

Research Briefing

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Sentencing Bill 2023-24



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Summary

The Sentencing Bill was introduced to the House of Commons on 14 November 2023. The Bill's second reading is scheduled for 6 December 2023.

The [King's Speech](#) of 7 November 2023 said the Government would bring forward a bill to “ensure tougher sentences for the most serious offenders and increase the confidence of victims”. This echoed a commitment made in the [Government's 2019 manifesto](#).

A [government press release issued on the day the Bill was introduced](#) said its measures would “better protect the British public from the worst offenders” and would “help low risk offenders escape the merry-go-around of short prison terms and turn their lives away from crime”.

The substantive provisions of the Bill would apply only to England and Wales and would come into force on a day to be set by the Secretary of State in regulations.

What would the Sentencing Bill do?

The Bill would:

- Make whole life orders mandatory for certain types of murder, except in exceptional circumstances. A whole life order means the offender will spend the rest of their life in prison (subject only to the possibility of compassionate release in exceptional cases).
- Allow for the special sentence for offenders of particular concern to be imposed for rape and certain other serious sexual offences. Currently these sentences are only available for certain serious child sex offences and certain terrorism offences.
- Require prisoners sentenced for rape and certain other serious sexual offences to serve all of their custodial term in prison, removing the current possibility of release into the community on licence after they have served two thirds of their custodial term.
- Introduce a presumption that custodial sentences of 12 months or less be suspended. A [suspended sentence](#) means the person does not have to go to prison provided they commit no further offences and comply with any requirements imposed for the duration of their sentence. There would be a number of exceptions to the presumption, including where a suspended sentence would put a particular individual at significant risk of harm.

- Extend the availability of Home Detention Curfew to certain prisoners serving sentences of four years or more. This would allow them to be released, subject to an electronically monitored curfew, up to 180 days before their automatic release date. Prisoners who have previously been recalled to prison having failed to comply with a curfew, where this was more than two years ago, would also become eligible.

Response to the Bill

[Organisations that campaign for prison reform have welcomed the presumption against short custodial sentences](#), something they have long called for. However, some have raised [concerns about the additional pressures that will be placed on the probation service](#) and questioned whether it will be able to meet the increased demand.

[Commentators have noted that the change would have limited impact on demand for prison places](#) because current demand has not been driven by an increased short-term prison population. [Advocates for victims have said they are pleased that there will be an exception to the presumption](#) where a suspended sentence would put a particular individual at risk.

[Prison reform campaigners have also welcomed the extension of eligibility for Home Detention Curfew](#).

Further Reading

The Government has published the following documents relating to the Bill:

- Explanatory Notes
- Impact assessments
- Equality statements
- Delegated Powers Memorandum
- European Convention on Human Rights Memorandum.

These can be accessed on the [Sentencing Bill page of the Parliament website](#).

1 Background

1.1 Maximum sentences

The maximum sentence available for each criminal offence is, in most instances, set out in legislation. For example, [section 1](#) of the Sexual Offences Act 2003 specifies a maximum sentence of life imprisonment for the offence of rape. Where the offence is a common law offence and no maximum sentence has been set out in legislation, the maximum sentence available is life imprisonment.¹

In a few instances, legislation also provides for a minimum sentence. For example, a sentence of three years for a third domestic burglary committed by an adult (unless the court is of the opinion that there are exceptional circumstances).²

Within the maximum sentence available, it is for the sentencing court to decide on the appropriate sentence in each particular case, using sentencing guidelines.

1.2 The Sentencing Council and guidelines

The Sentencing Council is an independent body, chaired by the Lady Chief Justice.³ It was established by the [Coroners and Justice Act 2009](#). It issues offence-specific sentencing guidelines and overarching guidelines that deal with more general sentencing topics.⁴ Sentencing guidelines provide guidance to judges and magistrates on the factors they should consider when determining the appropriate sentence in a particular case.

A sentencing court is required by legislation to follow these guidelines unless it is in the interests of justice not to do so.⁵ The primary purpose of the guidelines is to promote a more consistent approach to sentencing across courts in England and Wales.

Sentencing guidelines are available for most of the significant offences sentenced in the magistrates' court and for a wide range of offences in the

¹ For example, [Perverting the course of justice](#)

² [Section 314](#) Sentencing Act 2020

³ See: Sentencing Council, [Sentencing Council members](#) for details of other members

⁴ For example, [Reduction in sentence for a guilty plea](#) and [Overarching principles: domestic abuse](#)

⁵ [Section 59](#) Sentencing Act 2020

Crown Court. Where no offence-specific sentencing guideline exists, courts will refer to the [General guideline: overarching principles](#) and to Court of Appeal judgments to look at how sentences have been reached for similar cases.⁶

As well as publishing new guidelines, the Sentencing Council revises existing guidelines, often in response to legislative changes and sometimes in response to a request from the Lord Chancellor or Court of Appeal.⁷ When issuing or revising a guideline the Sentencing Council consults publicly, including with the Justice Committee, which is a statutory consultee.⁸

1.3 The Sentencing Code

The Sentencing Code provides the law of sentencing procedure and is contained in the [Sentencing Act 2020](#). The 2020 Act was a consolidation of the existing law and followed a [Law Commission project](#) which aimed to make the law simpler and easier to use; increase public confidence in the criminal justice system; and increase the efficiency of the sentencing process.⁹

1.4 The purposes of sentencing

The Sentencing Code sets out the five purposes of sentencing the courts must bear in mind when dealing with most adult offenders. These purposes are not given any order of priority.

- The punishment of the offender
- The reduction of crime (including its reduction by deterrence)
- The reform and rehabilitation of offenders
- The protection of the public
- The making of reparation by offenders to persons affected by their offences.¹⁰

When sentencing a child (meaning someone aged under 18) judges and magistrates must consider the main aim of the youth justice system, which is the prevention of offending, as well as the welfare of the child.¹¹

⁶ Sentencing Council: [About sentencing guidelines](#)

⁷ See: Sentencing Council, [How the Council works](#)

⁸ [Section 120\(6\)](#) Coroners and Justice Act 2009

⁹ For background information see the Library briefing [Sentencing Bill \[HL\] 2019-21](#), 22 September 2020

¹⁰ [Section 57](#) Sentencing Act 2020

¹¹ [Section 37](#) Crime and Disorder Act 1998 and [section 44](#) Children and Young Persons Act 1933

1.5 The sentencing process

When sentencing an offender (for an offence other than murder),¹² judges and magistrates follow the process set out in sentencing guidelines.¹³ They first determine the offence category by considering the seriousness of the case, taking into account the harm caused to the victim and the offender's level of responsibility or culpability.

For different categories of an offence, sentencing guidelines provide a 'starting point' and a 'sentence range'. The judge or magistrate will begin with the starting point set out in the guideline for the appropriate offence category. They will then consider any relevant aggravating and mitigating factors and adjust the sentence upwards or downwards to reflect these factors, usually within the range set out in the guideline.

Aggravating factors indicate a higher level of culpability on the part of the offender or a greater degree of harm. The presence of such a factor increases the seriousness of the offence and accordingly may increase the severity of the sentence. One aggravating factor to be considered is that the offender has previous convictions.¹⁴ Mitigating factors, such as genuine remorse, may reduce the severity of a sentence.

A reduction to the sentence will then be made if the offender has pleaded guilty or assisted the prosecution.¹⁵ The Sentencing Council has issued an overarching guideline on reduction in sentence for a guilty plea.¹⁶

When passing sentence, a court must state, in open court, in ordinary language and in general terms, its reasons for deciding on the sentence.¹⁷

1.6 Types of sentence

The four main types of sentence available to the courts are discharges, fines, community sentences and custodial sentences.¹⁸ The following provides a brief overview of community and custodial sentences for adults.¹⁹

¹² See section 3.1 of this briefing for information about sentencing for murder

¹³ Sentencing Council, [How sentencing works](#)

¹⁴ Section 65 Sentencing Act 2020

¹⁵ Section 73-75 Sentencing Act 2020

¹⁶ Sentencing Council, [Reduction in sentence for a guilty plea - first hearing on or after 1 June 2017](#)

¹⁷ [Section 52](#) Sentencing Act 2020

¹⁸ For information about discharges and fines see Sentencing Council; [Discharges](#) and [Fines](#) and Sentencing Academy, [Discharges](#) and [Fines](#)

¹⁹ For information on sentences for children see Sentencing Council, [Types of sentences for children and young people](#)

Community sentences

A community sentence is the most severe form of non-custodial sentence. A community order must not be imposed unless the offence is “serious enough to warrant the making of such an order”.²⁰

A community sentence may last up to three years and must subject the offender to one or more “community requirements”. The possible requirements are listed in [section 201](#) of the Sentencing Act 2020 and include an unpaid work requirement, a rehabilitation activity requirement, a curfew requirement, an exclusion requirement, and (with the offender’s consent) an alcohol or drug treatment requirement.

The court must impose the community requirements that are most suitable for the offender and that are commensurate with the seriousness of the offence. The order must include at least one requirement imposed for the purpose of punishment, unless the court also imposes a fine or there are exceptional circumstances.²¹ Offenders serving a community sentence are supervised by probation staff. If an offender fails to comply with the terms of a community order, the order can be revoked and the offender can be resentenced.

Custodial sentences

A custodial sentence can only be imposed where the statutory custody threshold is reached. This means that the offence is so serious that neither a fine nor a community sentence can be justified for the offence.²² The threshold is intended to ensure that custodial sentences are used as a last resort. The custodial sentence must be for the shortest term that, in the opinion of the court, is commensurate with the seriousness of the offence.²³

There are different types of custodial sentence, including a standard determinate sentence, a sentence for offenders of particular concern, an extended sentence and a life sentence.²⁴ The most common is a standard determinate sentence.

Release arrangements vary for the different types of custodial sentences. Offenders rarely serve all of their custodial sentence in prison. Usually, offenders are released part way through their sentence on licence. While on licence they will be subject to supervision by the probation service and must comply with the conditions of their licence. Offenders on licence can be recalled to prison if they breach their licence conditions. For some sentences release is automatic, others require the Parole Board to decide that it is safe for the person to be released.

²⁰ [Section 204](#) Sentencing Act 2020

²¹ [Section 208](#) Sentencing Act 2020

²² [Section 230](#) Sentencing Act 2020

²³ [Section 231](#) Sentencing Act 2020

²⁴ Sentencing Council, [Custodial sentences](#)

These custodial sentences and their release arrangements are discussed further below in relation to the relevant provisions of the Bill.

Suspended sentences

If the court imposes a term of imprisonment of between 14 days and 2 years on an adult it may suspend the sentence for between 6 months and 2 years.²⁵ When the court suspends a sentence, it may (but is not required to) impose one or more requirements for the offender to undertake in the community.²⁶ The requirements are listed in [section 287](#) of the Sentencing Act 2020 and include unpaid work, electronic monitoring and treatment requirements. If a person given a suspended sentence order breaches any requirements that have been imposed, or is convicted of another offence during their suspended sentence, their suspended sentence can be activated and they may be sent to prison.

Whether to suspend an eligible sentence is a matter of judicial discretion taking into account the factors in the Sentencing Council’s general guidance on the imposition of suspended sentences. This guidance is contained in the overarching guideline, [Imposition of community and custodial sentences](#), published 1 February 2017. The Sentencing Council is currently consulting on a revised version of this guideline. One of the changes being consulted on is providing courts with new information on evidence regarding the effectiveness of rehabilitation when compared with short custodial sentences.²⁷

1.7

Public opinion and understanding

The Justice Committee, in October 2023, published a report, [Public opinion and understanding of sentencing](#).²⁸ It said there needs to be greater public knowledge and understanding of current sentencing practice, of evidence on the effectiveness of different sentencing options, and the resource implications of sentences in order to improve the quality of public discourse on sentencing. The Committee said its inquiry highlighted that the public debate on sentencing is “stuck in a dysfunctional and reactive cycle”. It concluded that there is a need for national debate on sentencing.

²⁵ [Section 277](#) and 264 Sentencing Act 2020

²⁶ [Section 286](#) Sentencing Act 2020

²⁷ Sentencing Council, [Imposition of community and custodial sentences guideline – revised: consultation](#), 29 November 2023

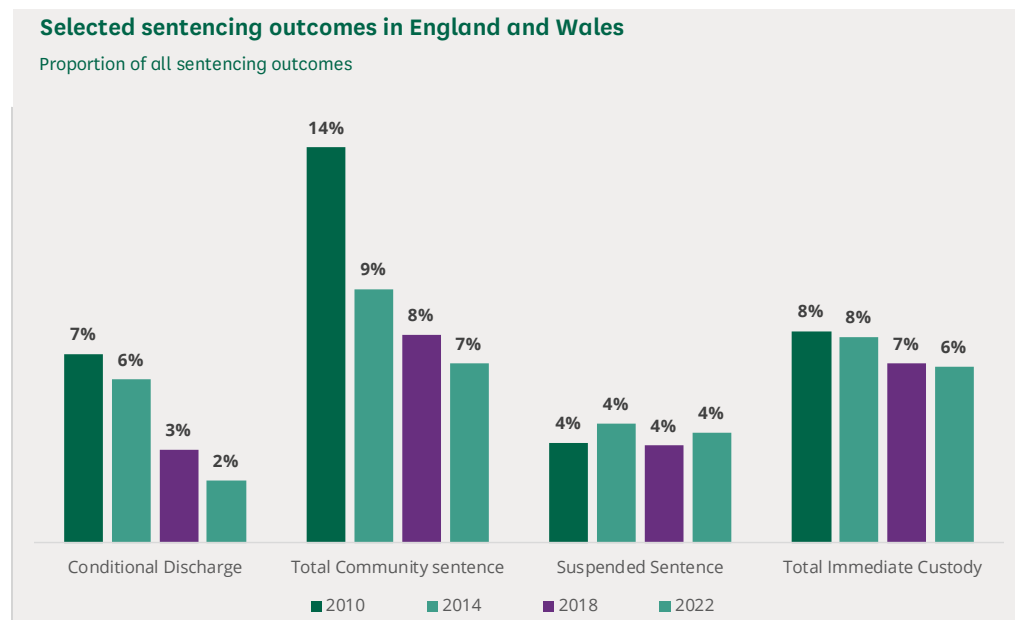
See also: [Sentencing Council, The Imposition guideline – what is it?](#), 29 November 2023

²⁸ Justice Committee, [Public opinion and understanding of sentencing](#), HC 305, 25 October 2023

2 Statistics

2.1 Sentencing

In 2022, there were just over a million offenders sentenced in England and Wales. Most successful prosecutions in England and Wales result in a fine - between 2010 and 2022, almost three-quarters (72%) of sentences given were a fine. The proportion of successful prosecutions that have resulted in a fine has risen from 68% in 2022 to 79% in 2022.²⁹



Source: Ministry of Justice, [Criminal Justice System statistics quarterly: December 2022: Outcomes by Offence data tool](#), 18 May 2023.

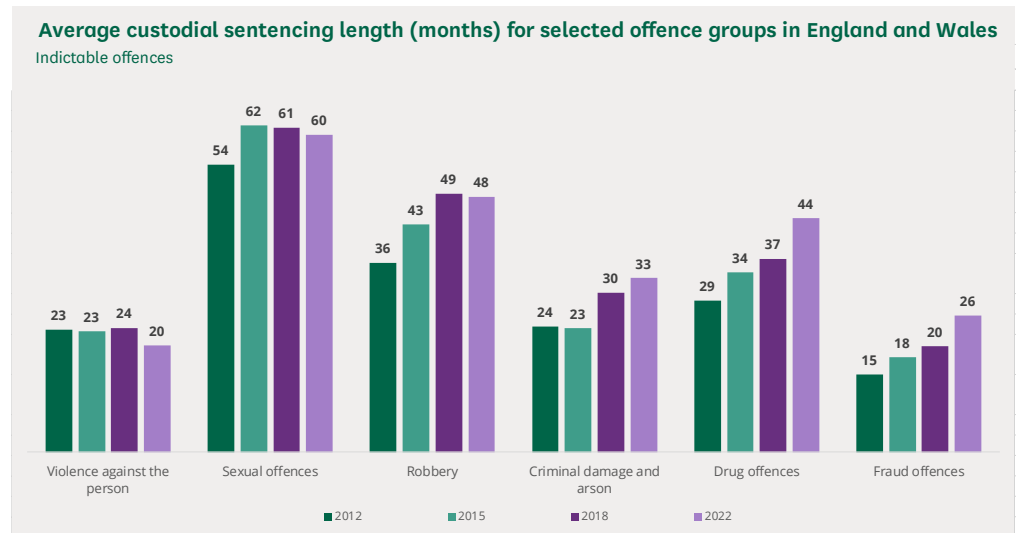
Since 2010, the proportion of outcomes accounted for by community service sentences has fallen by 7 percentage points; the proportion accounted for by Conditional Discharges and Immediate Custody have also declined – by 5 and 2 percentage points respectively. The proportion accounted for by suspended sentences has remained relatively constant across the period at around 4%.

Average custodial sentencing length (ACSL)

Although the number of custodial sentence outcomes handed out has fallen by around a third since 2012, the length of custodial sentences has been

²⁹ Ministry of Justice, [Criminal Justice System statistics quarterly: December 2022: Outcomes by Offence data tool](#), 18 May 2023.

increasing. The overall average custodial sentencing length (ACSL) for indictable offences rose by just over 7 months over the period, from 17 months in 2012 to 24 months in 2022.³⁰



Ministry of Justice, [Criminal Justice System statistics quarterly: December 2022; Overview Tables](#), table Q5.2c, 18 May 2023

The ACSL for most offence groups increased between 2012 and 2022. Drug offences (16 months) Robbery (12 months) and Fraud offences (11 months) saw the largest increases. Only the ACSL for the violence against the person offence group fell (-3 months).

2.2

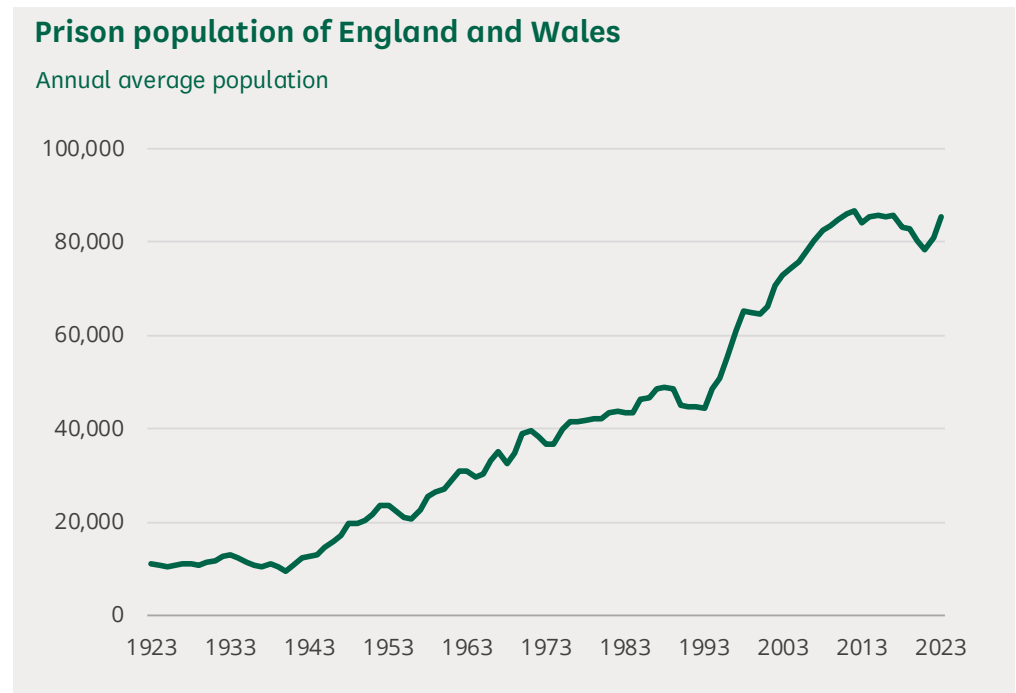
Prison population of England and Wales

Detailed information on the prison population in England and Wales (and Scotland and Northern Ireland) can be found in the Commons Library Briefing Paper: [UK Prison Population Statistics](#) (8 September 2023).

The average annual prison population in England and Wales has increased more than five-fold between 1945 and 2023³¹, going from just over 14,700 to around 85,400.

³⁰ Ministry of Justice, [Criminal Justice System statistics quarterly: December 2022; Overview Tables](#), table Q5.2c, 18 May 2023

³¹ Data for 2023 is average of month end prison population January 2023 to September 2023



Note: 2023 figure is the average of month end prison population January to September 2023

Source: Ministry of Justice, [Offender Management Statistics Quarterly](#), various editions.

Over the last twelve months, 30 September 2022 to 30 September 2023, the prison population has increased by 8% from just over 81,300 to just under 87,600.³²

This increase has been mainly driven by the number of prisoners receiving a custodial sentence, accounting for 78% of the increase over the period (a third of which were prisoners recalled for breaking the provisions of their licence); and prisoners on Remand, awaiting to be tried or sentenced, accounting for 27% of the increase.

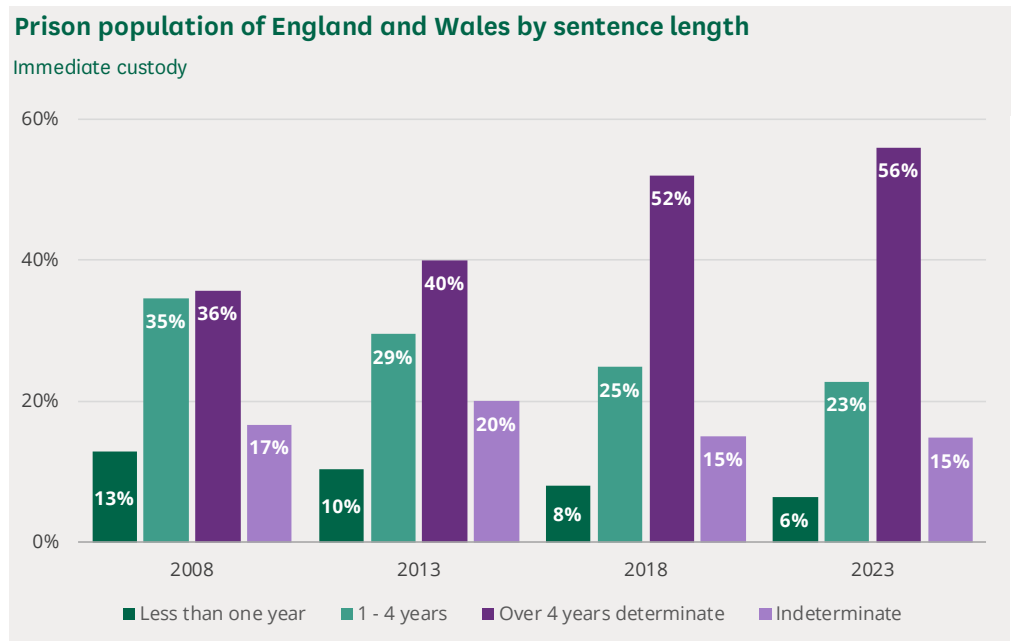
The latest prison population projections, published in February 2023, project a rise to 94,400 prisoners by March 2025 and between 93,100 and 106,300 by March 2027.³³

Sentence length and offences

The proportion of the sentenced prison population serving a sentence of ‘4 years or more (excluding indeterminate sentences)’ increased from 36% of the population in 2008 to 56% in 2023. The proportion of the prison population serving a sentence of less than one year has fallen from 13% in 2008 to 6% in 2023:

³² Ministry of Justice, [Offender Management Statistics quarterly: April to June 2023, Prison population: 30 September 2023](#), Table 1.1, 26 October 2023

³³ Ministry of Justice, [Prison population projections: 2022 to 2027](#), 23 February 2023



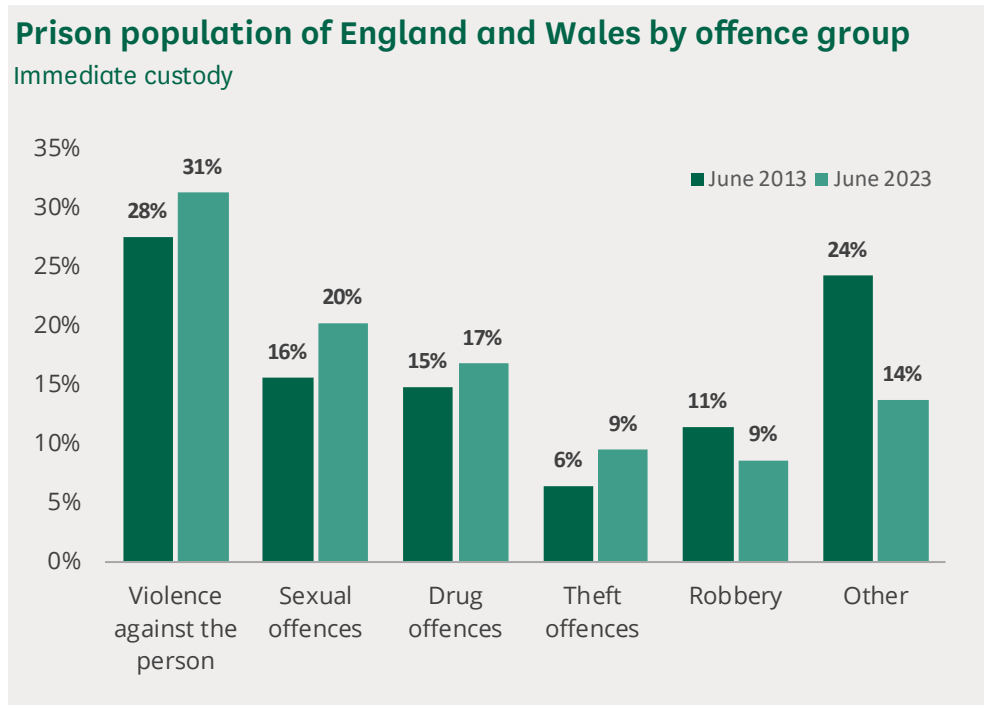
Note: Excludes 'Recall' prisoners; figures may not sum due to rounding.

Source: Ministry of Justice, [Offender Management Statistics Quarterly](#), various editions.

As at 30 September 2023, excluding 'Recalls', the most frequent length of sentence being served was '4 years or more'. Around 55% of the sentenced population were serving this length of sentence. About a quarter of prisoners (23%) were serving sentences ranging between 1-4 years and around 14% were serving indeterminate sentences.³⁴

The proportion of the prison population in custody serving a sentence for violence against the person offences increased from 28% at June 2013 to 31% at June 2023:

³⁴ Ministry of Justice, [Offender Management Statistics quarterly: April to June 2023, Prison population: 30 September 2023](#), Table 1.1, 26 October 2023



Note: Excludes 'Recall' prisoners; figures may not sum due to rounding.

Source: Ministry of Justice, [Offender Management Statistics Quarterly](#), various editions.

Prisoners in custody for violence against the person offences accounted for the highest proportion of prisoners at the end of September 2023 (32%). Sexual offences was the second highest category (20%) while drug offences was the third (17%).³⁵

³⁵ Ministry of Justice, [Offender Management Statistics quarterly: April to June 2023, Prison population: 30 September 2023](#), Table 1.2b, 26 October 2023

3 Whole life orders

Clause 1 of the Bill would require the court to impose a whole life order for murder in cases for which the starting point is currently a whole life order and in cases of murder with sexual or sadistic conduct, unless there are exceptional circumstances.

3.1 Background

The Government announced in an August 2023 press release that it would legislate to “place a legal expectation on judges to hand down whole life orders, except in extremely limited circumstances” to “monsters who commit the most horrific types of murder”.³⁶ The press release said the change would protect the public from the most dangerous offenders.

In an October 2023 press release the Government said that it intends that these reforms will apply retrospectively:

This will mean people who have committed a crime but are yet to be sentenced will face the possibility of being given a whole life order – even if the offence is committed before future legislation commences.³⁷

The Explanatory Notes state that the change with regard to a murder with sadistic or sexual conduct was being made following “a number of high profile murders where women have been attacked and killed by male assailants and there has been a sexual or sadistic element to the murder”.³⁸

The impact assessment for this measure states that the policy objective is to protect the public by ensuring the most dangerous prisoners are not released from prison.³⁹

Current law

A life sentence is mandatory for those convicted for murder.⁴⁰ In the most serious cases of murder committed by an adult the courts can impose a whole life order. These orders mean that the offender will spend the rest of their life in prison (subject only to the possibility of compassionate release in

³⁶ Gov.uk, press release, [PM announces new plans so society's most depraved killers will face life behind bars](#), 26 August 2023

³⁷ Gov.uk, press release, [Whole Life Order reforms to be applied to active cases](#), 3 October 2023

³⁸ [Explanatory Notes](#), (PDF) para 19

³⁹ [Impact Assessment: Sentencing Bill – Whole Life Orders](#), (PDF) p1

⁴⁰ [Section 1](#) Murder (Abolition of Death Penalty) Act 1965

exceptional cases).⁴¹ For all other life sentences, the judge sets the minimum term (also known as a tariff) that must be served in prison before the prisoner is eligible to apply to the Parole Board for release on life licence. The Parole Board will only order release if it is satisfied that it is no longer necessary for the protection of the public that the person should be confined.⁴²

A judge must make a whole life order where they are of the opinion that, because of the seriousness of the offence or the combination of the offence and one or more offences associated with it, they should not set a minimum term.⁴³

Until recently whole life orders could only be imposed on adults aged 21 or over. Changes made by the Police, Crime Sentencing and Courts Act 2022 have allowed for a whole life order to be imposed on offenders aged 18-21 in certain exceptional circumstances.⁴⁴ A whole life order can be imposed on an offender aged 18-21 if:

- the offence was committed after the coming into force of the relevant provision and
- the court considers that the seriousness of the offence, or combination of offences, is exceptionally high even by the standard of offences which would normally result in a whole life order in a case where the offender is aged 21 or over.

Those who are aged under 18 when they commit murder cannot be given a whole life order.

When deciding whether to impose a whole life order or setting a minimum term, the court must have regard to the starting points for different types of murder set out in [Schedule 21 of the Sentencing Act 2020](#). Schedule 21 includes the following starting points for adults: a whole life order (if aged 21 or over), 30 years, 25 years and 15 years. Schedule 21 includes a separate set of starting points for people who committed murder when aged under 18.

The judge in each case will identify the appropriate starting point and can adjust the sentence up or down to take account of any aggravating and mitigating factors.

The judge must state in open court the starting point chosen (and the reasons for this) and the reasons for any adjustment from the chosen starting point.⁴⁵

The types of murder for which a whole life order is currently the starting point for adults aged 21 or over when the murder was committed are listed in [paragraph 2 of Schedule 21 to the Sentencing Act 2020](#):

⁴¹ [Section 30](#) Crime (Sentences) Act 1997

⁴² [Section 28](#) Crime (Sentences) Act 1997

⁴³ [Section 321](#) Sentencing Act 2020

⁴⁴ [Section 126](#) Police, Crime Sentencing and Courts Act 2022

⁴⁵ [Section 322](#) Police, Crime Sentencing and Courts Act 2022

- The murder of two or more people, where each murder involves any of the following:
 - A substantial degree of premeditation or planning
 - The abduction of the victim
 - Sexual or sadistic motivation
- The murder of a child if the murder involved
 - The abduction of the child
 - Sexual or sadistic motivation
 - A substantial degree of premeditation or planning⁴⁶
- The murder of a police or prison officer in the course of their duty⁴⁷
- A murder done for the purpose of advancing a political, religious, racial or ideological cause
- A murder by an offender previously convicted of murder.

The starting point for a murder by an adult of a single victim involving sexual or sadistic conduct is currently 30 years.⁴⁸

Whole life orders are rare; five were imposed in 2022 and there were 65 prisoners serving whole life orders as at June 2023.⁴⁹ The number of prisoners serving a whole life order has increased steadily over the last decade.⁵⁰

3.2

The Bill

Clause 1 would make it mandatory for a judge to impose a whole life order in any case where a whole life order is currently the appropriate starting point or in a case of a murder with sexual or sadistic conduct. A judge would be unable, except in exceptional circumstances, to instead decide a minimum term to be served.

The exceptional circumstances may relate to the offender, or to the offence (or the combination of the offence and one or more offences associated with

⁴⁶ Added by [section 125](#) Police, Crime Sentencing and Courts Act 2022 and applies where the offence was committed on or after 28 June 2022

⁴⁷ Added by [section 27](#) Criminal Justice and Courts Act 2015 and applies where the offence was committed on or after 13 April 2015

⁴⁸ [Schedule 21](#), para 3(2)(e)

⁴⁹ [Impact Assessment: Sentencing Bill – Whole Life Orders](#), (PDF) p3

⁵⁰ [Equalities Statement: Sentencing Bill – Extension of Whole Life Orders](#) (PDF), para 8

it). It would be for the judge to determine whether there are exceptional circumstances in each particular case.

The requirement to impose a whole life order in such cases would only apply to offenders aged 21 or over when the offence was committed. The current position would be preserved for offenders aged 18 or over and under 21.

Clause 1 would require a judge who determines there are exceptional circumstances which justify not making a whole life order to explain in court why they have decided not to impose a whole life order.

The requirement to impose a whole life order would apply for any sentence imposed on or after the day on which the clause 1 of the Bill comes into effect. The Explanatory Notes state that this approach has been taken so that the new provisions “will have the widest possible application to ensure that all those who commit the most serious murders are subject to the new regime”.⁵¹

The Human Rights Memorandum prepared by the Government discusses the proposed retrospective effect of clause 1, noting that it would apply to people who may have committed offences before commencement but who have yet to be charged, convicted or sentenced. The Government asserts that Article 7 of the European Convention on Human Rights, (no punishment without law) is not breached by the provision because “the only penalty that may be imposed before and after commencement remains a life sentence”.⁵²

Judges would still have discretion to impose a whole life order in cases not covered by clause 1. The Explanatory Notes state that this is consistent with the current position that allows for a court to impose a whole life order in a case of exceptional seriousness where a whole life order is not the starting point.⁵³

⁵¹ [Explanatory Notes](#), (PDF), para 64

⁵² [European Convention on Human Rights Memorandum](#) (PDF), para 9

⁵³ [Explanatory Notes](#), (PDF), para 75

4 Sentencing and release - serious sexual offences

The Bill would allow for Sentences for Offenders of Particular Concern (SOPCs) to be imposed for offences of rape and certain other serious sexual offences. It would also change the release provisions for offenders sentenced to an Extended Determinate Sentence or SOPC for certain serious sexual offences so that they would serve all of their custodial term in prison before being automatically released on licence.

4.1 Background

The impact assessment for these measures states:

Ensuring rapists and other serious sexual offenders serve their full custodial term in prison will keep these offenders off the streets for longer, without the opportunity to reoffend and will therefore keep the public safe.⁵⁴

It states that holding the most serious offenders in custody for longer will enable victims to feel safer for longer and may also increase the confidence of victims and the general public in the justice system.⁵⁵

The Government says it is focussing on rape and the other most serious sexual offences because of “the significant amount of public concern relating to these offences at present” and because “there is a need to improve public confidence that the justice system appropriately addresses and punishes this offending”.⁵⁶

Recent legislation has changed arrangements for release to require prisoners serving sentences for certain serious sexual, violent and terrorist offences to serve more of their custodial term in prison.⁵⁷ The measures in the Bill would go further.

Standard determinate sentence

The most common type of prison sentence is a determinate sentence which has a fixed length. Prisoners who are serving a standard determinate

⁵⁴ Impact assessment, [Sentencing Bill – Changes relating to serious sexual offences](#) (PDF), p1

⁵⁵ Impact assessment, [Sentencing Bill – Changes relating to serious sexual offences](#) (PDF), para 34-36

⁵⁶ Impact assessment, [Sentencing Bill – Changes relating to serious sexual offences](#) (PDF), para 4

⁵⁷ Most recently the Counter Terrorism and Sentencing Act 2021 and the Police, Crime, Sentencing and Courts Act 2022

sentence⁵⁸ are automatically released from prison at the halfway point of the sentence,⁵⁹ **unless** one of the following applies:

- The sentence is at least 4 but less than 7 years for certain serious violent and sexual offences;⁶⁰ or
- The sentence is for 7 years or more and was imposed for a specified violent or sexual offence,⁶¹ for which the maximum penalty is life imprisonment.

In these cases, release will be automatic at the two thirds point.⁶²

A prisoner will **not** be automatically released (either at the halfway or two thirds point) if the Justice Secretary has used their power to refer the case to Parole Board. The Justice Secretary can refer a prisoner who would otherwise be eligible for automatic release to the Parole Board where they believe on reasonable grounds that the prisoner would, if released, pose a significant risk to members of the public of serious harm occasioned by the commission of murder or a specified offence.⁶³

Sentence for Offenders of Particular Concern

A Sentence for Offenders of Particular Concern (SOPC) is made up of the appropriate custodial term, determined by the court, and a fixed 12-month licence period.

An SOPC can currently be imposed on adult offenders who have been convicted of certain serious child sex offences and certain terrorism offences. The court must impose a SOPC where it imposes a custodial sentence for an offence for which an SOPC is available (listed in [Schedule 13](#) to the Sentencing Act 2020) and it does not impose either an extended sentence or a life sentence.⁶⁴

The Counter-Terrorism and Sentencing Act 2021 introduced an equivalent sentence for offenders aged under 18 when convicted of certain terrorist offences: the special sentence of detention for terrorist offenders of particular concern.⁶⁵

⁵⁸ Sentenced on or after 28 June 2022

⁵⁹ Taking into account time spent on remand and the prisoner's eligibility for Home Detention Curfew

⁶⁰ As specified in [section 244ZA\(7\)](#) Criminal Justice Act 2003

⁶¹ Specified in Part 1 or 2 of Schedule 15 of the 2003 Act

⁶² [Section 244ZA](#) Criminal Justice Act 2003 inserted by section 130 of the Police, Crime, Sentencing and Courts Act 2022

⁶³ [Section 244ZB](#) Criminal Justice Act 2003 inserted by section 132 of the Police, Crime, Sentencing and Courts Act 2022

Specified offences as defined in section 306 and schedule 18 of the Sentencing Act 2020

⁶⁴ [Section 278](#) and [section 265](#) Sentencing Act 2020

⁶⁵ [Section 252A](#) Sentencing Act 2020

There is currently no equivalent sentence for offenders aged under 18 who are convicted of committing a sexual offence.

Following recent amendments to release arrangements, prisoners serving a SOPC are eligible to apply to the Parole Board for release at the two thirds point of the custodial term to serve the remainder under supervision in the community. The Parole Board will only order release if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.⁶⁶

All prisoners serving a SOPC must be released automatically at the end of their custodial term. On release they will be subject to the fixed 12-month period of licence in the community, supervised by the probation service.

Extended determinate sentence

An extended determinate sentence (EDS) is comprised of a custodial term and an extended period of licence to be spent under supervision in the community.⁶⁷ The extended period can be up to 5 years for a specified violent offence and 8 years for a specified sexual offence or terrorism offence. The length of the custodial term and the extended period are decided by the sentencing judge.

A judge can impose an EDS where:

- A person is convicted of a specified violent, sexual or terrorist offence;⁶⁸
- The court considers that there is a significant risk to members of the public of serious harm from further specified offences committed by the offender (this is known as the ‘dangerousness test’);⁶⁹
- The court is not required to impose a life sentence or serious terrorism sentence; and
- Either:
 - The offender has a previous conviction for an offence listed in [Schedule 14](#) of the Sentencing Act 2020 (a smaller group of the most serious violent, sexual and terrorist offences), or

⁶⁶ [Section 244A](#) Criminal Justice Act 2003 originally provided for eligibility to apply to the Parole Board for release at the halfway point. This was changed to the two-thirds point for terrorist offenders by the Terrorist Offenders (Restriction of Early Release) Act 2020 and for sex offenders by the Police, Crime, Sentencing and Courts Act 2022

⁶⁷ [Sections 279-281](#) and [sections 266-268](#) Sentencing Act 2020. Extended determinate sentences were created by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and replaced the Extended Sentence for Public Protection which had been introduced by the Criminal Justice Act 2003.

⁶⁸ Listed in [Schedule 18](#) of the Sentencing Act 2020

⁶⁹ [Section 308](#) Sentencing Act 2020 sets out how the court makes an assessment of dangerousness

- The current offence (and any associated offences) justifies an appropriate custodial term of at least 4 years.

For those aged under 18 when convicted there are equivalent extended sentences of detention that are available in similar circumstances.⁷⁰

Most prisoners serving an EDS (or an extended sentence of detention) must serve at least two thirds of the custodial term of their sentence in prison before being eligible to apply to the Parole Board for release on licence. The Parole Board will only order release if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.⁷¹

Certain terrorist offenders (including those aged under 18 when they committed the offence) who receive an EDS (or extended sentence of detention) are required to serve the whole of the custodial term in prison.⁷²

All prisoners serving an EDS must be released automatically at the end of their custodial term.

At the end of their custodial term, whether released by the Parole Board or automatically, prisoners will then serve the extended licence period set by the court, in the community under supervision by the probation service.

4.2

The Bill

Sentences for Offenders of Particular Concern

Clause 2 would extend the availability of SOPCs to the following offences in the Sexual Offences Act 2003 by inserting them into a list in [Schedule 13](#) of the Sentencing Act 2020:⁷³

- Rape (section 1)
- Assault by penetration (section 2)
- In cases involving penetration:
 - Causing a person to engage in sexual activity without consent (section 4)

⁷⁰ [Sections 254-257](#) Sentencing Act 2020. Note extended sentences of detention are not available where the appropriate custodial term would be less than four years, even if the offender has a previous conviction for an offence listed in Schedule 14.

⁷¹ [Section 246A](#) Criminal Justice Act 2003

⁷² [Section 247A](#) Criminal Justice Act 2003, inserted by the Terrorist Offenders (Restriction of Early Release) Act 2020 and amended by the Counter-Terrorism and Sentencing Act 2021

⁷³ This would include all abolished and inchoate versions of these offences

- Causing or inciting a child under 13 to engage in sexual activity (section 8)
- Sexual activity with a person with a mental disorder impeding choice (section 30)
- Causing or inciting a person to with a mental disorder impeding choice to engage in sexual activity (section 31)
- Inducement, threat or deception to procure sexual activity with a person with a mental disorder (section 34)
- Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception (section 35)
- Paying for sexual services of a child in cases where the offence is committed against a person aged under 13 (section 47)
- Committing an offence with intent to commit a sexual offence where the offence is committed by kidnapping/ false imprisonment (section 62).

All of these offences have a maximum penalty of life imprisonment.

The Government wishes to extend the availability of SOPCs so that it will no longer be possible for a person convicted of rape (or the other serious offences in clause 2) to be given a standard determinate sentence.⁷⁴

When sentencing an adult offender for any of the serious sexual offences added to Schedule 13 by clause 2, if the court does not impose either a life sentence or extended sentence and would otherwise impose a custodial sentence, the court would be required by **clause 4** to impose a SOPC. An SOPC would be available for these offences where the offender is convicted on or after the day on which this measure comes into force.

When sentencing someone aged under 18 convicted of any of the sexual offences listed in Schedule 13 (as amended by clause 2), if the court does not impose either a life sentence or extended sentence and would otherwise impose a custodial sentence, it would be required by **clause 3** to impose a special sentence of detention. These sentences are currently only available for certain terrorist offences. The special sentence would be available for these sexual offences where the offence is committed on or after the day on which this measure comes into force.

Clause 5 would make equivalent provision with regards to service law.

⁷⁴ Impact assessment, [Sentencing Bill – Changes relating to serious sexual offences](#) (PDF), p3

Release

Clause 7 would provide that a person serving an EDS or SOPC (or the equivalent sentences for those aged under 18) for a serious sexual offence (listed in the amended Schedule 13 of the Sentencing Act 2020) must serve the whole of their custodial term before being automatically released on licence. There would be no referral to the Parole Board.

A person serving a SOPC would then be subject to the fixed 12 month period of licence. A person serving an extended sentence would be subject to the extended period of licence set by the court.

The measures to prevent release before the end of the custodial term of a SOPC or extended sentence would apply to those aged under 18 as well as to adult offenders. The Explanatory Notes give the Government's reasons for this:

While custody should always be a last resort for children, it is important that where a custodial sentence has been imposed for these serious offences, offenders are detained for the duration of their custodial term to keep the public protected for longer and to ensure rehabilitative interventions can be conducted to minimise the risks of recidivism. Applying the changes to EDS to children will mirror the change made for serious terrorist offences in the Counter-Terrorism and Sentencing Act 2021, which applied to both adults and children. The changes to SOPC will apply to children who are not assessed as dangerous but who have been convicted of the serious sex offences that are deemed inherently concerning.⁷⁵

Clause 7 would apply to people who are sentenced on or after the date this provision comes into force, including where the offence was committed prior to commencement. The Government's Human Rights Memorandum notes this retrospective effect and states that it engages Article 7 of the European Convention on Human Rights (no punishment without law). It states that there is no breach of Article 7 because release arrangements do not form part of the offender's "penalty" within the meaning of Article 7.⁷⁶

The impact assessment notes that prisoners affected by clause 7 will serve a shorter period on licence to support their transition into the community, stating it is unknown how this will impact on successful reintegration into society. It also notes the potential impact of the release changes on prison overcrowding with potential associated impacts on prison safety and the mental/ physical health of prisoners.⁷⁷

The impact assessment states that the measures in these clauses would increase the prison population by between 2,350 and 3,400 by 2047/48, with a best estimate of 2,850.⁷⁸

⁷⁵ [Explanatory Notes](#), (PDF) para 23

⁷⁶ [European Convention on Human Rights Memorandum](#) (PDF), para 14-15

⁷⁷ Impact assessment, [Sentencing Bill – Changes relating to serious sexual offences](#) (PDF), paras 19 and 21

⁷⁸ Impact assessment, [Sentencing Bill – Changes relating to serious sexual offences](#) (PDF), para 14

5 Presumption to suspend short custodial sentences

Clause 6 would provide for a presumption that custodial (prison) sentences of 12 months and under are to be suspended. A [suspended sentence](#) means that the person does not have to go to prison provided they commit no further offences and comply with any requirements imposed for the relevant period.

5.1 Background

This proposal was announced by the Justice Secretary on 16 October 2023 as one of the measures being taken to ease the pressures on prison capacity.⁷⁹

The Government said the proposal was being made to “to stop low risk offenders getting stuck in the revolving door of short prison sentences”, noting that a “merry go-round of reoffending” can “devastate communities and leave countless more victims”.⁸⁰ It said those given a suspended sentence would be “strictly overseen” by the probation service and would “be able to better access drug and alcohol rehab, mental healthcare and other support that properly addresses the root causes of their offending”.⁸¹

The impact assessment for this measure notes that “evidence suggests that short immediate prison sentences are too often ineffective at reducing reoffending, they have little deterrent effect and are costly”. It states:

Community-based sentencing alternatives allow for longer intervention and supervision and have statistically lower reoffending rates. These sentences are less disruptive for individuals, protecting their housing work and family networks- factors know to reduce reoffending,⁸²

It states that the main policy objectives of the measure are to reduce current high levels of offending and ensure the effective use of the prison estate.

⁷⁹ For further details see the Library’s insight, [What is the Government doing to reduce pressure on prison capacity?](#), 19 October 2023

⁸⁰ Gov.uk, press release, [Victims to be protected through Sentencing Reforms](#), 14 November 2023

⁸¹ As above

⁸² Impact Assessment, [Sentencing Bill: Changes on the presumption of the suspension of sort sentences](#) (PDF), p1

The impact assessment states that:

- as of December 2022, 3,700 adults were serving short custodial sentences of 12 months or less, of which 2,200 were serving sentences of six months or less
- sentences of 12 months or less accounted for 59% of all immediate custodial sentences received in the 12 months to December 2022.⁸³

Previous consideration of the use of short sentences and calls for reform

A 2001 review of the sentencing framework in England and Wales, known as the Halliday Review, found that short prison sentences were “ill-equipped to do anything to tackle the factors of underlying criminal behaviour, by comparison with any other sentence.”⁸⁴

In 2018, the charity Revolving Doors launched the “short-sighted” campaign which argued that short sentences are “short-sighted because they disrupt family ties, housing, employment and treatment programmes for example, but they do not provide any meaningful rehabilitation”.⁸⁵ It called for a presumption against the use of short custodial sentences of less than six months.

The Justice Committee in 2018 recommended that Government introduce a presumption against short prison sentences.⁸⁶ The cost and effectiveness of prison sentences under 12 months was the subject of a backbench business committee debate in Westminster Hall in March 2019 initiated by Ellie Reeves, then a member of the Justice Committee.⁸⁷

In a speech in February 2019, then Justice Secretary David Gauke said there was a very strong case to abolish sentences of six months or less altogether, with some closely defined exceptions, and put in their place a robust community order regime.⁸⁸ In 2019 he said that “moving away from prison sentences of up to six months would deliver real and positive change, for the offenders to turn their lives around and for the safety of the public”.⁸⁹

The 2020 white paper *A Smarter Approach to Sentencing* noted that “while short custodial sentences may punish those who receive them, they often fail to rehabilitate the offender or stop reoffending.” It noted that evidence

⁸³ Impact Assessment, [Sentencing Bill: Changes on the presumption of the suspension of sort sentences](#) (PDF), p1

⁸⁴ [Making punishments work: Report of a review of the sentencing framework for England and Wales](#), July 2001, (PDF) Para 1.18

⁸⁵ Revolving Doors, [Reducing the use of short prison sentences in favour of a smarter approach](#) (PDF), 2018

⁸⁶ Justice Committee, [Transforming Rehabilitation](#) (PDF), June 2018, para 140

⁸⁷ [HC Deb 7 March 2019 481WH](#)

⁸⁸ Gov.uk, [Beyond prison, redefining punishment: David Gauke speech](#), 18 February 2019

⁸⁹ Gov.uk, [Smarter sentences, safer streets: David Gauke speech](#), 18 July 2019

suggests that community sentences, in certain circumstances, are more effective in reducing reoffending than short custodial sentences.⁹⁰

Evidence on effectiveness at reducing reoffending

A report published by the Sentencing Council in 2022 on the effectiveness of sentencing options on reoffending found that, when comparing similar offenders, short prison sentences are associated with increased reoffending rates upon release compared to community orders or suspended sentence orders. It concluded that further work was required “to understand why, in light of the various limitations, there are so many short sentences of immediate imprisonment and what the barriers are to the use of other disposals”.⁹¹

A briefing by the Parliamentary Office of Science and Technology (POST) published in July 2023 examines the use of short prison sentences in England and Wales. It notes that there are some limitations in the current evidence base but concludes while

...there is no one-size fits all and the effectiveness of short sentences will vary across demographics, circumstances, and the type of offence, (...) evidence strongly suggests that short prison sentences of less than 12-months are less effective than other disposals at reducing reoffending”.⁹²

The briefing refers to Ministry of Justice analytical series (2015 and 2019) that investigated the impact of short sentences, community orders and suspended sentence orders on reoffending. Both series found that custodial sentences of under 12 months were associated with higher levels of proven reoffending compared to community sentences and suspended sentence orders, with the difference in percentage points being statistically significant.⁹³

Other jurisdictions

The POST briefing discusses Scotland’s presumption against short periods of imprisonment. A presumption against the use of sentences of three months or less was introduced there in 2011 and was extended in 2019 to sentences of less than 12 months. The briefing also mentions a presumption against sentences of less than six-months which has been in place in Germany since 1969.⁹⁴

⁹⁰ Gov.uk, [A Smarter Approach to Sentencing](#), 16 September 2020, para 96

⁹¹ Sentencing Council, Dr Jay Gormley, Prof Melissa Hamilton and Dr Ian Belton, [The Effectiveness of Sentencing Options on Reoffending](#) (PDF), 2022

⁹² POST, [The use of short prison sentences in England and Wales](#), 27 July 2023

⁹³ See: Ministry of Justice, [Impact of short custodial sentences, community orders and suspended sentence orders on reoffending](#), 18 July 2019 and [The impact of short custodial sentences, Community Orders and Suspended Sentence Orders on reoffending](#), 29 January 2015

⁹⁴ POST, [The use of short prison sentences in England and Wales](#), 27 July 2023, section 4.2

5.2

The Bill

Clause 6 would introduce a duty on judges to suspend custodial sentences of 12 months or under unless there are exceptional circumstances which would justify not making such an order. It would be for the judge to determine if there are exceptional circumstances, which may relate either to the offender or the offence (or the combination of the offence and one or more offences associated with it). The Explanatory Notes say the intention behind this is to maintain judicial discretion.⁹⁵

Clause 6 lists a number of exceptions to the presumption. These include:

- Where, on the date of the sentencing hearing, the offender is in custody (for example serving another sentence, or on remand in connection with another offence)
- Where the offender's time on remand means the custodial period of any custodial sentence is deemed served
- Where the offence was committed when the offender was on licence or subject to post sentence supervision
- Where the court is dealing with an offender for breach of a court order
- Where passing such an order would put a particular individual at significant risk of harm.

Though the presumption would not apply in these cases, the court would nevertheless be able to consider suspending the sentence in the usual way by reference to the sentencing guidelines.

Clause 6 would apply to adult offenders aged 18 or over at the date of conviction.

This measure would apply to offenders convicted on or after the date on which the measure comes into force. The Human Rights Memorandum notes that while the measure would have retrospective effect, the Government's view is that the clause does not contravene Article 7 (no punishment without law) because it would not lead to anyone being sentenced to a harsher penalty than could have been imposed at the date their offence was committed.⁹⁶

The impact assessment estimates that the presumption would increase the probation caseload by between 1,700 and 6,800 by the end of 2024/25, with a

⁹⁵ [Explanatory Notes](#) (PDF), para 99

⁹⁶ [European Convention on Human Rights Memorandum](#) (PDF), para 25

central estimate of 3,700. It states this forecast increase will require an increase in staffing in the probation service.⁹⁷

Comment

The Government's announcement in the King's Speech of an intention to legislate for a presumption that custodial sentence of less than 12 months would be suspended was welcomed by organisations that campaign for prison reform who have long campaigned for such a measure.⁹⁸

Advocates for victims have welcomed the fact that the presumption will not apply where a suspended sentence would put a particular individual at risk. However, the charity Women's Aid said it remained seriously concerned that there would not be an automatic exemption for perpetrators of domestic abuse.⁹⁹ Women's Aid raised serious concerns about the probation service's current response to domestic abuse, assessment of risk, staffing shortages, lack of experience, poor supervision, training and understanding. Both Women's Aid and the interim Victims' Commissioner, Baroness Newlove, said the measure will require a properly resourced probation service and robust pre-sentence reports to ensure that judges are provided with sound risk assessments.¹⁰⁰

Some have warned of the additional pressure that will be placed on the probation service, which inspectors have found is already struggling.¹⁰¹ The charity Revolving Doors has said the proposed presumption against short sentences will have limited success without reforms to the probation service. Policy manager Kelly Grehan has said that while the proposal is a welcome move that the charity has long called for, she has "grave concerns about the severely depleted Probation Service's ability to supervise individuals effectively without setting them up for failure".¹⁰²

Clinks, a charity that represents the voluntary sector working with people in the criminal justice system, welcomed this measure but said that the additional pressure on probation services, commissioned rehabilitative services providers, and the wider voluntary sector working with people in the community remained a concern. It said these services will need to be adequately resourced to meet this increased demand.¹⁰³

⁹⁷ Impact Assessment, [Sentencing Bill: Changes on the presumption of the suspension of sort sentences](#) (PDF), p9

⁹⁸ Prison Reform Trust, [Prison Reform Trust briefing: Prison-related measures included in the King's Speech - November 2023](#) (PDF)

⁹⁹ Women's Aid, [Women's Aid responds to changes to the justice system set out in The King's Speech and how they will impact protecting survivors](#), 16 November 2023

¹⁰⁰ Victims Commissioner, [Ministry of Justice to exempt high-risk offenders from the presumption against shorter sentences](#), 14 November 2023

¹⁰¹ HM Inspectorate of Probation, press release, [Chief Inspector calls for an independent review of the Probation Service, publishing his final annual report](#), September 2023

¹⁰² Revolving Doors, blog, [Presumption success is dependent on probation reforms](#), 23 November 2023

¹⁰³ Clinks, blog, [The Sentencing & Criminal Justice Bills - a deeper look](#), 27 November 2023

Commentators have also highlighted that the change would have limited impact on demand for prison places. Helen Mills, Head of Programmes at the charity the Centre for Crime and Justice Studies considered the impact of this proposal on the prison population. She noted that current demands for prison places have not been driven by an increased short-term prison population. Rather, “the long-term escalation in prison sentence length is a key sentencing trend underlying current prison demand”. She said that while a rebalancing of short prison sentences to community-based sentences will impact the ‘churn’ created by receptions and short stays in the prison estate “it is likely to offer a diminishing return on reducing the overall prison population compared to that of ten years ago”.¹⁰⁴

The Prison Reform Trust has said that a presumption against short sentences and increasing the uptake of non-custodial alternatives would be “a good thing in and of itself, regardless of its impact on demand”.¹⁰⁵ Pia Sinha, Chief Executive, and Mark Day, Deputy Director, state that as a measure to reduce demand a presumption against short sentences does have limitations. They note that there are parts of the prison estate where a presumption would have a greater impact, highlighting the female estate and category B local prisons, where the majority of people on short sentences are sent, as places where the presumption may have a significant benefit.

¹⁰⁴ Centre for Crime and Justice Studies, [Comment: Presumption against short sentences misses the point](#), 25 October 2023

¹⁰⁵ Prison Reform Trust, [Decision time](#), 13 October 2023

6 Extending eligibility for Home Detention Curfew

Clause 8 would extend eligibility for release under Home Detention Curfew, allowing for certain prisoners serving sentences of four years or more to be eligible. Prisoners who have previously been recalled to prison having failed to comply with a curfew, where this was more than 2 years ago, would also become eligible.

6.1 Background

Most prisoners serving a standard determinate sentence of any length and all who are serving a standard determinate sentence of less than four years are automatically released at the halfway point.¹⁰⁶ They serve the rest of their sentence on licence in the community, supervised by the probation service and subject to recall to prison if they breach licence conditions or reoffend.

Home Detention Curfew (HDC) allows for the early release of certain prisoners before the date on which they would otherwise be automatically released at the halfway point of their custodial term. People released on HDC are subject to an electronically monitored curfew which must be for at least 9 hours a day and is generally, as a matter of policy, 12 hours a day.¹⁰⁷ Some people have their location monitored beyond monitoring compliance with their curfew and some may also be subject to an alcohol monitoring tag. The purpose of the HDC scheme is to effectively manage the transition of prisoners from custody back into the community.¹⁰⁸

Eligible prisoners can be released on HDC up to 180 days before their automatic release date at the halfway point of their custodial sentence.¹⁰⁹ Prisoners must serve at least a quarter of their sentence and a minimum of 28 days before release on HDC.

Currently only prisoners serving a sentence of over 12 weeks and under four years are eligible to be released on HDC.

¹⁰⁶ [Section 244](#) Criminal Justice Act 2003

¹⁰⁷ [Home Detention Curfew \(HDC\) Policy Framework](#), para 4.1.2

¹⁰⁸ Impact assessment, [Sentencing Bill – Changes to Home Detention Curfew](#) (PDF)

¹⁰⁹ [Section 246](#) Criminal Justice Act 2003 as amended by the Criminal Justice Act 2003 (Home Detention Curfew) Order 2023. This maximum period of release on HDC was raised earlier this year from 135 days before the prisoner's automatic release date.

There are other exclusions from HDC set out in legislation (including prisoners who are registered sex offenders or terrorist offenders).¹¹⁰ Prisoners who have at any time previously been recalled to prison for breaching the curfew conditions attached to HDC are also excluded by law.

Other exclusions from HDC are a matter of policy. The relevant policy is the [Home Detention Curfew \(HDC\) Policy Framework](#), which lists offenders who are presumed unsuitable. The list includes those serving sentences for categories of offences including homicide, possession of an offensive weapon, possession of firearms with intent, cruelty to children, stalking, harassment and coercive control.¹¹¹ The framework states these offenders are presumed unsuitable in order to maintain public confidence in the scheme. A decision to release on HDC is made by the prison governor (or a senior manager with delegated authority).

The Justice Secretary on 16 October 2023 said that the Government was keeping HDC under active review as part of plans to ease the pressures on prison capacity.¹¹²

6.2 The Bill

Clause 8 would extend the availability of HDC to prisoners serving standard determinate (fixed) sentences of 4 years and more with an automatic release date at the halfway point.

Prisoners serving certain other fixed sentences would be excluded. The excluded sentences, which have their own release arrangements, include:

- Sentences for specified serious sexual or violent offences where the automatic release point is two thirds rather than halfway
- Sentences for offenders of particular concern
- Extended sentences
- Sentences for specified terrorist or terrorist connected offences.¹¹³

Clause 8 would also provide that offenders who have not complied with HDC curfew conditions in the last two years would be excluded from the scheme.

It would remove and replace the current ban on HDC for offenders who had previously, at any time failed to comply with their curfew. The impact

¹¹⁰ [Section 246](#) Criminal Justice Act 2003

¹¹¹ [Home Detention Curfew \(HDC\) Policy Framework](#), para 4.3.6

¹¹² [HC Deb 16 October 2023 c59](#)

¹¹³ For details see [Explanatory Notes](#) (PDF), para 132

assessment states this ban is “becoming increasingly disproportionate given how long the scheme has been running”.¹¹⁴

The exclusions which currently apply, for example with regard to certain offences, would continue to apply and all prisoners would continue to be subject to risk assessment.

The Government’s impact assessment for this measure explains that the number of prisoners serving sentences of under 4 years has almost halved since HDC was introduced (in 1999) as sentences have grown longer. It therefore states that in order to keep pace with this change, sentence length alone should no longer determine whether someone is eligible for HDC.¹¹⁵ It states that the policy objective of the change is to aid the resettlement of offenders and that it would also help ease pressure on the prison population and thereby help limit overcrowding.

The impact assessment estimates that an additional 850 offenders will be managed by probation as a consequence of these changes.¹¹⁶

Comment

The Prison Reform Trust welcomed the expansion of eligibility for HDC when it was announced in the King’s Speech, describing it as “eminently sensible”.¹¹⁷ The charity has long advocated for change and has previously recommended the extension of eligibility to sentences of four years or more and the removal of exclusions based on previous breaches.¹¹⁸

¹¹⁴ Impact Assessment, [Sentencing Bill: Changes to Home Detention Curfew](#) (PDF), para 9

¹¹⁵ Impact Assessment, [Sentencing Bill: Changes to Home Detention Curfew](#) (PDF), p1

¹¹⁶ Impact Assessment, [Sentencing Bill: Changes to Home Detention Curfew](#) (PDF), p8

¹¹⁷ Prison Reform Trust, [PRT comment: Our reaction to the King’s Speech criminal justice measures](#), 7 November 2023

¹¹⁸ Prison Reform Trust, [Home Detention Curfew: expanding eligibility and improving efficiency](#), May 2021

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