 2.18, 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 reforms 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 55 (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'²⁷ compared to around a fifth of the general population of adults aged 16 and over.

The reforms 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.

²⁷ Data from 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 married²⁸. 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 55 (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 55 (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 reforms will have a positive impact upon equalities. Namely reforms 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.

²⁸ Table 2.18, www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls

Although the reforms 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 reforms. We have identified in the potential for these differential effects in respect of age, disability, race and sex.

Potential Age Impacts

Table 55 (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'²⁹ 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 health³⁰.

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."³¹

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^[1].

²⁹ Data from 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."

³⁰ 'In the dark: The mental health implications of Imprisonment for Public Protection' by Sainsbury Centre for Mental Health

³¹ 'Unjust Deserts: imprisonment for public protection' by Jessica Jacobson and Mike Hough, Prison Reform Trust, 2010

The reforms 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 personality disorder 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 personality disorder 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 married³². 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 55 (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 56 (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 55 (Annex A) shows that the IPP population are slightly more likely to be male compared to the sentenced population.

³² Table 2.18, 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

Chapter 7 contains amendments to the legislation under which police constables may issue a penalty notice for disorder (“PND”) and authorised persons may give conditional cautions. This includes the introduction of a PND with an education option and provision for conditional cautions to be given without the need to refer the case to the relevant prosecutor. The amendments also allow new types of conditions to be attached to a conditional caution given to a foreign offender without leave to enter or remain in the United Kingdom. The Chapter creates a new kind of youth caution. It also makes amendments to youth conditional cautions, intended to make them more flexible.

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

Summary

We have considered the impact of the reforms 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 reform 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 reforms, 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 reforms.

Advancing equality of opportunity

Wherever possible we have considered how these reforms 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 reforms.

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 that:

- 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; and
- 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;
- 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; and
- 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 reforms, 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 Crime Survey for England and Wales, 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 reforms. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age, religion and sexual orientation.

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 reforms 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 57 (Annex A) shows that young people aged 12-14 account for a larger proportion of out of court disposals than all disposals.

Our reforms 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 olds³³. At present 10-15s who offend 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 58 (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 59 (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.

³³ PNDs for 10-15 year olds are used in two areas.

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 reforms against the statutory obligations under the Equality Act 2010. These are outlined below.

Direct discrimination

The reforms 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 reforms 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 reform 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 reforms 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 reforms, 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 reforms.

Advancing equality of opportunity

Wherever possible we have considered how these reforms 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 reforms.

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 reforms 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 reform 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 reforms 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 reform removes the requirement for the authorised person to refer the matter to the relevant prosecutor.

The reforms 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 reforms 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 reforms, 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 reforms 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 Crime Survey for England and Wales, 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 reforms. The results are presented in Table 1 (Annex A) and we have identified the potential for these positive differential effects in respect of age, religion and sexual orientation.

Impact on offenders

The reforms 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 60 (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 61 (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 62 (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 63 (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 64 (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 reform giving 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 reform removing 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: Rehabilitation of offenders

Chapter 8 contains a package of changes to the Rehabilitation of Offenders Act 1974 (“the ROA”) to amend the scope of the Act and its rehabilitation periods. The amendments extend the scope of the ROA so that custodial sentences of up to and including 4 years in length can become ‘spent’. The times at which different convictions become ‘spent’ are also amended, and in most cases the rehabilitation periods are reduced. Where a caution or conviction has become spent, the offender is treated as rehabilitated in respect of that offence and is not obliged to declare it for most purposes, for example, when applying for employment or insurance.

Reform of the Rehabilitation of Offenders Act

Summary

The primary purpose of the ROA is to support the effective rehabilitation of ex-offenders who have stayed on the right side of the law by supporting routes into employment, whilst maintaining an appropriate balance towards public protection. As the ROA is currently drafted it fails to achieve this balance. Several studies have highlighted the association between employment and reduced levels of re-offending, in fact, research has shown that being in employment is associated with a lower risk of re-offending³⁴. Details of previous convictions are a strong motivating factor for employers withdrawing offers of employment – that is, ‘unspent’ criminal convictions could be an impediment to employment for ex-offenders³⁵. There is also a perception among offenders that criminal records are a barrier to finding work – of those who did not have any paid employment in the 4 weeks before custody, 16.2 per cent listed previous criminal records as a barrier to getting work/ looking for work.³⁶

The government considered that the ROA should be reformed so that the criminal records disclosure scheme more effectively assists ex-offenders to obtain work, whilst maintaining the necessary safeguards for sensitive areas of employment and proceedings. Part of this is reaching clarity and consistency in ROA policy so that it can be better understood and applied.

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (“the Exceptions Order”) will continue to operate so that sensitive areas of employment and proceedings will continue to be able to rely on all conviction information (spent and unspent) when determining the suitability of individuals to carry out these particular roles. We believe that these reforms go further to achieve the aims of the ROA and fit with the wider MoJ policy of reducing re-offending and getting ex-offenders into work.

These reforms seek to achieve a more proportionate and relevant balance towards improving the employment prospects of reformed offenders who have put their criminal lives behind them, whilst maintaining public protection, part of which is through the continued operation of the Exceptions Order.

We have considered the impact of the reforms against the statutory obligations under the Equality Act 2010 which are set out below. We have also considered any potential impact in respect of the decision to create an exemption for certain immigration and nationality functions. Due to limitations in the available evidence we are unable to identify the potential for any differential impact in relation to victims.

Direct discrimination

The reforms to the ROA apply to all offenders within scope of the Act. There is therefore no direct discrimination within the meaning of the 2010 Act.

³⁴ Social Exclusion Unit, Reducing re-offending by ex-prisoners, 2002; M Lipsey in Thomas D Cook et al., Meta-analysis for explanation: a case-book, 1992; F Simon and C Corbett, an evaluation of prison work and training, Home Office 1996.

³⁵ CRB disclosure applicant research 2010

³⁶ Surveying Prisoner Crime Reduction Wave 1 results, 2010.

Under the current system, the majority of rehabilitation periods are halved for persons under the age of 18 at the point of conviction. This recognises the particular difficulties experienced by young people seeking employment and further education placements. It also takes into account the fact that a period of time clear from offending at a younger age, during the peak age of reoffending, is more significant than the same period of time at a later age. We believe that desistance from reoffending following conviction at a young age is therefore a good indicator that the young person has learned his or her lesson and the risk of reoffending is low. These reforms maintain this distinction and the changes to rehabilitation periods will continue to be halved for persons who are under the age of 18 at the point of conviction, with one exception: it will be necessary to have a buffer period of 18 months for custodial sentences of 6 months or less, in order to maintain the requisite balance in the hierarchy of sentences, in particular between short custodial sentences and community orders/Youth Rehabilitation Orders.

The immigration and nationality exemption does not create direct discrimination within the meaning of the 2010 Act. Any effect that may be caused to a person is due to their immigration status rather than one of the nine “protected characteristics” under the Equality Act.

Indirect discrimination

Although the reforms 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 disposals and longer custodial sentence lengths in particular sentences over 4 years, and may be negatively impacted by the reforms.

Offenders sentenced to sentences greater than 4 years: We have identified potential differential effects in respect of age, race, religion and sex. The government believes that these reforms will achieve a more proportionate and relevant balance towards improving the employment prospects of reformed offenders who have put their criminal lives behind them. It is still important to maintain public protection and therefore we believe that keeping out of scope offenders who have been sentenced to over 4 years in custody is proportionate to achieving this aim. The government believes that excluding sentences of over 4 years is a sensible policy considering the seriousness of an offence which attracts such a sentence. An offender who has been convicted of an offence that attracts a sentence of over 4 years should continue to reveal it to prospective employers to ensure that employers and the public are properly protected.

There are also a number of situations where the reforms will mean rehabilitation periods could increase for offenders:

Offenders sentenced to YROs and DTOs and those who commit further summary only offences within an existing rehabilitation period: We have identified potential differential effects in respect of age, race and sex. The government believes such a policy is justified and proportionate. These reforms change the rehabilitation periods to start from the date of conviction to the end of the sentence. The total rehabilitation period will correspond better with the seriousness of an offence. YROs and DTOs are likely to be given for relatively serious offences that we believe potential employers and providers of training courses might need or expect to be aware of in order to maintain the right balance towards public protection. Sentences of DTOs are a type of custody for young people. These reforms therefore bring the rehabilitation periods in respect of DTOs in line with the rehabilitation period

for other types of custodial sentence. The potential disadvantage to these individuals is offset by the benefits to society caused by having better and more evidence based rehabilitation periods and employers being aware of relevant convictions. The final change with a potentially negative impact relates to a provision that means offenders will in future have to disclose an offence that would otherwise be regarded as spent where a second, summary offence has been committed during the rehabilitation period of the first offence. These reforms bring the situation for subsequent summary offences in line with the current position where there is a subsequent either way or indictable offence. The aim is to bring consistency to what has been historically a confusing provision. It is not uncommon currently for offenders to fail to disclose offences they should have disclosed and disclose offences they need not have done because the current provisions are so complex. The government also believes it is right that offenders who have committed further offences within an existing rehabilitation period should not benefit from the protection of the ROA until they can demonstrate that they have put their criminal behaviour behind them fully, no matter how serious the subsequent offending is.

Those individuals with a criminal history who are in a position where they need to apply to enter and/or remain in the UK via the UKBA: We are aware that there could be potential differential effects most likely in respect of race but we are limited on exactly which groups within this protected characteristic would be affected due to limitations to data available. UKBA's core functions are about establishing the entitlement of foreign nationals to enter and remain in the UK. Good character of such individuals is a key issue in this decision making process. UKBA needs the wider picture of a person's behaviour to enable them to make the fundamental decision about whether to grant them permission to stay in the UK. The changes to the rehabilitation periods are such that UKBA will no longer be able to take information into account that it needs to in order to make such an assessment. Because of this, and the government's commitment to securing and protecting our borders and deporting foreign national offenders upon completion of their sentence, the government believes that this exemption is necessary.

Discrimination arising from disability and duty to make reasonable adjustments

We don't think the reforms will result in less favourable treatment of disabled people in consequence of their disability either directly or indirectly or place them at a substantial disadvantage.

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 reforms.

Advancing equality of opportunity

We have identified that young people aged 12-14 subject to DTOs and YROs may be subject to longer rehabilitation periods than is currently the case, which could impact on their ability to obtain work and training. As stated above, YROs and DTOs are likely to be given for relatively serious offences that we believe potential employers and providers of training courses might need or expect to be aware of in order to maintain the right balance towards public protection. The potential disadvantage to these individuals is offset by the benefits to society caused by having better and more evidence based rehabilitation periods and employers being aware of relevant convictions.

The reform to increase the scope of the Act so that sentences of up to and including 4 years in custody can become spent, instead of the current situation of sentences of up to and including 30 months, means that the potential differential impacts identified in relation to age, race, religion and sex may be less than the differential impacts arising from the current arrangements. We expect that this change will assist in the advancing of equality of opportunities for a number of ex-offenders.

We have identified below that more males, older people and people from the Black ethnic group are likely to receive custodial sentences in excess of 4 years and accordingly their convictions will never become spent. This is likely to impact on their opportunities to obtain work and training because of the need to disclose such convictions. As stated above, the government believes that these reforms will achieve a more proportionate and relevant balance towards improving the employment prospects of reformed offenders who have put their criminal lives behind them. It is still important to maintain public protection and therefore we believe that keeping out of scope offenders who have been sentenced to over 4 years in custody is proportionate to achieving this aim. The government believes that excluding sentences of over 4 years is a sensible policy considering the seriousness of an offence which attracts such a sentence. An offender who has been convicted of an offence that attracts a sentence of over 4 years should continue to reveal it to prospective employers to ensure that employers and the public are properly protected.

Fostering good relations

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

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 the ROA as is proposed.

Background

The ROA seeks to find a balance between public protection and the resettlement of offenders. The ROA enables ex-offenders, who have not committed further proven offences, not to disclose their previous cautions and convictions after certain periods of time have passed. After these specified time periods (“rehabilitation periods”), all cautions and convictions (except those resulting in prison sentences of over 30 months) are regarded as ‘spent’. Once a caution or conviction is spent it no longer has to be revealed or admitted in most circumstances. These rehabilitation periods are:

- For custodial sentences of up to and including 6 months, the conviction will not become spent until 7 years after the offender was convicted;
- For custodial sentences of between 6 and up to and including 30 months, the conviction will not become spent until 10 years after the offender was convicted;

- For fines and community orders, the conviction will not become spent until 5 years after the offender was convicted;
- For conditional discharges, the conviction will not become spent for the period of the order, or a minimum of 12 months (whichever is longer) after the offender was convicted; and
- For absolute discharges, the conviction will not become spent until 6 months after the offender was convicted.

For those individuals aged under 18 when convicted, the relevant rehabilitation periods are half of those specified above.

The law was extended in 2008 to cover simple cautions, reprimands and warnings (which become spent immediately) and conditional cautions (which become spent after 3 months).

Once a caution or conviction has become spent under the Act, the ex-offender does not have to reveal it or admit its existence in most circumstances. There are some exceptions, but unless the individual is told that one of these applies and are asked for more details of all their cautions or convictions, spent cautions and convictions need not be disclosed when filling in a form, or at a job interview. An employer cannot refuse to employ someone (or dismiss someone) because he or she has a spent caution or conviction unless an exception applies.

The exceptions where an ex-offender may have to declare spent cautions and convictions are listed in the Exceptions Order. These exceptions include, but are not limited to:

- Those working with children and other vulnerable groups, such as teachers and social workers;
- Those working in professions associated with the justice system, such as solicitor, police, court clerk, probation officer, prison officer and traffic warden;
- Doctors, dentists, chemists, nurses or Paramedics;
- Accountants;
- Veterinarians;
- Managers of unit trusts;
- Anyone applying to work as an officer of the Crown;
- Employees of the RSPCA or SSPCA whose duties extend to the humane killing of animals;
- Any employment or other work normally carried out in bail hostels or probation hostels;
- Certain officials and employees from government and public authorities with access to sensitive or personal information or official databases about children or vulnerable adults;

- Any office or employment concerned with providing health services which would normally enable access to recipients of those health services;
- Officers and other persons who execute various court orders;
- Anyone who as part of their occupation occupies premises where explosives are kept under a police certificate;
- Contractors who carry out various kinds of work in tribunal and court buildings;
- Certain company directorships, such as those for banks, building societies and insurance companies; and
- Certain civil service positions are excluded from the act, such as employment with the Civil Aviation Authority and the UK Atomic Energy Authority.

Aside from these professions, the law also exempts organisations if the question is asked:

- by or on behalf of the Football Association, the Football League or Premier League to assess someone's suitability to work as, or supervise or manage, a steward at football matches;
- by the Financial Services Authority and certain other bodies involved in finance, when asked to assess the suitability of a person to hold a particular status in the financial and monetary sectors; and
- to assess a person's suitability to adopt children, or a particular child, or a question about anyone over the age of 18 living with such a person.

There are also a number of proceedings before a "judicial authority" (widely defined) that are excluded from the Act, and where spent cautions and convictions can be disclosed. These include applications for adoption or fostering, and for firearms certificates. Applicants to university courses are required to declare their criminal records on their UCAS forms. Students applying to do law, medicine, teaching, nursing and social work (or similar trades) may be barred if they have a conviction, even if it is spent.

The Exceptions Order can be amended through secondary legislation by way of an affirmative order.

Aims and outcomes for the policy

These reforms involve increasing the scope of the Act so that sentences of up to and including 4 years in custody can become spent after a period of time; sentences of over 4 years in custody can never become spent. The rehabilitation periods would now commence when the sentence ends (including any period spent by the offender on license), rather than from the date that the offender is convicted. The rehabilitation periods would be changed as follows:

- Custodial sentences over 0 months and up to and including 6 months, the conviction would not become spent until 2 years after the end of the sentence;

- Custodial sentences of over 6 months and up to and including 30 months, the conviction would not become spent until 4 years after the end of the sentence;
- Custodial sentences of over 30 months and up to and including 4 years, the conviction would not become spent until 7 years after the end of the sentence;
- Community order, the conviction would not become spent until 1 year after the end of the order;
- Fines, the conviction would not become spent until 1 year from the point of imposition; and
- An absolute discharge will become spent immediately.

As under the current ROA, these rehabilitation periods would be halved for offenders who are under the age of 18 at the point of conviction with one exception (to ensure that the total rehabilitation period for short custodial sentences is appropriate and proportionate when compared to youth rehabilitation orders), that custodial sentences over 0 months and up to and including 6 months in custody would not become spent until 18 months after the end of the sentence for offenders who are under 18 at the point of conviction.

All extended determinate sentences, regardless of length, will be excluded from the scope of ROA so that these convictions can never become spent.

These periods will apply equally to the corresponding military offences, which are included in the relevant definitions of sentences to be rehabilitated. Specifically, for sentences of service detention, the conviction would not become spent until 12 months from the date of conviction; for removal from Her Majesty's Service, the conviction would not become spent until 12 months from the date of conviction.

However there are three situations where the reforms will mean rehabilitation periods would increase. The cases where a period will be extended are:

Youth rehabilitation orders (“YRO’s”): Currently these become spent after one year or when the order ceases to be in force (whichever is later); under proposed amendments they become spent 6 months from when the order ceases to be in force. Where an order of longer than 6 months is imposed, the rehabilitation period will be longer than the previous minimum of one year and all those with orders that expire after 6 months or longer will have an additional 6 months added to their rehabilitation period. Thus, for example the rehabilitation period will change as follows:

- 3 month YRO: now 12 months, under LASPO 9 months;
- 1 year YRO: now 12 months, under LASPO 18 months; and
- 3 year YRO: now 36 months, under LASPO 42 months.

NB: As stated above, the YRO will become spent 6 months after the order ceases to be in force. We have provided the examples above as illustrative comparisons of the rehabilitation period before and after these reforms, based on the length of rehabilitation period from the point of conviction.

Detention and training orders (“DTOs”) for 12 to 14 year olds: These can be a maximum of 24 months. Currently these become spent one year after the Order ceases to have effect; under proposed amendments DTOs will be treated in the same way as other custodial sentences, so that DTOs of less than 6 months will become spent 18 months after the end of the sentence and for DTOs over 6 months it will be 2 years after the end of the sentence. Thus for example the rehabilitation period will change as follows:

- 3 month DTO: Now 15 months, under LASPO 21 months;
- 6 month DTO: Now 18 months under LASPO 24 months;
- 18 month DTO: Now 2 ½ years, under LASPO 3 ½ years; and
- 2 year DTO: Now 3 years, under LASPO 4 years.

NB: As stated above, the DTO will become spent 18 months after the sentence (for DTOs of less than 6 months) or 2 years after the end of the sentence (for DTOs of greater than 6 months). We have provided the examples above as illustrative comparisons of the rehabilitation period before and after these reforms, based on the length of rehabilitation period from the point of conviction.

Repeat offenders: The same rule would be applied to summary offences that is applied to triable either-way and indictable only offences when committed in an existing rehabilitation period. This will ensure consistency in the way that offenders who commit further offences within existing rehabilitation periods are treated.

All changes will be retrospective so that offenders who have committed offences in the past will be subject to the new rehabilitation periods.

The reforms to rehabilitation periods for offenders will only apply to offenders in England & Wales.

UKBA

The clause relating to UKBA will exempt them entirely from the operation of the ROA so that they can rely on all conviction information (spent and unspent) when making immigration and nationality decisions.

Methodology

In analysing the potential equalities impacts of these reforms, we have considered the impact on offenders by comparing the distribution of disposals, and custodial sentence lengths, by protected characteristics, and where there are differences we have noted that the evidence we have available suggests the potential for a differential impact.

We have also examined consultation feedback provided as part of the ‘Breaking the Cycle’ Green Paper consultation.

Analysis

Impact on victims

The reforms would extend the scope of the Act to include all custodial sentences up to and including 4 years in custody. When an employer makes an employment offer, the key problem for the employer is one of asymmetric information – i.e. they cannot be sure of whether a potential candidate has a criminal record. The availability of information on a job candidate's criminal convictions mitigates this risk for those employers that can make use of criminal records checks. This reform potentially reduces the time during which unspent convictions have to be disclosed to certain employers. This means that there is a risk to an employer of hiring someone who subsequently re-offends. This could expose some employers/individuals involved in activities where the offender works to a greater, indirect risk of harm through their re-offending.

This risk is minimal as the Exceptions Order ensures that there are safeguards in place so that for activities where there is a particular opportunity for harm, or where there are particularly sensitive groups involved and so the harm itself is potentially greater, an ex-offender cannot conceal their conviction. This risk is also considered minimal as for example, the probability of an ex-offender re-offending for the first time after 36 months is little different from the probability of first time re-offending after 48 months.

Information is not available on the protected characteristics of victims of those offenders sentenced to greater than 30 months to less than or equal to 4 years (i.e. covering those sentences where the scope of the Act is being extended to). We are therefore unable to identify any differential impacts in relation to victims.

Impact on offenders

Ex-offenders who have served custodial sentences of 4 years or less and who do not go on to re-offend would benefit from having their conviction 'spent' and after a reduced amount of time. This should reduce the barriers to employment that many ex-offenders currently face. Research has indicated that employment is positively associated with reduced levels of re-offending. To the extent that these reforms reduce unemployment among this group of ex-offenders, re-offending may also be reduced.

We have not quantified the number of ex-offenders who will now have a shorter rehabilitation period. Any estimate would be subject to considerable uncertainty as there are a large number of interactions to consider; these are the rate, frequency and severity of re-offending; and the outcome if the offender is convicted. Any estimate would also be difficult to quantify as it is complicated by the switch from calculating the length of the rehabilitation period from date of conviction to the date of release.

We believe that these reforms amount to a proportionate means to reform the ROA to achieve the legitimate aim of supporting the rehabilitation into employment of reformed offenders who have stayed on the right side of the law, whilst maintaining an appropriate balance towards public protection. Sentences of over 4 years will follow particularly serious offending behaviour, in which case we believe it is right for employers to be aware of an individual's convictions.

The rehabilitation periods are currently very long. These time periods fail to recognise that a large proportion of offenders who are reconvicted are reconvicted in the first year of release from custody. Data on reconviction rates over time based on offenders in the Ministry of Justice 2000 Reconviction Cohort show that after a three-month follow up period, 19.9 per cent of offenders have been reconvicted compared to 43.0 per cent in one year and 74.0 per cent within 9 years. Over half of those offenders reconvicted within the nine years follow up period are convicted within the first year.³⁷

Further analysis of data from the 2000 Reconviction Cohort by age (see Table 65 in Annex A) suggest that a higher proportion of those in the younger age groups (18-20 and 21-24) are reconvicted compared to all age groups. As for all age groups, over half of offenders in each age group reconvicted within nine years follow up were convicted in the first year. The only exception was for the 35+ group where it was just below half.

Table 66 shows reconviction rates based on the 2000 Reconviction Cohort by gender. A higher proportion of men than women are reconvicted at one year and nine year follow-up. As for all offenders, over half of men and women reconvicted within the nine year follow up period are convicted within the first year.

Data on reconviction over time are not available for young offenders or by ethnicity based on the 2000 Reconviction Cohort and it is therefore not possible to draw conclusions about the differential impact of these characteristics.

Potential Age Impacts

The decision to increase rehabilitation periods for certain sentences.

Table 67 (Annex A) shows the distribution of disposals for indictable offences by age group. Proportionately more offenders aged under 18 and 18-20 receive non custodial sentences. This suggests that younger offenders may be more likely than older offenders to receive the shorter rehabilitation periods under the reforms.

For those aged 12 to 14 and sentenced to DTOs or YROs, the rehabilitation periods will be increased compared to the current situation. For all other offenders, rehabilitation periods will be decreased or there will be no change.

The decision to extend the ROA to custodial sentences up to 4 years

Table 68 (Annex A) shows the distribution of sentence lengths for immediate custodial sentences for indictable offences by age group. Older offenders are more likely to be given sentences of longer than 4 years; these sentences can never become spent under the reforms.

Therefore there is the potential for the reforms to have a differential impact in relation to age. The reform to increase the scope of the Act so that sentences of up to and including 4 years in custody can become spent, instead of the current situation of sentences of up to and including 30 months, means that the differential impact of the reforms may be less than the differential impact arising from the current arrangements.

³⁷ Ministry of Justice (2010). Compendium of reoffending statistics and analysis. Ministry of Justice Statistics Bulletin.

Potential Disability Impacts

Due to limitations in the available evidence we are unable to identify the potential for any differential impact, as no comprehensive statistical evidence is available on whether persons sentenced have a disability.

Evidence suggests that a large proportion of offenders on community orders identify as having a long standing illness or disability. 51 per cent of the OMCCS sample of 2,595 people starting community orders stated that they had a longstanding illness, disability, or infirmity of some kind³⁸ (Table 13, Annex A). It is a reasonable assumption that at least some of these people will be disabled under the Equality Act 2010³⁹. 33 per cent of the total OMCCS sample stated that they had a health condition or disability that limits their ability to carry out everyday activities a great deal or to some extent (Table 13, Annex A), and 14 per cent of the total OMCCS sample stated that they needed help with a physical health condition or disability (Table 14, Annex A).

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’⁴⁰.

These figures compare to around a fifth of the general population of adults aged 16 and over, so there would be a positive impact for the disabled in this respect arising from this reform.

Potential Gender Reassignment Impacts

Due to limitations in the available evidence, we are unable to identify the potential for any differential impact, as no comprehensive statistical evidence is available on persons sentenced by gender reassignment.

Potential Marriage and Civil Partnership Impacts

Due to limitations in the available evidence we are unable to identify the potential for any differential impact, as no comprehensive statistical evidence is available by marital status for persons sentenced.

³⁸ A wide range of disabilities and illness were included in the definition used at interview, including: problem with arms, legs, hands, feet, back or neck (including arthritis or rheumatism); difficulty in seeing; difficulty in hearing; skin conditions, allergies; chest, breathing problem, asthma, bronchitis; heart, blood pressure or blood circulation problems; stomach, liver, kidney or digestive problems; diabetes; depression, bad nerves; mental illness or suffer from phobia, panics or other nervous disorders; learning difficulties; epilepsy; other health problems or disabilities.

³⁹ The Equality Act 2010 definition is that a person (P) has a disability if (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

⁴⁰ Data from 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.”

Evidence suggests that a small proportion of offenders on community orders are married, with 8 per cent of the OMCCS sample stating that they were married (Table 16, Annex A).

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 married⁴¹.

These figures compare to around a half of the general population aged 18 and over being married.

Potential Pregnancy and Maternity Impacts

Due to limitations in the available evidence we are unable to identify the potential for any differential impact, as no comprehensive statistical evidence is available on persons sentenced by pregnancy and maternity.

Potential Race Impacts

The main issue raised during the consultation in relation to this proposed change concerned Black and Minority Ethnic (BME) groups and the point that they are currently more likely to be excluded from the ROA as a higher proportion get custodial sentences of greater than 30 months.

The decision to increase rehabilitation periods for certain sentences.

Table 69 (Annex A) shows the distribution of disposals made for indictable offences by ethnic group. Offenders from the White ethnic group have the highest proportions receiving non custodial sentences. This suggests that offenders from the White ethnic group may be more likely than BME offenders to receive the shorter rehabilitation periods under the reforms.

For those aged 12 to 14 and sentenced to DTOs or YROs, the rehabilitation periods will be increased compared to the current situation. For all other offenders rehabilitation periods will be decreased or there will be no change.

The decision to extend the ROA to custodial sentences up to 4 years

Table 70 (Annex A) shows the distribution of sentence lengths for immediate custodial sentences for indictable offences by ethnic group. Offenders from the Black ethnic group are more likely to be given sentences of longer than 4 years; these sentences can never become spent under the reforms.

Therefore there is the potential for the reforms to have a differential impact in relation to race. The reform to increase the scope of the Act so that sentences of up to and including 4 years in custody can become spent, instead of the current situation of sentences of up to and including 30 months, means that the differential impact from the reforms may be less than the differential impact arising from the current arrangements.

⁴¹ Table 2.18, 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

Table 71 (Annex A) shows the distribution of immediate custodial sentenced prison receptions by religion. Buddhists, Muslims, Pagans and Rastafarians are more likely to be given sentences of longer than 4 years; these sentences can never become spent under the reforms.

Therefore there is the potential for the reforms to have a differential impact in relation to religion. The reform to increase the scope of the Act so that sentences of up to and including 4 years in custody can become spent, instead of the current situation of sentences of up to and including 30 months, means that the differential impact from the reforms may be less than the differential impact arising from the current arrangements.

Potential Sex Impacts

The decision to increase rehabilitation periods for certain sentences.

Table 72 (Annex A) shows the distribution of disposals made by sex. Females have the highest proportions receiving non custodial sentences (i.e. sentences other than immediate custody and suspended sentences). This suggests that females may be more likely than males to receive shorter rehabilitation periods under the reforms.

For those aged 12 to 14 and sentenced to DTOs or YROs, the rehabilitation periods will be increased compared to the current situation. For all other offenders, rehabilitation periods will be decreased or there will be no change.

The decision to extend the ROA to custodial sentences up to 4 years

Table 73 (Annex A) shows the distribution of sentence lengths for immediate custodial sentences by sex. Males are more likely to be given sentences of longer than 4 years; these sentences can never become spent under the reforms.

Therefore there is the potential for the reforms to have a differential impact in relation to sex. The reform to increase the scope of the Act so that sentences of up to and including 4 years in custody can become spent, instead of the current situation of sentences of up to and including 30 months, means that the differential impact from the reforms may be less than the differential impact arising from the current arrangements.

Potential Sexual Orientation Impacts

Due to limitations in the available evidence, we are unable to identify the potential for any differential impact, as no comprehensive statistical evidence is available on persons sentenced by sexual orientation.

Impact on UKBA applicants

UKBA currently use only information relating to an applicant's unspent convictions in their immigration and nationality decision-making processes. These reforms exempt UKBA from the ROA enabling them to operate wholly outside the Act and take into account information relating to an applicant's spent and unspent convictions. The following groups of individuals subject to an immigration or nationality decision may therefore be affected:

- a. Those seeking to enter the UK (for example as a student or to work)

- b. Those seeking to remain in the UK (extending or switching their current leave)
- c. Those seeking British citizenship
- d. Individuals being considered for deportation
- e. Individuals whose leave may be revoked

Immigration and nationality decisions that are not in the favour of the person they are made in relation to can be for a variety of reasons; each case is assessed by UKBA against a wide range of criteria.

Due to limitations in the available evidence we are therefore unable to identify the potential for differential impact. We cannot quantify the impact that the UKBA exemption would have on different groups as this depends on a number of variables. These are the proportion of these individuals who have a previous criminal conviction; how UKBA intends to assess the decisions of individuals with previous criminal convictions; and whether these individuals would have been otherwise refused for reasons not relating to previous criminal convictions. However, given that the majority of applicants are likely to be from the non White-British ethnic groups we consider that there is the potential for differential impact in relation to race.

Impact on those convicted of military offences

There is currently no accessible data on the protected characteristics of those convicted of military offences. Due to limitations in the available evidence we are therefore unable to rule out any differential impact.

In 2010, 4 people were convicted of military offences and given an immediate custodial sentence of more than 4 years. These sentences can never become spent under the reforms. The potential impact of this will be minimal because of the small numbers involved.

Mitigation and Justification

The government believes that these reforms will achieve a more proportionate and relevant balance towards improving the employment prospects of reformed offenders who have put their criminal lives behind them. It is still important to maintain public protection and therefore we believe that keeping out of scope offenders who have been sentenced to over 4 years in custody is proportionate to achieving this aim. The government believes that excluding sentences of over 4 years is a sensible policy considering the seriousness of an offence which attracts such a sentence. An offender who has been convicted of an offence that attracts a sentence of over 4 years should continue to reveal it to prospective employers to ensure that employers and the public are properly protected.

Whilst this policy will mean that some offenders will remain outside the scope of the ROA, the number will be fewer than those who are currently outside the scope of the ROA. The benefits that are bestowed on ex-offenders by virtue of the ROA are therefore being extended to a larger group of people.

In respect of those offenders who may face longer rehabilitation periods under the reforms – offenders sentenced to YROs and DTOs and those who commit further summary offences within an existing rehabilitation period – the government believes such a policy is justified and proportionate. These reforms change the rehabilitation periods to start from the date of conviction to the end of the sentence. The total

rehabilitation period will correspond better with the seriousness of an offence. YROs and DTOs are likely to be given for relatively serious offences that we believe potential employers and providers of training courses might need or expect to be aware of in order to maintain the right balance towards public protection. Sentences of DTOs are a type of custody for young people. These reforms therefore bring the rehabilitation periods in respect of DTOs in line with the rehabilitation period for other types of custodial sentence. The potential disadvantage to these individuals is offset by the benefits to society caused by having better and more evidence based rehabilitation periods and employers being aware of relevant convictions.

The final change with a potentially negative impact relates to a provision that means offenders will in future have to disclose an offence that would otherwise be regarded as spent where a second, summary offence has been committed during the rehabilitation period of the first offence. These reforms bring the situation for subsequent summary offences in line with the current position where there is a subsequent either way or indictable offence. The aim is to bring consistency to what has been historically a confusing provision. It is not uncommon currently for offenders to fail to disclose offences they should have disclosed and disclose offences they need not have done because the current provisions are so complex. The government also believes it is right that offenders who have committed further offences within an existing rehabilitation period should not benefit from the protection of the ROA until they can demonstrate that they have put their criminal behaviour behind them fully, no matter how serious the subsequent offending is.

These reforms will have the general effect that ex-offenders who have served custodial sentences of 4 years or less and who do not go on to re-offend could benefit from having their conviction ‘spent’ and after a reduced amount of time. This should reduce the barriers to employment that many ex-offenders currently face. Research has indicated that employment is positively associated with reduced levels of re-offending⁴². To the extent that these reforms reduce unemployment among this group of ex-offenders, re-offending may also be reduced.

UKBA’s core functions are about establishing the entitlement of foreign nationals to enter and remain in the UK. Good character of such individuals is a key issue in this decision making process. UKBA needs the wider picture of a person’s behaviour to enable them to make the fundamental decision about whether to grant them permission to stay in the UK. The changes to the rehabilitation periods are such that UKBA will no longer be able to take information into account that it needs to in order to make such an assessment. Because of this, and the government’s commitment to securing and protecting our borders and deporting foreign national offenders upon completion of their sentence, the government believes that this exemption is necessary.

⁴² Social exclusion unit, reducing re-offending by ex-prisoners, 2002

Chapter 9: Offences

Chapter 9 creates new offences of threatening with an offensive weapon or an article with a blade or point thereby creating an immediate risk of serious physical harm with a maximum penalty of 4 years imprisonment. There will be a minimum sentence of 6 months imprisonment for persons aged 18 or over found guilty of this new offence (unless this would be unjust in all the circumstances) and a minimum sentence for persons aged 16 and 17 years old of a 4 month detention and training order (again, unless it would be unjust in the circumstances).

It creates a new offence of causing serious injury by dangerous driving and a criminal offence of squatting in a residential building.

It amends the Scrap Metal Dealers Act 1964, including by creating a new offence of buying scrap metal for cash. The new offence prohibits scrap metal dealers paying for scrap metal other than by cheque or by electronic transfer.

It contains provision amending section 76 of the Criminal Justice and Immigration Act 2008 (“the 2008 Act”) (reasonable force for the purposes of self-defence etc).

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

Summary

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. We have considered the impact of the reforms 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 reforms 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 reforms 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 reforms.

Harassment and victimisation

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

Advancing equality of opportunity

We have had regard to this aspect of the equality duty but do not consider that the reforms 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 reforms.

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 Act 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 reforms.

- 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 Crime Survey for England and Wales (CSEW), the small number of incidents involving a knife reported (the 2010/11 CSEW 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 74 (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, religion, sex and sexual orientation.

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, sex and sexual orientation of victims in the introduction of minimum sentences.

Impact on offenders

The legislation applies 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

population⁴³); 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 75 (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 76 (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'⁴⁴ compared to around a fifth of the general population of adults aged 16 and over.

⁴³ 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.

⁴⁴ Data from 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 married⁴⁵. 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 77 (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 population⁴⁶.

In Table 78 (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.

Potential Religion or Belief Impacts

Table 79 (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.

⁴⁵ Table 2.18, www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/spcr-full-tables-paper-5-2-prisoners-backgrounds-reconviction-a.xls

⁴⁶ 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 Sex Impacts

Table 80 (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 81 (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 or 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

Summary

This analysis relates to the new offence of causing serious injury by dangerous driving. We have considered the impact of the reforms 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 reforms.

Advancing equality of opportunity

We have had regard to this aspect of the equality duty but do not consider that the reforms 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 reforms.

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 allows 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 82 (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 82 (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 82 (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

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 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 reforms 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 reforms.

Harassment and victimisation

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

Advancing equality of opportunity

We have had regard to this aspect of the equality duty but do not consider that the reforms 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 reforms.

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 reforms 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 included 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 reforms 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 characteristic, 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 been 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 reform 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 reforms 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 reforms 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 night⁴⁷. 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 underestimate⁴⁸.

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 **SQUASH⁴⁹ 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

⁴⁷ '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)

⁴⁸ 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.*).

⁴⁹ 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 reforms.

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 reforms 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 40⁵⁰, 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 issues⁵¹. 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

⁵⁰ '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)

⁵¹ '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 issues⁵². 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 disorder⁵³. 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 squatted⁵⁴. 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.

⁵² *ibid*

⁵³ 'Adult psychiatric morbidity in England, 2007' by the NHS Information Centre

⁵⁴ '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 groups⁵⁵, 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 research⁵⁶. 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 from taking paid employment. Research by Oxfam was cited that showed many asylum seekers experience homelessness⁵⁷.

⁵⁵ '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)

⁵⁶ '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)

⁵⁷ 'Coping with destitution: survival and livelihood strategies of refused asylum seekers living in the UK' by Oxfam (February 2011)

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 male⁵⁸. 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)⁵⁹. Research also suggests that some women find squats unsafe. However, this research suggested that in some circumstances squatting is safer than rough sleeping for women⁶⁰.

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)⁶¹. The 2003 report by the New Policy Institute for Crisis cited research that found 40 per cent of homeless women had reported that domestic violence was connected to their homelessness⁶².

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

⁵⁸ '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)

⁵⁹ '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)

⁶⁰ '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)

⁶¹ '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)

⁶² '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)

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 criminalise the act of squatting in residential buildings, and that the reforms strike an appropriate balance between those interests.

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.

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 has therefore criminalised 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 reforms 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

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 reforms 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 reform 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 reform 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 reforms.

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 reforms.

Advancing equality of opportunity

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

Fostering good relations

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

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 reforms, we have considered:

- The impact on victims by considering the ways in which victims might benefit from the reforms. 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 reforms 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, robbery⁶³, 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, sex and sexual orientation 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 reforms 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 83 (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.

Potential Race Impacts

Table 83 (Annex A) shows that those offenders are more likely to be from the Black ethnic group compared to the general population.

⁶³ The number of robbery incidents picked up in the CSEW 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.

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 83 (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 these reforms for positive, negative and mixed equality impacts. We expect implementation of the reforms to follow towards the end of 2012 and early 2013. We would require a full year's data on a number of protected characteristics following implementation on which to base a review.

Annex A – Evidence

Figure 1

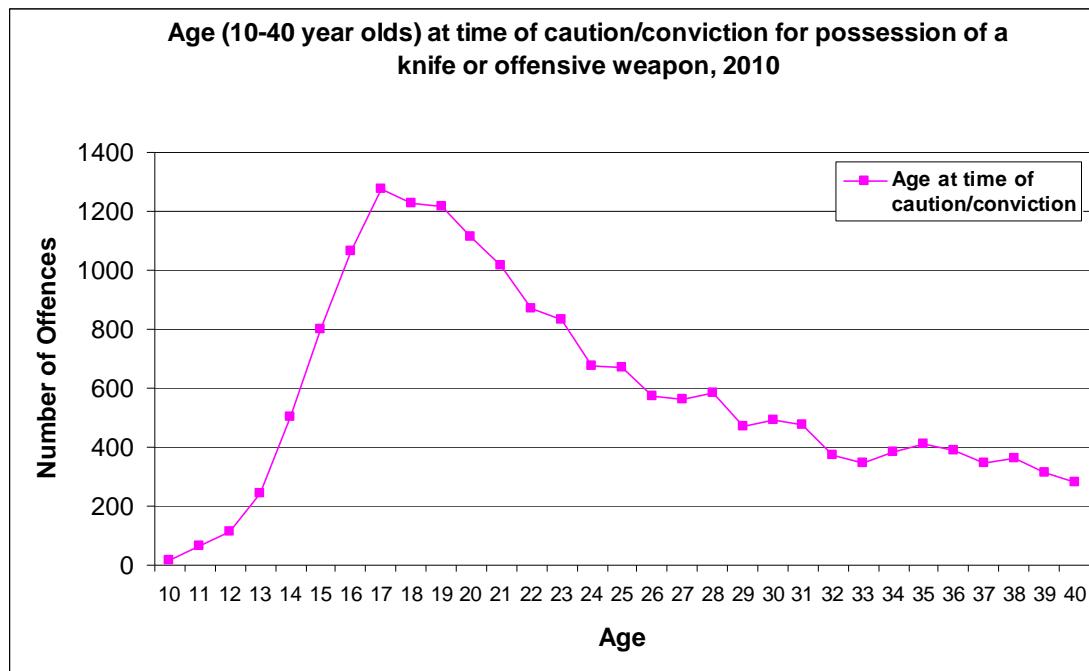


Table 1 Proportion of adults who were victims of all CSEW crime and personal crime by personal characteristics

Percentages	England and Wales, 2010/11 CSEW		
	All CSEW crime	Personal crime	Unweighted base
<i>% victims once or more:</i>			
ALL ADULTS	21.5	5.9	46,754
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
Men	22.6	6.5	21,076
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
Women	20.5	5.3	25,678
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
Ethnic group			
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
Marital status			
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
Long-standing illness or disability			
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 CSEW					
	All violence ¹	Wounding	Assault with minor injury	Assault without injury	Robbery	Unweighted base
<i>% victims once or more</i>						
ALL ADULTS	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
Men	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
Women	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
Ethnic group						
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
<i>Mixed</i>	7.1	1.0	1.2	3.3	2.2	350
<i>Asian or Asian British</i>	3.9	1.2	0.5	1.7	0.7	1,676
<i>Black or Black British</i>	3.2	1.0	0.5	0.8	0.8	1,006
<i>Chinese or other</i>	3.3	0.4	0.0	2.1	0.8	655
Marital status						
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
Long-standing illness or disability						
Long-standing illness or disability	3.0	0.9	0.7	1.2	0.5	13,793
162 limits activities	2.7	0.8	0.7	1.0	0.4	9,879
<i>Does not limit activities</i>	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

Table 3 Proportion of households that were victims of burglary by household characteristics

Percentages	England and Wales, 2010/11 CSEW			
	Burglary	Burglary with entry	Attempted burglary	<i>Unweighte d base</i>
ALL HOUSEHOLDS	2.6	1.6	1.1	<i>46,728</i>
Sex of household reference person				
Male	2.4	1.4	1.0	<i>28,086</i>
Female	2.8	1.8	1.1	<i>18,642</i>
Age of household reference person				
16-24	6.4	4.6	2.1	<i>1,631</i>
25-34	3.4	1.9	1.6	<i>5,868</i>
35-44	2.9	1.7	1.3	<i>8,458</i>
45-54	2.6	1.6	1.1	<i>9,111</i>
55-64	2.1	1.3	0.9	<i>8,603</i>
65-74	1.2	0.8	0.4	<i>6,703</i>
75+	1.4	0.9	0.5	<i>6,243</i>
Structure of household				
Single adult & child(ren)	5.6	3.2	2.6	<i>2,448</i>
Adults & child(ren)	2.8	1.7	1.2	<i>9,876</i>
Adult(s) & no children	2.3	1.4	0.9	<i>34,404</i>

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 CSEW	
	Theft from person	Unweighted base
ALL ADULTS	1.1	46,754
Age		
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
Men	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
Women	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
Ethnic group		
White	1.0	42,991
Non-White	2.1	3,687
<i>Mixed</i>	1.1	350
<i>Asian or Asian British</i>	1.7	1,676
<i>Black or Black British</i>	2.3	1,006
<i>Chinese or other</i>	3.4	655
Marital status		
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
Long-standing illness or disability		
Long-standing illness or disability	1.1	13,793
<i>Limits activities</i>	1.2	9,879
<i>Does not limit activities</i>	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 by type of crime and religion

Percentages	England and Wales, adults aged 16 and over, 2009/10 and 2010/11 CSEW					Unweighted base
	Personal hate crime ¹	All hate crime ^{1,2}	All violence	All CSEW personal crime	All CSEW crime	
Religion						
Christian	0	0	3	4	20	69,854
Buddhist	1	1	2	5	26	408
Hindu	1	2	2	4	21	897
Muslim	1	2	3	6	23	2,167
Other	1	1	5	7	27	1,142
No religion	0	0	5	7	27	16,596

1. Excludes gender identity as questions on this strand were not included until 2011/12.

2. This percentage is calculated treating a household crime as a personal crime. It is the estimated percentage of adults who have been a victim of at least one personal crime or have been resident in a household that was a victim of at least one household crime.

Source: Hate crime, cyber security and the experience of crime among children: Findings from the 2010/11 British Crime Survey Supplementary Volume 3 to Crime in England and Wales 2010/11

Table 6: Proportion of adults who were victims by type of crime and sexual identity (2009/10 and 2010/11 CSEW)^{1,2}

Percentages ³	All	Personal	All violence	Unweighted	
Sexual identity⁴					
Heterosexual or straight	26	7	4	47,677	
Gay or lesbian	35	15	9	733	
Bisexual	30	12	5	389	
Other ⁵	26	8	4	1,694	
Total for those aged 16-59⁶	26	7	4	50,493	

1. The British Crime Survey (BCS) is now known as the Crime Survey for England and Wales to better reflect its geographical coverage.

While the survey did previously cover the whole of Great Britain it ceased to include Scotland in its sample in the late 1980s. There is a separate survey – the Scottish Crime and Justice Survey – covering Scotland. Given the transfer of responsibility for the survey to ONS, it was decided that the name change would take effect from 1 April 2012.

2. Based on a combined 2009/10 and 2010/11 dataset.

3. Percentage of respondents.

4. The question on the sexual identity of the respondent is asked in the self-completion module of the questionnaire. This module is only asked of those respondents aged 16-59.

5. The 'Other' category includes those who responded 'Other', those who responded 'Don't know' and those that did not wish to answer the question.

6. These are higher than the proportions for the overall CSEW as they exclude respondents aged 60 and over.

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 CSEW	
	Preferred measure ¹	Broad measure ¹
All violence	7	12
Personal theft	5	6
Vandalism to personal property ²	0	2
All crime experienced by children aged 10-15	12	17
<i>Unweighted base</i>	3,849	3,849

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 CSEW (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 CSEW personal crime once or more in the last year, by age group

Percentages	England and Wales, January to December 2009 CSEW			
	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
All personal crime	18	17	5	7
<i>Unweighted base</i>	1,733	1,928	1,733	1,928

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: Total of recorded Hate Crime from Police forces in England, Wales and Northern Ireland during the calendar year 2010

Race	Faith	Sexual Orientation	Transgender	Disability	Total	Anti-Semitic
39,311	2,007	4,883	357	1,569	48,127	488

Source: Association of Chief Police Officers (ACPO), 2011

Please note: The above data relates to recordable crimes under Home Office recording rules and indicates those offences that have been perceived as hate crimes by the victim or any other person. Crimes were recorded from 1st January to 31st December 2010 in all police forces in England, Wales and Northern Ireland.

Improvements in the way forces collect and record hate crime data mean that direct year on year comparisons can be misleading. All hate crimes are included and not additional to general crime (i.e. all these crimes are also recorded in the figures for the relevant crime types, for example, robbery, assault etc.) Forces have only been collating data for the five strands of hate crimes since 1st April 2008.

Table 10: 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%
Total		100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 11: 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
Community Order								
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%
All	100%							
SSO								
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%
All	100%							

Source: Further analysis of Offender Management Caseload Statistics 2010

Table 12: Household income of offenders by age group

	18 to 20	21 to 24	25 to 39	40 or over	Total
Less than £5,000	42%	45%	39%	38%	40%
£5,000 to less than £10,000	21%	17%	23%	23%	22%
£10,000 to less than 15,000	13%	11%	13%	12%	12%
£15,000 to less than £20,000	7%	6%	8%	7%	7%
£20,000 to less than £30,000	6%	8%	7%	8%	7%
£30,000 or more	11%	12%	11%	10%	11%
All	100%	100%	100%	100%	100%

Unweighted base 2,321

Source: Interim dataset for the first wave of the Offender Management Community Cohort Study
The figures may change when the data is finalised.

Due to weighting there may be rounding errors in the data

Table 13: The extent, if any, an offender's health condition or disability limits their ability to carry out everyday activities

	Per cent
A great deal	14.0
To some extent	18.5
A little	10.6
Not at all	7.7
Total with a longstanding illness, disability, or infirmity of any kind	51.0
Don't Know	.0
Item not applicable	49.0
Total without a longstanding illness, disability, or infirmity of any kind	49.0
Total	100.0

Unweighted base 2,595

Source: Interim dataset for the first wave of the Offender Management Community Cohort Study
The figures may change when the data is finalised.

Due to weighting there may be rounding errors in the data

Note: this question is not based on the Equality Act 2010 definition of disability. There are a wide range of disabilities and illness included in the definition used at interview, including: problem with arms; legs; hands; feet; back or neck (including arthritis or rheumatism); difficulty in seeing; difficulty in hearing; skin conditions, allergies; chest; breathing problem, asthma, bronchitis; Heart, blood pressure or blood circulation problems; stomach; liver; kidney or digestive problems; diabetes; depression, bad nerves; mental illness or suffer from phobia; panics or other nervous disorders; learning difficulties; epilepsy; other health problems or disabilities.

Table 14: The proportion of offenders who feel they need help with a physical health condition or disability

	Per cent
No	85.6
Yes	14.3
Missing	0.1
Total	100.0

Unweighted base 2,595

Source: Interim dataset for the first wave of the Offender Management Community Cohort Study
The figures may change when the data is finalised.

Due to weighting there may be rounding errors in the data

Table 15: Household income of offenders by whether they have a longstanding illness, disability, or infirmity of any kind

	Yes	No	Total
Less than £5,000	43%	36%	40%
£5,000 to less than £10,000	25%	18%	22%
£10,000 to less than 15,000	12%	13%	12%
£15,000 to less than £20,000	6%	9%	7%
£20,000 to less than £30,000	5%	10%	7%
£30,000 or more	8%	14%	11%
All	100%	100%	100%

Unweighted base 2,306

Source: Interim dataset for the first wave of the Offender Management Community Cohort Study
The figures may change when the data is finalised.

Due to weighting there may be rounding errors in the data

Table 16: Marital status of offenders

Marital status	Per cent
Married	7.7
Living with a partner	17.5
Single, never married	59.0
Divorced	7.5
Separated	7.3
Widowed	.4
Other Specific	.6
Refusal	.0
Total	100.0

Unweighted base 2,595

Source: Interim dataset for the first wave of the Offender Management Community Cohort Study
The figures may change when the data is finalised.

Due to weighting there may be rounding errors in the data

Table 17: Household income of offenders by marital status

	Married	Living with a partner	Single, never married	Divorced	Separated	Other (including widow)	Total
Less than £5,000	11%	23%	49%	38%	44%	67%	40%
£5,000 to less than £10,000	23%	26%	21%	21%	17%	10%	22%
£10,000 to less than 15,000	16%	20%	9%	14%	12%	5%	12%
£15,000 to less than £20,000	14%	10%	5%	9%	9%	10%	8%
£20,000 to less than £30,000	16%	10%	5%	8%	9%	5%	7%
£30,000 or more	20%	10%	10%	9%	8%	5%	11%
All	100%	100%	100%	100%	100%	100%	100%

Unweighted base 2,310

Source: Interim dataset for the first wave of the Offender Management Community Cohort Study
The figures may change when the data is finalised.

Due to weighting there may be rounding errors in the data

Table 18: Persons (18 and over) sentenced at all courts for indictable offences by ethnicity 2010

England and Wales		Community Order	Total sentenced
<u>Ethnicity</u>			
White		79%	75%
Black		7%	9%
Asian		4%	5%
Other		1%	2%
Unknown		9%	10%
Total		100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 19: 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
Community Order								
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%
All	100%	100%	100%	100%	100%	100%	100%	100%

SSO

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%
All	100%							

Source: Further analysis of Offender Management Caseload Statistics 2010

Table 20: Household income of offenders by ethnic group

	White	BME	Total
Less than £5,000	39%	48%	40%
£5,000 to less than £10,000	22%	17%	22%
£10,000 to less than 15,000	12%	12%	12%
£15,000 to less than £20,000	8%	7%	8%
£20,000 to less than £30,000	8%	7%	8%
£30,000 or more	11%	10%	11%
All	100%	100%	100%

Unweighted base 2,306

Source: Interim dataset for the first wave of the Offender Management Community Cohort Study
The figures may change when the data is finalised.

Due to weighting there may be rounding errors in the data

Table 21: Persons (18 and over) sentenced at all courts for all offences by sex 2010

England and Wales	Community Order	Total sentenced
<u>Sex</u>		
Male	83%	74%
Female	16%	23%
Non specified	1%	3%
Total	100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 22: Court orders terminated in 2010, by reason for termination and sex

	Community Order	Suspended Sentence Order
Males and Females		
Ran their full course	53%	56%
Terminated early for:		
Good progress	12%	11%
Failure to comply with requirements	15%	12%
Conviction of an offence	10%	15%
Other reasons	10%	7%
All Community orders (=100%)	100%	100%
Males		
Ran their full course	53%	55%
Terminated early for:		
Good progress	12%	11%
Failure to comply with requirements	15%	12%
Conviction of an offence	11%	16%
Other reasons	10%	7%
All Community orders (=100%)	100%	100%
Females		
Ran their full course	57%	62%
Terminated early for:		
Good progress	12%	12%
Failure to comply with requirements	14%	9%
Conviction of an offence	8%	11%
Other reasons	10%	6%
All Community orders (=100%)	100%	100%

Source: Offender Management Caseload Statistics 2010

Table 23: Household income of offenders by sex

	Male	Female	Total
Less than £5,000	40%	40%	40%
£5,000 to less than £10,000	20%	29%	22%
£10,000 to less than 15,000	12%	14%	12%
£15,000 to less than £20,000	8%	5%	7%
£20,000 to less than £30,000	8%	4%	7%
£30,000 or more	11%	9%	11%
All	100%	100%	100%
<i>Unweighted base</i>			2,309

Source: Interim dataset for the first wave of the Offender Management Community Cohort Study
The figures may change when the data is finalised.

Due to weighting there may be rounding errors in the data

Table 24: Main activity of offenders in last seven days by sex

	Male	Female	Total
Looking for paid work / preparing to be self-employed/unpaid work (not domestic work)	49%	23%	44%
Activities related to my sentence (attending programmes etc)	7%	8%	8%
Training	5%	6%	5%
Looking after a child / children (in the daytime on a weekday)	4%	16%	6%
Looking after someone sick or disabled (in the daytime on a weekday)	2%	4%	3%
Looking after the home (in the daytime on a weekday)	3%	19%	6%
Off sick / focus was health condition or disability	22%	19%	22%
Other	6%	4%	6%
Total	100%	100%	100%

Unweighted base 1,946

Source: Interim dataset for the first wave of the Offender Management Community Cohort Study
The figures may change when the data is finalised.

Due to weighting there may be rounding errors in the data

Table 25: Persons (18 and over) sentenced at all courts for indictable offences by age 2010

England and Wales	Suspended sentence	Total sentenced
<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%
Total	100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 26: Persons (18 and over) sentenced at all courts for indictable offences by ethnicity 2010

England and Wales		Suspended sentence	Total sentenced
Race			
White		75%	75%
Black		8%	9%
Asian		5%	5%
Other		2%	2%
Unknown		10%	10%
Total		100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 27: Persons (18 and over) sentenced at all courts for all offences by sex 2010

England and Wales		Suspended sentence	Total sentenced
Sex			
Male		85%	74%
Female		15%	23%
Non specified		0%	3%
Total		100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 28: 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
Community Order	18%	19%	18%	25%	14%	4%	1%	100%
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%
Suspended Sentence Order	16%	20%	19%	25%	14%	4%	1%	100%
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

Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act (2012) Equality Impact Assessment

Table 29: Offenders aged 18 and over sentenced to a community sentence for selected offences by age group, 2010

	18-20	21-24	25-29	30-39	40-49	50-59	60 and over	Total
Assault occasioning actual bodily harm	25%	22%	17%	19%	12%	4%	1%	100%
Common assault	17%	19%	18%	24%	17%	4%	1%	100%
Criminal damage under £5000	26%	25%	19%	19%	9%	2%	0%	100%
Fear or provocation of violence	28%	26%	16%	17%	10%	2%	0%	100%
All selected offences	22%	22%	18%	21%	14%	4%	1%	100%
All offenders sentenced to a community sentence	17%	18%	18%	25%	15%	5%	1%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Note. Sentences selected on basis that alcohol can be an aggravating factor and in these circumstances offenders could receive sobriety requirements as part of their community sentence and as high volume offences where over 4,000 community sentences were given. Therefore there could be a higher likelihood that a proportion of these offenders would be affected by the changes.

Table 30: 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
Community Orders	85%	5%	4%	1%	3%	1%	1%	100%
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%
Suspended Sentence Orders	81%	7%	5%	1%	3%	1%	1%	100%
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 31: Offenders aged 18 and over sentenced to a community sentence for selected offences by ethnic group, 2010

	White	Black	Asian	Other	Unknown	Total
Assault occasioning actual bodily harm	83%	6%	4%	1%	6%	100%
Common assault	82%	7%	4%	1%	5%	100%
Criminal damage under £5000	87%	6%	2%	0%	4%	100%
Fear or provocation of violence	83%	7%	3%	1%	6%	100%
All selected offences	83%	6%	4%	1%	5%	100%
All offences	79%	7%	4%	1%	9%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Note. Sentences selected on basis that alcohol can be an aggravating factor and in these circumstances offenders could receive sobriety requirements as part of their community sentence and as high volume offences where over 4,000 community sentences were given. Therefore there could be a higher likelihood that a proportion of these offenders would be affected by the changes.

Table 32: Requirements commenced under Community Orders and Suspended Sentence Orders by gender, 2010

	Male	Female	Total
Community Order	85%	15%	100%
Accredited Program	91%	9%	100%
Drug treatment	79%	21%	100%
Alcohol treatment	83%	17%	100%
Mental Health	83%	17%	100%
Suspended Sentence Order	87%	13%	100%
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 33 Offenders aged 18 and over sentenced to a community sentence for selected offences by gender, 2010

	Female	Male	Not stated	Total
Assault occasioning actual bodily harm	15%	85%	0%	100%
Common assault	13%	87%	0%	100%
Criminal damage under £5000	7%	92%	0%	100%
Fear or provocation of violence	8%	92%	0%	100%
All selected offences	11%	88%	0%	100%
All offences	16%	83%	1%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Note. Sentences selected on basis that alcohol can be an aggravating factor and in these circumstances offenders could receive sobriety requirements as part of their community sentence and as high volume offences where over 4,000 community sentences were given. Therefore there could be a higher likelihood that a proportion of these offenders would be affected by the changes.

Table 34: 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%
Total	100%	100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 35: 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%
Total	100%	100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 36: 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%
Total	100%	100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 37: Young people sentenced for indictable offences by age 2010

	YROs	All sentences
10	0%	0%
11	0%	0%
12	1%	1%
13	4%	4%
14	9%	10%
15	19%	20%
16	29%	28%
17	39%	36%
Total	100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 38: Young people sentenced for indictable offences by ethnicity 2010

	YRO	All sentences
White	77%	73%
Black	12%	13%
Asian	3%	5%
Other	1%	1%
Unknown	7%	8%
Total	100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 39: Young people sentenced by sex 2010

	YRO	All sentences
Male	85%	84%
Female	14%	15%
Not stated	1%	1%
Total	100%	100%

Source: Further analysis of Criminal Justice Statistics 2010

Table 40: 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%
Total	100%	100%

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 41: 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%
Total	100%	100%

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 42: 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
<u>Age</u>		
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%
Total	100%	100%

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

Table 43: 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
<u>Race</u>		
White	71%	70%
Black	12%	12%
Asian	6%	6%
Other	2%	3%
Unknown	8%	9%
Total	100%	100%

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

Table 44: 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%
Total	100%	100%

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act (2012) Equality Impact Assessment

Table 45: Proportion of defendants tried or sentenced at the Crown Court for indictable offences by ethnicity and remand status at point of committal for trial or sentence, 2010

	White	Black	Asian	Other	Not recorded	Total
Not remanded	0	0	0	0	2	0
Bailed	67	55	67	54	65	65
Remanded in custody	33	45	33	46	32	34
No. of defendants (thousands)	83.0	12.9	8.5	4.2	11.3	119.9

Source: Further analysis of Criminal Justice Statistics 2010

Table 46: Proportion of defendants tried or sentenced at the Crown Court for indictable offences by age group and remand status at point of committal for trial or sentence, 2010

	10-17	18-20	21-24	25-29	30-39	40-49	50-59	60+	Total
Not remanded	0	0	0	1	0	0	0	0	0
Bailed	66	65	65	62	62	69	76	81	65
Remanded in custody	33	34	35	37	38	31	24	18	34
No. of defendants (thousands)	3.1	18.3	22.3	21.3	28.1	17.7	6.4	2.8	119.9

Source: Further analysis of Criminal Justice Statistics 2010

Table 47: Proportion of defendants tried or sentenced at the Crown Court for indictable offences by sex and remand status at point of committal for trial or sentence, 2010

	Male	Female	Other	Total
Not remanded	0	0	99	0
Bailed	63	81	1	65
Remanded in custody	36	18	0	34
No. of defendants (thousands)	106.1	13.6	0.2	119.9

Source: Further analysis of Criminal Justice Statistics 2010

Note: In Tables 45-47, those remanded in custody includes those remanded for part of the time in custody and part on bail.

Table 48: Defendants under 18 remanded in custody by age

England and Wales

<u>Age</u>	Remanded in custody and not subsequently given an immediate custodial sentence	All remands
10	-	-
11	0%	0%
12	-	-
13	0%	0%
14	0%	1%
15	9%	11%
16	26%	27%
17	64%	61%
Total	100%	100%

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

Table 49: Defendants under 18 remanded in custody by ethnic appearance

England and Wales

<u>Race</u>	Remanded in custody and not subsequently given an immediate custodial sentence	All remands
White	63%	62%
Black	22%	21%
Asian	6%	6%
Other	2%	2%
Unknown	7%	8%
Total	100%	100%

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

Table 50: Defendants under 18 remanded in custody by sex

England and Wales

Sex	Remanded in custody and not subsequently given an immediate custodial sentence		All remands
	97%	97%	
Male	97%	97%	
Female	3%	3%	
Total	100%		100%

Data are estimated

Source: Further analysis of Criminal Justice Statistics 2010

Table 51: 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
IPP	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%
All nationalities		0%	3%	17%	22%	27%	20%	7%	3%	100%
Lifers	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%
All nationalities		0%	2%	7%	12%	27%	29%	16%	7%	100%

Source: Further analysis of Offender Management Caseload Statistics

Table 52: 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
IPP	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%
All nationalities		76%	4%	4%	15%	1%	0%	1%	100%
Lifers	UK National	80%	3%	5%	11%	0%	0%	0%	100%
	Foreign National	34%	3%	22%	33%	6%	1%	6%	100%
	Not Recorded	69%	3%	8%	8%	3%	3%	6%	100%
All nationalities		75%	3%	7%	13%	1%	0%	0%	100%

Source: Further analysis of Offender Management Caseload Statistics

Table 53: 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%
Total	100%	100%	100%	100%	100%	100%	100%	100%

Source: Further analysis of Offender Management Caseload Statistics

Table 54: Prison population by custody type, nationality and sex, as at 31 March 2011 (England and Wales)

IPP	Female	Male	Total	
	UK National	2%	98%	100%
	Foreign National	2%	98%	100%
	Not Recorded	0%	100%	100%
All nationalities	2%	98%	100%	
Lifers				
UK National	3%	97%	100%	
Foreign National	2%	98%	100%	
Not Recorded	0%	100%	100%	
All nationalities	3%	97%	100%	

Source: Further analysis of Offender Management Caseload Statistics

Table 55: 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
	Offenders sentenced to IPPs in 2010	Offenders sentenced to EPPs in 2010	Offenders sentenced to IPPs in 2010	Offenders sentenced to EPPs in 2010			
Age							
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%	
Total	100%	100%	100%	100%	100%	100%	100%
Gender							
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	
Total	100%	100%	100%	100%	100%	100%	100%
Ethnicity							
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	
Total	100%	100%	100%	100%	100%	n/a	

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 56: 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%
<i>Total</i>	100%	100%

Source:

Further analysis of Offender Management Caseload Statistics

Table 57: Disposals given to young people by type and age, 2009/10

	10	11	12	13	14	15	16	17	Total
Pre-Court									
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%
Total pre-court disposals	1%	3%	7%	11%	18%	21%	21%	19%	100%
Total	1%	1%	4%	7%	13%	20%	24%	28%	100%

Source: Youth Justice Board's Workload Statistics

Table 58: Disposals given to young people by type and ethnicity, 2009/10

Disposal type	White	Mixed	Black	Asian	Other	Not Known	Total
Pre-Court							
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%
Total pre-court disposals	87%	2%	4%	4%	0%	2%	100%
Total	84%	4%	6%	4%	0%	2%	100%

Source: Youth Justice Board's Workload Statistics

Table 59: Disposals given to young people by type and sex, 2009/10

Disposal type	Female	Male	Total
Pre-Court			
Reprimand	35%	65%	100%
Final Warning	26%	74%	100%
Conditional Caution	15%	85%	100%
Total pre-court disposals	32%	68%	100%
Total	22%	78%	100%

Source: Youth Justice Board's Workload Statistics

Table 60: 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
Total	5%	14%	18%	19%	26%	13%	4%	1%	100%
UK National	6%	15%	18%	19%	25%	13%	3%	1%	100%
Foreign National	2%	8%	16%	22%	32%	15%	4%	1%	100%
Not Recorded	1%	7%	19%	21%	28%	16%	7%	1%	100%

Source: Further analysis of Offender Management Caseload Statistics

Table 61: 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
Total	79%	3%	6%	10%	1%	0%	0%	0%	100%
UK National	84%	3%	5%	8%	0%	0%	0%	0%	100%
Foreign National	42%	3%	17%	28%	9%	0%	0%	0%	100%
Not Recorded	37%	3%	18%	30%	7%	5%	0%	0%	100%

Source: Further analysis of Offender Management Caseload Statistics

Table 62: 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%
Total	100%	100%	100%	100%

Source: Further analysis of Offender Management Caseload Statistics

Table 63: Sentenced prison reception by nationality and sex, 2008 (England and Wales)

	Male	Female	Total
Total	91%	9%	100%
UK National	91%	9%	100%
Foreign National	90%	10%	100%
Not Recorded	90%	10%	100%

Source: Further analysis of Offender Management Caseload Statistics

Table 64: Persons given cautions by sex 2010/11, England and Wales

	Conditional cautions	All cautions (excluding motoring offences)
Female	14%	25%
Male	86%	75%
Total	100%	100%

Source: CPS Conditional Cautioning Data and further analysis of Criminal Justice Statistics

Table 65: Reconviction rate for differing follow up periods based on 2000 cohort for Reoffending of adults in England and Wales by age

	18-20		21-24		25-34		35+	
Follow up period	Number of offenders	Reconviction rate						
3 month	8,598	27%	8,669	24%	15,915	20%	9,539	11%
6 month	8,598	40%	8,669	36%	15,915	31%	9,539	18%
9 month	8,598	48%	8,669	44%	15,915	38%	9,539	23%
1 Year	8,598	54%	8,669	50%	15,915	44%	9,539	26%
2 Year	8,598	66%	8,669	63%	15,915	56%	9,539	37%
3 Year	8,598	72%	8,669	70%	15,915	63%	9,539	44%
4 Year	8,598	76%	8,669	73%	15,915	67%	9,539	47%
5 Year	8,598	78%	8,669	76%	15,915	70%	9,539	51%
6 Year	8,598	79%	8,669	77%	15,915	72%	9,539	53%
7 Year	8,598	81%	8,669	79%	15,915	74%	9,539	55%
8 Year	8,598	82%	8,669	80%	15,915	75%	9,539	56%
9 Year	8,598	82%	8,669	81%	15,915	76%	9,539	57%

Source: Further analysis of 2000 Reconviction Cohort

Table 66: Reconviction rate for differing follow up periods based on 2000 cohort for Reoffending of adults in England and Wales by sex

Follow up period	Male		Female	
	Number of offenders	Reconviction rate	Number of offenders	Reconviction rate
3 month	37,228	20%	5,493	18%
6 month	37,228	31%	5,493	27%
9 month	37,228	39%	5,493	33%
1 Year	37,228	44%	5,493	37%
2 Year	37,228	56%	5,493	47%
3 Year	37,228	63%	5,493	53%
4 Year	37,228	67%	5,493	56%
5 Year	37,228	70%	5,493	58%
6 Year	37,228	72%	5,493	60%
7 Year	37,228	73%	5,493	61%
8 Year	37,228	75%	5,493	62%
9 Year	37,228	76%	5,493	63%

Source: Further analysis of 2000 Reconviction Cohort

Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act (2012) Equality Impact Assessment

Table 67: Persons sentenced for indictable offences by disposal and age group, 2010

	Under 18	18-20	21-24	25-29	30-39	40-49	50-59	60+	Total
Immediate custody	9%	23%	26%	28%	27%	24%	24%	26%	24%
Suspended sentence	0%	9%	12%	11%	11%	12%	13%	15%	10%
Community sentence	70%	31%	26%	26%	25%	25%	23%	18%	31%
Fine	4%	19%	21%	19%	17%	19%	19%	21%	17%
Other	17%	18%	16%	17%	19%	20%	21%	21%	18%
Total	100%								

Source: Further analysis of Criminal Justice Statistics 2010

Table 68: Persons sentenced to immediate custody for indictable offences by age group and sentence length, 2010

	12-14	15-17	18-20	21-24	25-29	30-39	40-49	50-59	60+	Total
Less than or equal to 6 months	60%	44%	38%	44%	52%	55%	50%	43%	33%	48%
Greater than 6 months to less than or equal to 30 months	36%	47%	45%	38%	32%	29%	31%	33%	34%	34%
30 months to less than or equal to 4 years	2%	6%	10%	10%	9%	9%	9%	10%	12%	9%
Over 4 years	1%	4%	6%	8%	7%	8%	11%	14%	21%	8%
Total	100%									

Source: Further analysis of Criminal Justice Statistics 2010

Table 69: Persons sentenced for indictable offences by disposal and ethnic group, 2010

	Under 18					18 and over					Total	
	White	Black	Asian	Other	Unknown	White	Black	Asian	Other	Unknown		
Immediate custody	8%	11%	12%	18%	11%	9%	25%	30%	31%	44%	23%	26%
Suspended sentence	0%	0%	0%	0%	0%	0%	11%	10%	12%	13%	12%	11%
Community sentence	70%	69%	71%	65%	68%	70%	27%	21%	22%	17%	24%	26%
Fine	4%	6%	5%	5%	3%	4%	18%	22%	21%	12%	23%	19%
Other	18%	13%	13%	13%	18%	17%	19%	17%	14%	14%	18%	18%
Total	100%											

Source: Further analysis of Criminal Justice Statistics 2010

Table 70: Persons sentenced to immediate custody for indictable offences by ethnicity and sentence length, 2010

	Under 18					18 and over					Total	
	White	Black	Asian	Other	Unknown	White	Black	Asian	Other	Unknown		
Less than or equal to 6 months	46%	41%	39%	21%	49%	45%	51%	41%	37%	35%	48%	48%
Greater than 6 months to less than or equal to 30 months	46%	46%	49%	59%	43%	46%	33%	34%	42%	45%	33%	34%
30 months to less than or equal to 4 years	5%	7%	9%	15%	3%	6%	9%	12%	11%	10%	8%	9%
Over 4 years	3%	7%	3%	5%	5%	4%	7%	14%	11%	10%	10%	8%
Total	100%											

Source: Further analysis of Criminal Justice Statistics 2010

Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act (2012) Equality Impact Assessment

Table 71: Immediate custodial prison receptions by sentence length and religion, 2008

	Less than or equal to 6 months	Greater than 6 months to less than or equal to 30 months	Greater than 30 months to less than or equal to 4 years	Greater than 4 years	Total
Anglican	54%	29%	8%	9%	100%
Free Church	42%	37%	9%	12%	100%
Roman Catholic	57%	29%	7%	8%	100%
Other Christian	53%	33%	6%	8%	100%
Muslim	43%	34%	9%	13%	100%
Hindu	46%	38%	6%	11%	100%
Sikh	56%	31%	6%	7%	100%
Buddhist	32%	44%	10%	14%	100%
Jewish	50%	32%	10%	8%	100%
Mormons	53%	30%	10%	6%	100%
Pagan	42%	34%	11%	13%	100%
Rastafarians	49%	27%	10%	14%	100%
Other non-recognised	50%	33%	8%	8%	100%
No religion	60%	28%	6%	5%	100%
All Others	55%	28%	7%	9%	100%
Total	56%	29%	7%	8%	100%

Source: Further analysis of Offender Management Caseload Statistics 2008

Table 72: Persons sentenced for all offences by disposal and sex, 2010

	Under 18				18 and over				Total
	Female	Male	Unstated	Total	Female	Male	Unstated		
Immediate custody	2%	6%	5%	6%	3%	9%	1%	8%	
Suspended sentence	0%	0%	0%	0%	2%	4%	0%	4%	
Community sentence	73%	63%	46%	65%	8%	12%	2%	11%	
Fine	5%	9%	30%	9%	79%	64%	93%	69%	
Other	20%	21%	19%	21%	9%	9%	4%	9%	
Total	100%								

Source: Further analysis of Criminal Justice Statistics 2010

Table 73: Persons sentenced to immediate custody for all offences by sex and sentence length, 2010

	Under 18				18 and over				Total
	Female	Male	Unstated	Total	Female	Male	Unstated		
Less than or equal to 6 months	62%	50%	81%	51%	69%	57%	100%	58%	
Greater than 6 months to less than or equal to 30 months	36%	41%	19%	41%	23%	28%	0%	28%	
30 months to less than or equal to 4 years	1%	5%	0%	5%	5%	8%	0%	8%	
Over 4 years	1%	4%	0%	3%	3%	7%	0%	7%	
Total	100%								

Source: Further analysis of Criminal Justice Statistics 2010

Table 74: 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)
Sex		
Female	11%	51%
Male	89%	49%
Total	100%	100%
Age group		
Age 0-14	2%	17%
Age 15-59	96%	60%
Age 60-74	1%	15%
Age 75+	1%	8%
Total	100%	100%

Source:

NHS Information Centre Hospital Episode Statistics.

General population figures are 2010 mid-year population estimates
(age and gender), Office for National Statistics.

**Table 75: 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	Cautions 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%
All	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 76: 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%
Total	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 77: 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
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

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 78: 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%
Total	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

Ethnicity is based on the police officer's judgement of the offender's ethnicity

Table 79: 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%
Total	100.0%	100.0%	100.0%

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 80: 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 81: 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 82: 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+)
Sex		
Female	4%	51%
Male	96%	49%
Total	100%	100%
Age group		
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%
Total	100%	100%
Ethnicity⁽¹⁾		
White	69%	89%
Mixed	n/a	1%
Black	6%	3%
Asian	9%	6%
Other	n/a	2%
Unknown	16%	n/a
Total	100%	100%

(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.

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Table 83: 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
Total	100%	100%
<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%
Total	100%	100%
<u>Ethnicity⁽¹⁾</u>		
White	80%	89%
Mixed	n/a	1%
Black	8%	3%
Asian	4%	6%
Other	1%	2%
Unknown	7%	n/a
Total	100%	100%

(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.