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The *Criminal Justice Bill*: Sentencing

Bill 8 of 2002-2003

The *Criminal Justice Bill* is due to be considered on second reading on 4th December 2002. Explanatory Notes to the Bill have also been issued [Bill 8-EN].

This paper is concerned with the provisions of the *Criminal Justice Bill* relating to sentencing. It also contains a summary of the background to the sentencing provisions contained in the Bill and in particular of *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales* (the Halliday Report).

Other provisions in the Bill are considered separately in four other Library Research Papers as follows: The *Criminal Justice Bill;* The *Criminal Justice Bill*: Double Jeopardy and Prosecution Appeals; The *Criminal Justice Bill*: Disclosure and Evidence and The *Criminal Justice Bill:* Juries and Mode of Trial.

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Summary of main points

This paper is intended as an introduction to the sentencing provisions contained in Part 12 of the *Criminal Justice Bill* [Bill 8 of 2002-2003], which, with few minor exceptions, apply to England and Wales.

The first part of the paper sets out some views on the purpose of sentencing. It then summarises the present sentencing framework, and continues with a brief summary of the sentencing proposals in the Government's White Paper, *Criminal Justice: The Way Ahead*.

The next part of the paper is concerned with a summary of *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales* (the Halliday Report). It summarises the case for change and the main recommendations in the Report. These include recommendations relating to the principles of sentencing, individual sentences, sentence management, legislation and guidelines and costs and benefits. This part of the paper then quotes extracts from a selection of responses to the Report.

The third part of the paper is concerned with the sentencing provisions contained in the Government's White Paper, *Justice for All,* which was published after the publication of the Halliday Report. It considers the Government's proposals for change in the light of recommendations in the Halliday Report, and also the Government's specific responses to the Report. This part of the paper also contains extracts from a selection of responses to the White Paper.

The final part of the paper is concerned with the Bill's provisions on sentencing. The purposes of sentencing of adults would be identified in statute for the first time, and the Bill would set out the principles of sentencing, including that any previous recent and relevant convictions should be regarded as an aggravating factor which would increase the severity of the sentence. A new Sentencing Guidelines Council would be established. Sentences would be reformed: the various kinds of community order for adults would be replaced by a single community order with a range of possible requirements; custodial sentences of less than 12 months would be replaced by a new sentence, "custody plus", which would involve a period of at least 26 weeks post-release supervision in the community; and sentences over 12 months would be served in full, half in custody, half in the community, with supervision extended to the end of the sentence rather than the 3/4 point as now. Serious violent and sexual offenders would be kept in prison or under supervision for longer periods than at present. Several "intermediate" sanctions would also be introduced including intermittent custody and a reformed suspended sentence in which offenders would have to complete a range of requirements imposed by the court. A statistical appendix is set out at the end of this paper.

Other provisions in the Bill are considered separately in four other Library Research Papers as follows: The *Criminal Justice Bill;* The *Criminal Justice Bill*: Double Jeopardy and Prosecution Appeals; The *Criminal Justice Bill*: Disclosure and Evidence, and The *Criminal Justice Bill:* Juries and Mode of Trial.

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I Background

A. The purpose of sentencing

In *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales* (the Halliday Report)[1], the purpose of sentencing is described as follows:

> At its roots, sentencing contributes to good order in society. It does so by visibly upholding society's norms and standards; dealing appropriately with those who breach them; and enabling the public to have confidence in its outcomes. The public, as a result, can legitimately be expected to uphold and observe the law, and not to take it into their own hands. To achieve this, there must be confidence in the justice of the outcomes, as well as in their effectiveness. Achieving a satisfactory level of public confidence is therefore an important goal of sentencing, and the framework for sentencing needs to support that goal.
>
> The review has found widespread agreement that sentencing serves three other more specific purposes, those of:
>
> - punishment
> - crime reduction and
> - reparation.
>
> Opinions differ as to whether punishment is a goal in its own right or is, rather, a means of achieving the other two goals. Crime reduction includes:
>
> - deterrence (specific deterrence of those actually sentenced, and general deterrence of others put off from offending for fear of the sentencing consequences);
> - incapacitation (being excluded from society through imprisonment for a period during which offending in the community is therefore not possible);
> - reform and rehabilitation (measures to change the way offenders think and behave, and to enable them to develop in ways that reduce risks of re-offending).
>
> Punishment – meaning the loss of liberty, property or other rights and freedoms – is necessary in order to achieve any of the three aspects of crime reduction, as well as reparation. Perhaps above all, the goal is to achieve punishments that work as well as they can, in terms of crime reduction and the satisfaction of victims and communities. Equally important is the goal of achieving punishments that are just, and are seen to be just.[2]

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[1] Published by Home Office Communication Directorate, July 2001 http://www.homeoffice.gov.uk/cpg/halliday.htm

[2] Halliday Report p1

David Blunkett, speaking at the National Probation Service inaugural conference, on 5th July 2001, the day of publication of the Halliday Report, gave his views as follows:

> We can summarise the aims of sentencing with the three Ps and the three Rs: prevention, protection, punishment; and reparation, reducing crime, and rehabilitation.

The Halliday Report considers that two main philosophies underlie sentencing frameworks: "desert" which emphasises the need to make the punishment fit the crime so as to be "proportionate" and "commensurate"; and "utilitarian" which emphasises the achievement of practical outcomes such as crime reduction, public protection, rehabilitation etc. According to the Report, the philosophy underlying the current statutory framework in England and Wales is predominately desert-based, with sentences being supposed to reflect the seriousness of the offences before the court, but with some utilitarian goals, for example, in relation to some non-custodial sentences (e.g. probation orders).

B. The Current Sentencing Framework in England and Wales

The present framework is contained in various statutes including:

- The *Criminal Justice Act 1991*
- The *Crime (Sentences) Act 1997*
- The *Criminal Justice and Court Services Act 2000* and
- The *Powers of the Criminal Courts (Sentencing) Act 2000* (a consolidating statute)

Sentencers have guidance on how to sentence in specific circumstances from:

- Court of Appeal judgments (contained in D A Thomas' *Current Sentencing Practice)*
- Court of Appeal Sentencing Guidelines, informed by the Sentencing Advisory Panel
- Practice Directions issued by the Lord Chief Justice
- The Magistrates' Association sentencing guidelines which recommend sentence lengths and factors which might aggravate or mitigate the offence[3]

However, in the White Paper *Justice for All*[4], the Government highlights the current wide variations in sentences imposed by the courts in different parts of England and Wales:

> Statistics from magistrates' courts in 2000 show that, for example:

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[3] The Howard League, *Sentencing for Success*, 2001

[4] Cm 5563 http://www.cjsonline.org/library/pdf/CJS_whitepaper.pdf at p89

> • for burglary of dwellings, 20% of offenders are sentenced to immediate custody in Teesside, compared with 41% in Birmingham. 38% of burglars at Cardiff magistrates' courts receive community sentences, compared with 66% in Leicester;
> • for driving while disqualified, the percentage of offenders sentenced to custody ranged from 21% in Neath Port Talbot to 77% in Mid North Essex. 18% in Mid North Essex were given community sentences, compared with 68% at Neath Port Talbot; and
> • for receiving stolen goods, 3.5% of offenders sentenced at Reading magistrates' court received custodial sentences, compared with 48% in Greenwich and Woolwich, and 39% at Camberwell Green. 24% in Greenwich and Woolwich received community sentences, compared with 62% in Bradford.[5]

A summary of the existing sentencing framework is given in the Library's standard note *Sentencing – The General Framework*[6]. Details of some individual sentences are given in Library Research Paper 00/36.[7]

The Sentence of the Court - A Handbook for Magistrates sets out what it describes as the six traditionally recognised objects of sentencing:

> i) punishment/retribution;
> ii) reparation (including financial compensation to a victim);
> iii) protection of the public;
> iv) deterrence;
> v) reflecting proper public concern;
> vi) rehabilitation.[8]

The handbook suggests that to the list of traditionally recognised objects of sentencing there can be added a further aim of "disposal", that is, that each offence requires its own sentence. It also comments that:

> The *Criminal Justice Act 1991* made significant changes to the way in which the sentencing of offenders is approached. The criteria set out in that Act serve as a framework for present day sentencing practice. An underlying aim was to ensure that sentences are proportionate to the seriousness of the offence or offences of which an offender stands convicted. The 1991 Act uses the term "commensurate" to describe such sentences – and at the time of the legislation the government called this a "just deserts" approach.[9]

The provisions of the 1991 Act to which this extract refers are now set out in the *Powers of Criminal Courts (Sentencing) Act 2000*.

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[5] *Criminal Statistics England and Wales 2000* (2001), Home Office
[6] SN/HA/1118
[7] The *Criminal Justice and Court Services Bill:* Probation, Community Sentences and Exclusion Orders
[8] *The Sentence of the Court: A Handbook for Magistrates*, 2nd edition, 1998, p19
[9] ibid. p10-11

The Sentence of the Court notes that when "proportionate", "commensurate" and "just deserts" principles were first invoked as a result of the *Criminal Justice Act 1991* there was some uncertainty as to whether, and to what extent, the traditional objects of sentencing had survived. In 1997 Lord Bingham of Cornhill, who was then Lord Chief Justice, considered the continuing relevance of the traditional objects of sentencing in a speech to the Police Foundation.[10] In summarising his comments the handbook comments that the approach of the Court of Appeal since the enactment of the 1991 Act also shows the continuing relevance of the traditional objects.[11]

1. Mandatory penalties

The mandatory penalty for murder is life imprisonment.[12] This is the only offence in respect of which a custodial penalty must be imposed on a person with no previous convictions. Road traffic legislation also imposes mandatory disqualification where certain driving offences are concerned.

Section 2 of the *Crime (Sentences) Act 1997,* first required a court to impose a sentence of life imprisonment on a person convicted of a serious offence, where the person is aged 18 or over and he or she has a previous conviction for a serious offence. The court need not impose such a sentence if it considers that there are exceptional circumstances relating to either of the offences or the offender which justify it not doing so. "Serious offences" are defined in section 2 of the 1997 Act and include:

a) attempting to commit or soliciting murder;
b) manslaughter;
c) wounding or causing grievous bodily harm with intent;
d) rape, or attempted rape;
e) sexual intercourse with a girl under the age of 13;
f) possessing a firearm with intent to injure, using a firearm with intent to resist arrest, or carrying a firearm with criminal intent;
g) robbery where the offender is in possession of a firearm or imitation firearm at some time during the commission of the offence

This provision is now to be found in section 109 of the *Powers of Criminal Courts (Sentencing) Act 2000*.

Section 3 of the *Crime (Sentences) Act 1997* (now section 110 of the *Powers of Criminal Courts (Sentencing) Act 2000*) provides for a mandatory minimum sentence of seven years' imprisonment to be imposed on a person convicted for the third time of an offence involving trafficking in Class A drugs. Section 4 of the 1997 Act, (now section 111 of the

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[10] Lord Chancellor's Department press notice, *Criminal Sentencing and Public Opinion* –10 July 1997; Lord Bingham's speech is also reported in full in *Justice of the Peace and Local Government Law*, 150 JPN, 7000 19 July 1997

[11] *The Sentence of the Court: A Handbook for Magistrates*, 2nd edition, 1998, pp.20-1)

[12] *Murder (Abolition of Death Penalty) Act 1965* s.1(1)

Powers of Criminal Courts (Sentencing) Act 2000) provides for a mandatory minimum sentence of three years' imprisonment to be imposed on a person convicted for the third time of an offence of domestic burglary.

2. Judicial discretion

In cases other than those in which a mandatory penalty is imposed by statute, the sentence imposed on an offender in a particular case is a matter for the judge, although he or she must keep within such maximum sentences as may be set out in the statute for the particular offence concerned. Maximum penalties are designed to cater for the worst possible offence and have had little effect on the question of what should be the appropriate period of imprisonment for the majority of cases which come before the courts. Instead a "tariff" has been established by the Court of Appeal, guiding judges on the range of penalties imposed for offences for which the statutory maximum penalties are high. This tariff is not to be found in any official publication, although D A Thomas' loose-leaf compendium *Current Sentencing Practice* tends to be regarded as virtually authoritative. The range of sentences set out in the tariff tends to be well below the statutory maximum penalties for a particular offence.

Under section 79 of the *Powers of Criminal Courts (Sentencing) Act 2000*, a court may only impose a custodial sentence on an offender where:

- it takes the view that the offence is so serious that only a custodial sentence is justified or,

- if the offence is a violent or sexual offence, where it takes the view that only a custodial sentence will be adequate to protect the public from serious harm from the offender.

Where the court does impose a custodial sentence, Section 80 of the 2000 Act provides that the sentences should be:

> a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it; or
> b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.

For offences which are not so serious as to require a custodial sentence, other "community sentences" may be imposed. Under section 35 of the *Powers of Criminal Courts (Sentencing) Act 2000* courts may only impose community sentences if they are of the opinion that the offences concerned are serious enough to warrant such a sentence. The orders imposed as part of the community sentence must be those which the court considers most suitable for the offender and any restrictions on liberty imposed must be in proportion to the seriousness of the offences for which they are imposed.

3. Range of sentences

Sentencers have available a range of individual custodial and non-custodial sentences which are referred to in the context of specific proposals for change throughout this paper.

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4. Review of Unduly Lenient Sentences

Sections 35 and 36 of the *Criminal Justice Act 1988* permit the Attorney-General to refer to the Court of Appeal, with the leave of that Court, certain types of case in which it appears to him that the sentencing of a person has been unduly lenient. The Court of Appeal may then quash the original sentence and substitute another, which may be more severe than the original.

5. Sentencing Guidelines

It is generally acknowledged that inconsistencies in sentencing have often contributed to public dissatisfaction with sentencing policy. The Court of Appeal has from time to time issued decisions which are specifically referred to a "guidelines" for future use. However, even these "guidelines" do not deprive judges of their discretion over the sentences which are ultimately imposed in individual cases. The Court of Appeal has always been wary of giving the impression that its decisions are to be regarded as absolutely authoritative and has often stressed that each case depends on its own facts.

The Government has sought to encourage the Court of Appeal to produce sentencing guidelines for a wider range of criminal offences on a more systematic basis. Section 80 of the *Crime and Disorder Act 1998* requires the Court of Appeal to consider producing or revising sentencing guidelines, whenever it hears an appeal against sentence, reviews a sentence referred to it by the Attorney-General under the *Criminal Justice Act 1988*, or receives a proposal from the Sentencing Advisory Panel (see below) established under section 81 of the 1998 Act. In considering guidelines, the Court must have regard to:

- the need to promote consistency in sentencing;
- the pattern of sentencing for similar offences;
- the cost and effectiveness of different sentences; and
- the need to promote public confidence in the criminal justice system.

Any guidelines produced must include criteria for determining the seriousness of offences, including criteria for determining the weight to be given to any previous convictions of offenders or any failure to respond to previous sentences.

Section 81 of the 1998 Act provided for the establishment of a Sentencing Advisory Panel, appointed by the Lord Chancellor, to provide advice on sentencing to the Court of Appeal. The panel must be informed when the Court produces guidelines, and will then provide advice, having consulting with other interested bodies. The Panel also has powers

to propose that the Court frame or revise guidelines if it considers this may be necessary or when it is directed to do so by the Home Secretary.

The Court of Appeal does not have the same degree of influence over the sentencing decisions of magistrates' courts as it has over the decisions of judges in the Crown Court. There are a number of reasons for this, but one is that appeals involving sentencing decisions in magistrates' courts rarely, if ever, come before the Court of Appeal. Lay magistrates receive guidance about sentencing and other matters from the justices' clerks who serve their courts. The Magistrate's Association has produced *Sentencing Guidelines* for those criminal offences that frequently come before magistrates' courts but these are only starting points for discussion of individual sentences, not finishing points. The guidelines emphasise that responsibility for the sentence imposed belongs to the justices concerned and it is they who must assess each case judicially having regard to the circumstances of the particular offence and the circumstances of the particular offender.

As far as the use of custody by the Crown Court and by magistrates' courts is concerned, the proportionate use of custody has tended to be much higher at the Crown Court for all offence groups. The average length of sentence imposed by the Crown Court for either-way offences[13] has also tended to be higher. [14] This is not entirely surprising, as the Crown Court tends to deal with the more serious "either way offences".[15]

C. The White Paper *Criminal Justice: The Way Ahead*

In February 2001, the Government published a White Paper, *Criminal Justice: The Way Ahead*[16], which addresses a wide range of issues relating to the Criminal Justice System. In the introduction the Government defines its aim to:

> ensure that punishments fit the criminal as well as the crime – with a clear message to all persistent offenders that they should reform or expect to stay under supervision. A new sentencing framework would ensure that short as well as long-term prisoners are supervised after release and by investing in drug treatment and more intensive support and surveillance for convicted offenders, we will get re-offending down.[17]

The White Paper further states:

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[13] that is, those offences which may be tried either summarily by magistrates or by a judge and jury on indictment at the Crown Court

[14] HL Deb 3 September 1998 WA19-23; HL Deb 12 July 1999 WA7-9

[15] See Claire Flood-Page and Alan Mackie, *Sentencing Practice: an examination of decisions in magistrates' courts and the Crown Court in the mid-1990's* – Home Office Research Study 180, 1998, pp6,13,21-34,67-70,73-93,125-130. See also Nigel Walker and Nicola Padfield, *Sentencing: Theory, Law & Practice* 2nd edition, 1996, pp15-16

[16] Cm 5074 http://www.archive.official-documents.co.uk/document/cm50/5074/5074.pdf

[17] *ibid* p8

> **15** Within two years of starting a community sentence, or finishing their prison sentence, over half of offenders – and nearly 80 per cent of those with more than five previous convictions – will be back in court to be convicted and sentenced for further offences.
>
> **16** Too often, short sentence prisoners leave custody just as illiterate, as unemployable and as prone to drug dependence as when they went in. And under the current sentencing framework, short term prisoners know that there will be no follow up supervision to keep them away from crime after their release. This is unacceptable, which is why the Government commissioned a major review of the sentencing framework, expected to report in May 2001.
>
> **17** The Government aims to establish a new sentencing framework, focused on crime reduction as well as punishment for the immediate crime, which ensures greater consistency and that persistent offending leads to increased severity of punishment. There will be much greater post-release supervision of short sentence prisoners and a new emphasis on ongoing sentence management and review.[18]

Various reasons are given in the White Paper for why a new sentencing philosophy is needed including:

- The present system does not always help prevent reoffending.
- There is too narrow a focus on the specific offence for which the offender is before the court, whether or not this is simply the latest in a series of similar offences. It is stated that the 100,000 most persistent offenders account for about half of all crime[19] and that persistent offenders should receive increasingly severe punishments.
- The procedures available for enforcement and sentence management are complex, inefficient and insufficiently effective.
- There is a general lack of understanding among society and victims about the reasons for different sentences and their actual content.
- There is insufficient encouragement of reparation to the individual victim or the community.

The Government set out three key objectives which it would pursue as it considered the outcome of the Sentencing Review which it had already established (see below):[20]

- A focus on high risk, high rate offenders, with intensive criminal justice supervision throughout the entire duration of their sentences.
- Tackling the underlying causes of criminal behaviour through and during sentence, based on 'what works for whom'.

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[18] *ibid* p13
[19] *ibid* p41
[20] Published as the Halliday Report

- Maximum transparency to the public, victims and witnesses about the content of sentences.[21]

The White Paper, whilst acknowledging that the Sentencing Review still had work to do, gives a preview of the emerging conclusions. The proposals for change and the types of sentence to be introduced are discussed more comprehensively in the Sentencing Review (Halliday Report).

II The Halliday Report

On 16th May 2000, the then Home Secretary, Jack Straw, had announced a fundamental review of the legal framework for sentencing and its impact on re-offending. A Home Office press release issued that day announced that:

> The review will examine the foundations of the 1991 Criminal Justice Act and explore the possibility of more flexible sentencing options which join up custodial and community penalties. The focus would be on maximising crime reduction by tackling repeat offending, sustaining public confidence, protecting the public and would take full account of the interests of victims.
>
> Led by John Halliday, formerly Director of Criminal Justice Policy at the Home Office, it will be a rigorous, evidence based exercise involving and seeking views from a wide range of interested parties.
>
> Mr Straw said: "We need a sentencing framework which takes account of the progress prison and probation services are making in assessing risks of re-offending, the danger offenders present to the public, and what needs to be done in individual cases to reduce those risks.
>
> "We also need a framework which sends a clear, tough message about sanctions for persistent re-offending. It must be made far clearer to offenders what the consequences of their actions will be, without ambiguity.
>
> "The key question for us to consider is whether a different legal framework to that currently established by the 1991 Act would facilitate better results, that is: preventing more crimes, causing fewer victims and creating greater public safety. These criteria must be the key tests for any changes."
>
> The terms of reference of the review are:-
>
> "In the light of the Government's objectives to protect the public by reducing crime and re-offending, and to dispense justice fairly and consistently, to consider:

[21] *Criminal Justice: The Way Ahead*, p42

> (i) what principles should guide sentencing decisions;
> (ii) what types of disposal should be made available to the courts in order to meet the overarching objectives;
> (iii) the costs of different disposals and their relative effectiveness in reducing re-offending;
> (iv) what changes therefore need to be made to the current sentencing framework, as established by the Criminal Justice Act 1991, so as more effectively to reduce re-offending, including any transitional and consequential arrangements; and
> (v) the likely impact of any recommendations in terms of costs and the effects on the prison population.
>
> In particular, the review should bear in mind the desirability of promoting flexibility in the use of custodial and community based approaches."[22]

The report of the review (the Halliday Report) was published in July 2001.[23]

A. The case for change

As had already been indicated in the Government's White Paper *Criminal Justice: The Way Ahead*, the Halliday report concludes that an overview of the present framework reveals limitations and problems, the most compelling being:

> the unclear and unpredictable approach to persistent offenders, who commit a disproportionate amount of crime, and the inability of short prison sentences (those of less than 12 months) to make any meaningful intervention in the criminal careers of many of those who receive them. The gradual erosion of the approach set out in the Criminal Justice Act 1991, with its emphasis on linking punishment to the seriousness of the offences under sentence, and the resulting muddle, complexity, and lack of clear purpose or philosophy, are further grounds for reform.[24]

The Report examines the way in which sentencing is working in England and Wales, and how the framework could be changed to enable it to work better. The identified limitations of the present framework include:

- A narrow sense of purpose caused by a requirement on those who pass sentence to concentrate primarily on imposing a level of punishment commensurate with the particular offence or offences being dealt with. Sentencers are not encouraged to consider crime reduction or reparation.

- A muddled approach to persistent offenders:

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[22] Home Office press release, *Home Secretary Announces Sentencing Framework Review*, 16 May 2000
[23] Published by Home Office Communication Directorate, July 2001
http://www.homeoffice.gov.uk/cpg/halliday.htm
[24] *ibid*, Executive summary p ii

- there is a strong correlation between number of previous convictions and the likelihood of receiving a short prison sentence;
- persistent offenders do not appear to receive significantly longer prison sentences (in a sample of male offenders aged over 18 and sentenced in 1998, the average sentence for burglary for an offender with 10 or more previous convictions was only 4 months more, at 19.1 months, than for an offender with 1 conviction);
- persistent offenders with 10 or more previous convictions still had a one in four chance of receiving a community sentence.[25]

- The inadequacy of short sentences: only half of the sentence is served in prison and because no conditions apply during the second half of the sentence, this becomes meaningless and ineffective:

> A sample of male prisoners receiving short prison sentences in mid 1998 showed:
> • 54% had been to prison under sentence before;
> • 56% had five or more previous convictions;
> A sample of male prisoners receiving short prison sentences in early 2000 showed:
> • 40% admitted to having problems over drug misuse before entering prison;
> • 53% were unemployed.[26]

- The weakness of long prison sentences: half the sentence is served in prison (two thirds for some sentences over 4 years), half of the remainder is subject to conditions but the final quarter of the sentence lacks any obvious purpose

- Lack of confidence in community sentences

- Muddled and weak enforcement systems

- Unnecessary rigidities between the three tiers of seriousness of offence resulting respectively in fines, punishment in the community and imprisonment.

- Lack of transparency – the present framework results from a variety of sources and is relatively inaccessible. The perception is that sentences should mean what they say.

- Inconsistency

[25] *ibid*, p2
[26] *ibid*, p3

Opportunities to improve outcomes are also identified, including defining and putting into practice "what works" in reducing reoffending, through work with offenders under sentence. The Report considers the present framework to be ill-equipped to exploit these possibilities.

The Report considers that sentencing makes an important contribution to crime reduction and public confidence and states that the available evidence suggests that:

> • confidence could be improved through changes which improved public awareness of sentencing practice and improved sentencers' awareness of public opinion and the knowledge on which it is based;
> • changing present levels of punishment as an end in itself, or exclusively to enhance deterrent or incapacitative effects on crime would not be justified;
> • improvement in the present state of knowledge about deterrence and incapacitation is desirable;
> • outcomes are most likely to be improved by targeting resources on the offenders most likely to re-offend and commit offences serious enough to cause concern to local communities;
> • if targeting persistent offenders reduced crime through additional deterrence, incapacitation or both that would be a bonus;
> • changes in the framework aimed at promoting effective work with offenders during their sentences are most likely to improve outcomes;
> • there is scope for greater attention to reparation.[27]

The Report concludes that the case for reform is strong and recommends that:

> A new framework should do more to support crime reduction and reparation, while meeting the needs of punishment. In support of crime reduction, the framework should in particular do more to target persistent offenders and support the work of the prison and probation services to reduce re-offending.[28]

B. Main recommendations

1. Principles of sentencing

The Report goes on to consider the principles on which any new framework should be based. The main recommendations are:

- The existing "just deserts" philosophy should be modified by incorporating a new presumption that severity of sentence should increase when an offender has sufficiently recent and relevant previous convictions.
- The principles governing severity of sentence should be as follows:

[27] *ibid*, pp10-11
[28] *ibid*, p11

  - severity of punishment should reflect the seriousness of the offence (or offences as a whole) and the offender's criminal history;
  - the seriousness of the offence should reflect its degree of harmfulness, or risked harmfulness, and the offender's culpability in committing the offence;
  - in considering criminal history, the severity of sentence should increase to reflect a persistent course of criminal conduct, as shown by previous convictions and sentences.
- Imprisonment should be used when no other sentence would be adequate to meet the seriousness of the offence (or offences), having taken account of the offender's criminal history.
- Courts should be free to choose from the full range of non-custodial sentences, while being required to match the punitive weight of such a sentence with the seriousness of the offence (or offences), having taken account of the offender's criminal history.
- Courts should have clear discretion to pass a non-custodial sentence of sufficient severity, even when a short prison sentence could have been justified – bearing in mind their ability to re-sentence in the event of repeated breach of conditions.
- The so-called "totality principle", which requires courts to look at all the current offences before the court as a whole, and increase sentence severity accordingly without adding the total suitable for each offence cumulatively, should remain
- New sentencing guidelines should set out "entry points" for considering severity of sentence, alongside graded definitions of seriousness of offences, and indicate the range of effects that previous convictions should have on sentence severity.
- The proposed new guidelines should look for consistency of approach, rather than uniform outcomes, and recognise justifiable disparity, for example in cases where the offender has young dependant children.
- Section 95 of the Criminal Justice Act 1991 should be extended to require the Secretary of State to disseminate information about the effectiveness of sentencing, as well as its costs (including the contributions of sentencing to crime reduction and public confidence); and about consistency of approach between different areas. In addition, practitioners should be required to make themselves aware of the information provided.
- Unless only a prison sentence of 12 months or more would meet the needs for punishment, sentencers should consider the scope for a community sentence to meet the needs of punishment, crime reduction and reparation.
- Reasons for sentencing decisions, including grounds for any mitigation, should be given and recorded for subsequent retrieval if needed, preferably electronically.
- The Home Office should consider ways of increasing public knowledge about how sentencing is intended to work and how it is working in practice.[29]

[29] *ibid*, p21

2. Individual sentences

The Report then considers individual sentences and makes various recommendations for change, including:

a. Custody Plus

> Prison sentences of less than 12 months … should normally consist of a period in prison (maximum 3 months) and a period of compulsory supervision in the community, subject to conditions and requirements whose breach may lead to return to prison. The period of supervision should be a minimum of 6 months, and a maximum of whatever would take the sentence as a whole to less than 12 months. In cases where the court identified no need for a supervisory period it should be able to order a period in custody, without post release supervision, of up to 3 months.[30]

In the White Paper, *Criminal Justice: The Way Ahead*, it was envisaged that offenders who breached the conditions of the community element of the Custody Plus sentence would automatically be returned to prison to serve out the remainder of their sentence[31], so this represents a slight shift in approach.

A consequence of introducing this type of sentence means that effectively there will no longer be scope to impose a custodial sentence of more than three and less than six months (real time). However, the Report points out that there is additional severity in the conditional release period of the sentence, which is potentially convertible to imprisonment.[32]

b. Prison sentences of 12 months or more

- Prison sentences of 12 months or more should continue to be served partly in prison and partly in the community, but conditions of release, and supervision, should continue to the end of the sentence, with liability to recall to prison if conditions are breached. For most offenders, release would be at the half-way point of the sentence.
- Before the release of a prisoner, the content of the second half of the sentence should be subject to court review, on the basis of proposals prepared jointly by the prison and probation service, in consultation with other potential contributors in the statutory, independent, and voluntary sectors.[33]
- Discretionary release should be reserved for violent and sexual offenders who may need to be detained for longer to avoid risks of serious harm to the public.

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[30] *ibid*, p26
[31] p43
[32] *The Halliday Report*, p24
[33] *ibid*, p33

- Violent or sexual offenders who present a risk of serious harm to the public should be eligible for a new sentence, the effect of which would be to make their release during the second half of the sentence dependent on a decision by the Parole Board. Courts would have power to extend the supervisory part of the sentence.[34]

c. Community sentences

- Existing community sentences should be replaced by a new generic community punishment order, whose punitive weight would be proportionate to the current offence and any additional severity for previous convictions. The sentence would consist of ingredients best suited to meeting the needs of crime reduction, and exploiting opportunities for reparation, within the appropriately punitive "envelope".
- The purposes, and applications, of the various non-custodial penalties, should be made clear, either in legislation or guidelines.
- Under the new community punishment order, courts would be able to order an offender to undertake an accredited programme, subject to local availability and the assessed suitability of the offender for such a programme.
- Sentencers would be able to specify the type of compulsory work an offender should undertake in the community, based on advice from the probation service. Crime & Disorder reduction partnerships would be used to advise on what types of work would respond to local needs and wishes. The probation service should consider ways in which religious and other groups could be involved more directly in work with offenders aimed at reducing re-offending.
- Financial penalties would be available at all levels of seriousness, both in isolation and in combination with the ingredients making up the community punishment order. The 'serious enough' test to justify a nonfinancial community sentence would be dropped.
- A new interim review order should be created, enabling deferral of sentences to be strengthened with proper safeguards.[35]

The Report states that the elements of a non-custodial sentence might include treatment for substance abuse or mental illness, curfew and exclusion orders, electronic monitoring, reparation to victims and communities, compulsory work and attendance at offending behaviour programmes.

d. Intermediate sanctions

- Intermittent custody: this would allow an offender to spend part of a custodial sentence out of prison. Intermittence could cover weekend imprisonment or

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[34] *ibid*, p33
[35] *ibid*, p44

imprisonment for parts of the day or night. However, the Report acknowledges that the Prison Service considers it would be unable to manage such sentences otherwise than through release on temporary licence schemes (which it does not consider would be appropriate)[36] and that public confidence in such a sanction would need more testing.

The report also comments:

> The review has taken account of work underpinning the Government's Reply to the Third Report from the Home Affairs Committee Session 1997-98, HC486 – Alternatives to Prison Sentences (Cm 4174). The Committee had recognised both the potential advantages of "weekend prison", in enabling offenders to keep or seek employment, and a number of difficult practical issues to be resolved concerning its implementation. It recommended a feasibility study by the Home Office to see if weekend prison could be made possible without significant extra costs. The Government, in its Response, concluded that from the operational perspective it would be difficult to manage the logistics of such an arrangement, and expressed concerns about possible "net widening". The Government concluded that weekend prison would not be a viable and useful option at that time.
>
> The possible costs and benefits of intermittent custody are difficult to estimate, and any estimates would in any event be highly speculative. Leaving prison places unoccupied might at first sight appear wasteful, but if they would otherwise have been occupied, at possibly greater expense, that would not be the case. Whether offenders released intermittently would offend during release periods is difficult to say. Equally, it is difficult to say whether longer term re-offending rates would be affected. The effect on public confidence is also hard to judge – a serious offence committed by a released prisoner would cause concern, but that is true of any serious offence committed by an offender under sentence, and reflects general concern over the most serious and persistent offenders, for whom a sentence of intermittent custody would not be appropriate. Much would depend on how it was used.
>
> The review has been unable to draw firm conclusions from the experience in other jurisdictions of intermittent custody. Short periods in jail are used in the USA, for example as sanctions for breach of conditions in the community. Use of "weekend imprisonment" in some European countries appears to have faded out.
> The effects of intermittent imprisonment can be achieved in other ways. An offender receiving a community sentence can be required to reside at a named address, including a probation or prison hostel; to attend a designated centre at designated times; to stay at home under curfew, electronically monitored, for designated periods; and to refrain from entering designated areas at any time. This can amount to intermittent "containment in the community".

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[36] *ibid*, p34

> The review has not been able to look closely at the estate that is already available to support, and contain offenders in this "intermediate" state. Probation centres, approved hostels and attendance centres (renamed senior custody centres) are likely to comprise a substantial resource. Maximising the benefits of its use, within the sentencing framework, calls for deeper analysis and review than has so far been possible.[37]

- Suspended sentence plus (later referred to by the Government as "Custody Minus"): this would combine a community sentence with a suspended sentence of imprisonment, which could be activated if the offender failed to comply with the conditions of the non-custodial sentence.[38]

3. Sentence management

The Report considers that the present framework is complicated in that there are several different mechanisms for dealing with a breach of licence or community sentence, and recommends reinforcing the importance of rigorous pre-sentence reports. It also envisages that all non custodial sentences would be enforced by the court, which could, if the terms of the sentence were breached, replace the community sentence by a custodial one. Supervision would be geared towards managing and enforcing the sentence and supporting re-settlement.

- Where a swift response to the failure of a non-custodial sentence was needed, the probation service should be encouraged to use the existing power to apply for an arrest warrant. A court hearing could lead to remand in custody, pending a full hearing.
- Breach of conditions imposed on release from prison should be enforceable administratively through recall to prison, subject to a review hearing by a court.
- If the breach occurred during the community part of prison sentences of under 12 months, re-release would be possible after recall only if there were 4 months or more of the sentence left to serve. Re-release from sentences of 12 months or more would be possible, subject to a review hearing 12 months after the date of recall (or appeal against recall). That review hearing would also determine the date of any future hearings.
- There should be a new statutory duty on the probation service, the police service and providers of electronic monitoring to cooperate in the supervision of offenders under sentence in the community, especially those judged to have a high risk of reoffending.
- Courts should develop and provide a new 'sentence review' capacity which would deal with breaches of community sentences, hear appeals against recall to prison, authorise pre-release plans for offenders on

[37] *ibid*, p35
[38] *ibid*, p36

> release from custody and review progress during community sentences and the community part of custodial sentences.[39]

4. Legislation and guidelines

The Report makes the following recommendations:

- Codified guidelines should be produced for application by all criminal courts, taking account of existing guidelines and the need for their further development and modification in the light of changes resulting from this report. Such guidelines should be permanently available to all in their up to date form.
- New independent machinery should be established for this purpose, either using the Court of Appeal (Criminal Division) in a new capacity, or establishing a new body for the purpose. In either case, the remit of the Sentencing Advisory Panel should be widened to enable it to provide general advice on sentencing issues, including draft guidelines.
- The body responsible for the guidelines should also be responsible for monitoring their application, keeping them up to date and otherwise revising them as necessary. It should also have regard to the need to promote consistency and public confidence, and the need for information bearing on the costs and effectiveness of sentences.
- Guidelines should be published in draft for public debate, and the responsible body should be required to consider comments made by Parliament, the Government and others, and to publish an explanation of its final conclusions.
- Parliament should consider ways of establishing a permanently up-to-date statutory Penal Code incorporating the relevant statute law on sentencing, including the way sentences operate, as well as the powers of the courts; and the Government should instigate the necessary discussions for this purpose.
- Once suitable guidelines were in place, and had a chance to operate, it would be sensible to review whether mandatory minimum sentences for particular offences in statute would still be needed.

5. Costs and benefits

The Halliday Report examines the costs and benefits of the new proposed framework and concludes:

> The analysis has shown that, measured in terms of crime reduction, the estimated additional expenditure on the new framework should be capable of achieving sufficient added value by comparison with the present framework to justify the necessary investment. This conclusion is highly sensitive to assumptions about the impact of work by the prison and probation services to reduce reoffending,

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[39] *ibid*, p51

> and the extent to which a new framework would improve the outcomes of that work. It also depends on a large number of assumptions. The figures, however, reflect only the benefits that can be modelled in this way. They take no account of possible additional deterrent effects resulting from increased severity on persistent offenders, nor of any benefits in terms of increased public confidence. Any additional benefits of this sort would be a bonus, on top of those shown in the figures.[40]

C. Reaction to the Halliday report

In February 2002, the Home Office published *Making Punishments Work: Response to Consultation Overview*[41], which set out the trend of responses to all the key questions in the consultation. According to the Overview, included in the responses there was a high level of agreement on the broad issues that change was necessary; that the majority of the proposals in the report were likely to be effective; that there was a low level of confidence in the current system; and that the way to improve that was complex and likely to take a great deal of time and energy.

Respondents supported the goal of honesty in sentencing, better enforcement, the creation of a framework that would stand the test of time and the need for a "whole system" approach. However, opinions were divided on how best to deal with persistent offenders and about the use of previous convictions in the sentencing decision. Concerns were also expressed about the proposals for the various sentences, although support was also voiced. The Overview states that there was widespread support for a wider variety of sentencing options and that support for the reform of short custodial sentences was the strongest of all the proposals in the Report.
Strong views were expressed that reviewing performance under a Community Sentence which has not been breached could be better done by clearer guidance for probation staff rather than by the Court.

The following comments are extracts from a selection of views expressed in response to the Halliday Report.

1. The Howard League

The Howard League included these comments in their briefing paper *Sentencing for Success* 2001 (published after the launch of the review but before the Report was actually published):

> Proportionality: By tying the penalty to the seriousness of the offence, the court makes it clear that offenders are sentenced not on the basis of *who* they are but *what* they have done. The Howard League sees proportionality as an essential

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[40] *ibid*, p64
[41] http://www.homeoffice.gov.uk/cpg/consrespoverview.pdf

> guarantee of fairness and public confidence.... The Howard League would not support moves towards a system of *sentencing* which is governed in detail by predictions of future behaviour as opposed to evidence of past actions…
>
> There are three reasons for opposing [the notion of intermittent custody]: first it would undermine the purpose of prison: people are either a danger to the public or they are not. Secondly, part-time prison would probably be used in place of non-custodial penalties, leading to a costly rise in the prison population. Thirdly, there is no evidence to suggest that part-time prison would deter people from committing crime any more than the current range of penalties.

2. Justice

Justice published its response in December 2001[42] and included the following comments:

On proportionality:

> In our view, Halliday's recommendation that sentence severity should be proportionate, not only to the seriousness of the offence under sentence and the culpability of the offender, but also to the offender's antecedent criminal conduct, has been proved, both historically in this country and more recently in other jurisdictions, to lead to unfairness, discrimination and unnecessary increases in prison populations.

On consistency:

> Consistency in sentencing is clearly an important objective, both on grounds of intrinsic fairness and because inconsistency is a major source of public criticism. However, consistency is a slippery concept and it is in fact no guarantor of rationality or fairness.

On freedom from improper discrimination:

> If members of ethnic minorities are disproportionately targeted, arrested and over-charged, they inevitably acquire a greater number of convictions. If length of sentence is related to these previous convictions, the effect of past discrimination is quickly magnified. It is of primary importance that sentencing policy takes account of the discriminatory impact of sentencing on past record.

On sentences of less than twelve months:

> We note that a number of very experienced criminal practitioners have voiced concern that Halliday's recommendations restricting the use of short prison

[42] http://www.justice.org.uk/parliamentpress/parliamentarybriefings/index.html

> sentences may have the paradoxical effect of encouraging cautious sentencers to increase the term imposed to over the one year threshold.

On commissions and guidelines:

> We agree that a policy-based approach to guidelines is more likely than an ad hoc system to provide the transparency and accountability necessary for public confidence. However, there are also potential dangers in creating too large a separation between decisions on sentencing levels and the facts of particular cases. The US experience of guidelines and commissions has shown a near universal increase in the length of sentences; and studies show that the further divorced from the particular facts of the case is the body deciding the level of sentence, the more punitive that sentence will be.

On lessons for England and Wales:

> What we learn from the North American experience is that fundamental problems remain. The move away from individualised, discretionary sentencing to mandatory sentences and guidelines may have reduced disparity in terms of end results, but has arguably increased it in other ways, by not taking into account factors that many would feel should be acknowledged, particularly if effectiveness (for the individual) is desired. Guidelines have been at least as blunt an instrument as the discretionary system they replaced, and infinitely more expensive in economic and human terms.
>
> Another aspect which is not explicitly recognised in "Making Punishments Work" is the magnitude of the task that would face a commission or equivalent body, and how that body might function in practice. The development of comprehensive guidelines which indicate presumptive sentencing levels for all types of offence in all types of court, encompassing imprisonment, community sentences and fines, with appropriate gearing for aggravating and mitigating factors is a monumental undertaking. It will require a credible body of research, including detailed consideration of the relative seriousness of different types of offence and appropriate sanctions.

Justice also refers to the following Council of Europe recommendations which it believes to be relevant:

> DI Previous convictions should not, at any stage in the criminal justice system, be used mechanically as a factor working against the defendant.
> D2 Although it may be justifiable to take account of the offender's previous criminal record within the declared rationales for sentencing, the sentence should be kept in proportion to the seriousness of the current offence.
> Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation states:
> "1. Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only where the seriousness of the offence would make any other sanction or measure clearly inadequate.
> 2. The extension of the prison estate should rather be an exceptional measure,

> as it is generally unlikely to offer a lasting solution to the problem of overcrowding."

3. Alec Samuels

On the proposal that the severity of the sentence should be increased where there are relevant previous convictions:

> This is an unsound proposal, contrary to the concept of a just and proportionate sentence. The offender should be sentenced for the offence. If he has a record, mitigation otherwise open to him to bring down the sentence is reduced or eliminated. But to sentence him upon his record would be unjust and totally unsatisfactory. The punishment should fit the crime, not the record.

On the proposal that a prison sentence of less than 12 months should not exceed three months:

> ...to deprive the sentencer of the power to imprison for between 3 to 12 months would create a huge gap in the armoury. The sentencer might be tempted to sentence for 13 months. [43]

III The White Paper: *Justice for All*

The Government's white paper *Justice for All* was published in July 2002.[44] It sets out the Governments views as to what should be done to modernise and improve the criminal justice system so its aims can be achieved more effectively, and includes proposals for the reform of the sentencing framework. In the Executive Summary provisions relating to sentencing are summarised as follows:

> Where a defendant is convicted we will:
> • focus custody on dangerous, serious and seriously persistent offenders and thosewho consistently breach community sentences;
> • ensure that dangerous violent and sexual offenders can be kept in custody for as long as they present a risk to the public;
> • ensure tough, more intensive community sentences with multiple conditions like tagging, reparation and drug treatment and testing to deny liberty, rehabilitate the offender and protect the public;
> • ensure more uniformity in sentencing through a new Sentencing Guidelines Council;
> • enable courts to offer drug treatment as part of a community sentence for juveniles;

[43] writing in *Justice of the Peace* Vol 166 No 9 p168
[44] Cm 5563 http://www.cjsonline.org/library/pdf/CJS_whitepaper.pdf

> • introduce a new sentence of Custody Minus – community supervision backed by automatic return to custody if the offender fails to comply with the conditions of their sentence;
> • introduce a new sentence of Custody Plus to ensure that short sentence prisoners are properly supervised and supported after release; and
> • introduce intermittent custody to enable use of weekend or night-time custody for low risk offenders.[45]

Under the heading "Putting the sense back into sentencing", the summary continues:

> Sentencing must protect the public, punish offenders, and encourage them to make amends for their crime and contribute to crime reduction. Technological advances, however, such as tagging and voice recognition technology, give innovative ways to deny liberty, reduce reoffending and ensure community sentences are not a soft option.
> The punishment must be appropriate to the offence and the offender, ensure the safety of the community and help rehabilitate offenders to prevent them reoffending once and for all. Sentences must be consistent across the country and prison must be reserved for serious, dangerous and seriously persistent offenders and those who have failed to respond to community punishment, with effective alternative sentences for other offenders.
> We have already:
> • overhauled sentences for young offenders, replacing the old failed system of repeated cautions with a single police reprimand and Final Warning, and introducing Detention and Training Orders for those who require custody; and introduced a range of innovative new punishments such as Drug Treatment and Testing Orders.
> We propose to:
> • set up a new Sentencing Guidelines Council to end the unacceptable variations in sentencing;
> • introduce a new sentence to ensure that dangerous violent and sexual offenders stay in custody for as long as they present a risk to society;
> • enable the courts to request drug treatment as part of a range of community sentences for young offenders as well as adults;
> • make the release of all juveniles sentenced for serious crimes subject to decision by the Parole Board and require them to be supervised until the end of their sentence, as is the case for adults;
> • introduce a fine enforcement scheme under which the fine will increase if the offender fails to pay;
> • publish a paper in the Autumn on the law reform of sexual offences and proposals to overhaul the Sex Offenders Act; and
> • look at ways to develop and pilot further intensive fostering to include more young people on remand and as part of a sentence.[46]

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[45] *ibid*, p13
[46] *ibid*, p17-18

The summary continues with the following proposals on punishment and rehabilitation:

> Our sentencing policy will ensure that the punishment is appropriate for the offender and the offence. Community sentences will be rigorous and robust enough so as to protect the public and effectively punish the offender by denying liberty and requiring reparation. A key part of sentencing must be rehabilitation to reduce reoffending and contribute to safer communities.
> Radical reform of sentencing policy should mean community punishment is a tough and credible alternative to custody with more time to rehabilitate those that remain in prison. But that reform will only achieve its goals if correctional policy works too. That means more support and supervision for those leaving prison, and better joint working between the Prison and Probation Services.

A. The Government's proposals for change

The specific proposals for reform are based on the recommendations of the Halliday Report, as set out above, and no further comment is given in this section on any proposal unless it differs significantly from those recommendations. The following points are however, worthy of comment:

- In the *Review of the Criminal Courts of England and Wales* by Rt Hon Lord Justice Auld published in September 2001 a recommendation was made to introduce a new "intermediate tier" court.[47] The Government do not consider that this is necessary but state that they believe that the benefits this would provide can be achieved in other ways. Therefore it is proposed to increase magistrates' sentencing powers to 12 months for a single offence from 6 months and that the legislation will enable the Government to increase them further up to a maximum of 18 months.[48]

- Intermittent custody: the Government sets out its intention to legislate for a new sentence of Intermittent Custody, with the intention that offenders will be able to continue in regular employment, maintain caring responsibilities, or follow a court specified educational, treatment or reparative programme in the community. It is stated that such sentences could be served in existing open prisons and will be suitable for those currently receiving short sentences who are not dangerous and who do not need to be kept in secure accommodation for the protection of the public. The Government also expresses an interest in developing a network of community custody centres.[49]

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[47] http://www.criminal-courts-review.org.uk/auldconts.htm
[48] *Justice for All*, p72
[49] *ibid*, p94

- Non-dangerous offenders serving custodial sentences of 12 months and over will be released automatically at the halfway point of their sentence and will be subject to supervision for the remainder of their sentence. The Prison and Probation Services will set the package prior to release.[50] The court will therefore not be involved at the point of release, and this is a departure from the recommendation in the Halliday Report.

- In the Halliday Report it was proposed that dangerous offenders who do not receive a life sentence would be eligible for a new determinate prison sentence. When used, the length of the prison sentence would be the same as if the offender had not qualified for the "special" sentence but offenders would not automatically be released at the half way stage of their sentence and would be released only at the discretion of the Parole Board. In addition, the sentencing court would have power to order an extended period of supervision of up to ten years, after release. However, *Justice for All* appears to go further than this and includes the following:

> We want to ensure that the public are adequately protected from those offenders whose offences do not currently attract a maximum penalty of life imprisonment but who are nevertheless assessed as dangerous. We believe that such offenders should remain in custody until their risks are considered manageable in the community. For this reason we propose to develop an indeterminate sentence for sexual and violent offenders who have been assessed and considered dangerous. The offender would be required to serve a minimum term and would then remain in prison beyond this time, until the Parole Board was completely satisfied that the risk had sufficiently diminished for that person to be released and supervised in the community. The offender could remain on licence for the rest of their life.[51]

- More details are given of the proposals for enforcement which are seen to be vital for public confidence in the structure:

> When an offender is released from prison on licence, including in the future the new sentences of Intermittent Custody, Custody Plus, custodial sentences over 12 months and the new sentence for dangerous sexual or violent offenders, the local Probation Board is responsible for monitoring the offender's compliance with their requirements. If the offender breaches the requirements of the licence, a report is sent to the Prison Service, who will consider whether to recall the offender to prison. Once back in prison the recall will be considered by the Parole Board and the offender will, as currently, have the right of appeal.

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[50] *ibid*, p95
[51] *ibid*, p95

> Community sentences need rigorous enforcement to command public confidence. If an offender fails to comply with the conditions of the sentence he or she will be given one warning. If he or she continues to fail to comply, one of four things will happen:
>
> • The existing sentence will be varied to make the requirements more onerous.
> • The offender will be resentenced (taking into account the completed work of theoriginal sentence).
> • Wilful and persistent failure to comply could result in a custodial sentence, even if the original offence did not warrant a custodial sentence (though not for under 18s).
> • Whichever route is chosen the court must impose a penalty of some kind, so breaches will not go unpunished.
>
> Custody Minus is a special case. It will be clear to the offender that failure to comply with the community sentence could result in immediate imprisonment. Should he or she breach the community sentence the judge or magistrate will activate the suspended prison sentence, taking into account successful completion of any activities from the community sentence.[52]

- The White Paper also contains detailed proposals relating to the enforcement of fines, including the appointment of Fines officers in every area, discount for prompt payment and an increase in the fine if there is delay in payment.[53]

- It is stated that some provisions, such as those on dangerous offenders and the setting up of the Guidelines Council, will take effect immediately and that others will be phased in progressively.[54]

B. The Government's specific responses to the Halliday report

As an appendix to *Justice for All*, the Government published its specific responses to both the Halliday Report and to the Auld Report (*Review of the Criminal Courts of England and Wales*).[55] The Government states that it accepted fully 40 (73%) of the 55 recommendations made in the Halliday Report; it accepted in principle a further 5 (9%) of the recommendations; it accepted in part 2 (4%) of the recommendations; that it was considering further another 2 (4%) recommendations and; rejected 6 (11%) of the recommendations.

The recommendations which were not fully accepted include:

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[52] *ibid*, p97
[53] *ibid*, p98
[54] *ibid*, p101
[55] http://www.cjsonline.org/library/pdf/responses_to_Auld.pdf

- The Halliday Report recommended that new sentencing guidelines should set out "entry points" for considering severity of sentence, alongside graded definitions of seriousness of offences, and indicate the range of effects that previous convictions should have on sentence severity. This recommendation has been accepted in principle with the comment that a Sentencing Guidelines Council will be established to determine the precise style and content of sentencing guidelines.

- In the Halliday Report, it was recommended that, where the court identified no need for a supervisory period, it should be able to order a period of custody, without post release supervision, of up to three months. The response indicates that the Government is considering this further, but only the option of Custody Plus for short sentences is included in the *Criminal Justice Bill* (see below)[56].

- The Government has rejected the recommendation that before the release of a prisoner, the content of the second half of the sentence should be subject to court review, on the basis of proposals prepared jointly by the prison and probation service, in consultation with other potential contributors in the statutory, independent and voluntary sectors. The content of the second half of the sentence is to be put together only by the Prison service and the National Probation Service. However, under the Criminal Justice Bill,[57] the court would be able to make recommendations as to the licence conditions for an offender it is sentencing to imprisonment for 12 months or more.

- The Government has rejected recommendations that the conditional nature of a non-custodial sentence be emphasised, and that the court should have power when passing a community sentence for an imprisonable offence to indicate a suitable length of prison sentence in the event of breach, because of the proposal for a new form of suspended sentence, Custody Minus, which would deal adequately with these recommendations.

- The government is considering further how to deal with persistent minor offenders for whom fines might not be the most appropriate or effective sentence.[58]

- The Government has rejected a recommendation that if a breach occurred during the community part of prison sentences of under 12 months, re-release would be possible after recall only if there were 4 months or more of the sentence left to serve. To improve the prospect of reintegration, there is to be a presumption in favour of ensuring there should be at least some days under community supervision at the end of sentence.

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[56] **Clause 163,** but the court would have power to revoke the Custody Plus order, **Clause 169** and **Schedule 8**

[57] **Clause 218**. See section IV F 4 of this paper below

[58] **Clause 134**

- The Government has also rejected a general sentence review role for the court which will review sentence progress only in the case of Custody Minus.[59]

- It was recommended that once suitable guidelines were in place, there might be a review of whether minimum sentences for particular offences were still necessary, but this has also been rejected.

C. Reaction to *Justice for All*

1. Liberty

In their response to *Justice for All*, Liberty commented on the proposal to double the sentencing power of magistrates:

> As experience shows that the magistrates' courts often tend to use their sentencing power to the maximum, the consequence will be to increase substantially the number of people in our already over-crowded prisons. Government research has also demonstrated wide regional variations in magistrates' sentencing. It is important to aim for greater clarity in magistrates' sentencing as the extension of sentencing powers gives rise to greater opportunity for discrepancy.
>
> Whilst we welcome the fact that the government is preserving the right of a defendant to elect the mode of trial in either way cases, we do not see a need to extend magistrates' powers. We also believe that the provision to extend sentencing power to eighteen months without the need for primary legislation is wholly unacceptable. [60]

(This same proposal was, however, welcomed by AMO [the trade union for magistrates' court staff]).

2. The Howard League

In a press release issued on 17 July 2001, the Howard League broadly welcomed the Government's recognition of the ineffectiveness of short prison sentences and the need for the use of prison to be reserved for dangerous and violent offenders. However, they expressed concern that some of the specific proposals might undermine this general principle:

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[59] see also **Clause 161** which would provide an order making power to enable the court to review the progress of an offender under a community order. In addition the court would continue to have power to the drug treatment and testing requirement, **Clause 190**.

[60] http://www.liberty-human-rights.org.uk/Criminal%20Justice1.doc

- The doubling of the sentencing powers of magistrates from a maximum of six months to twelve will lead to sentence inflation in these courts.
- The introduction of 'Custody Plus' directly contradicts the premise that a short time in prison does nothing to reduce re-offending and provides little satisfaction to victims.
- The idea of intermittent custody (e.g. weekend prison) is unworkable and would be extremely expensive to administer. In addition, if the Home Office believes that prison should be reserved for dangerous and violent offenders, for whom would this be appropriate?
- The use of intensive supervision and surveillance (ISSP) for young offenders is already in operation and has not led to a reduction in the prison population. What vulnerable young people need is structure in their lives provided by expert human support not technological control.

Frances Crook, Director of the Howard League said:

"Whilst much of what David Blunkett has announced today is welcome, what we really need to bring down the prison population are consistent messages from the Government and senior members of the judiciary about the need to use custody solely for the protection of the public from violent and dangerous offenders. Innovative, supportive and well-resourced community-based sentences are what is required for all other offenders."

3. Magistrates Court Practice

In an article entitled "The White Paper II – Sentencing",[61] attention is drawn to a number of concerns relating to the proposals, chief of which is the complexity of the new system, and that the intricate nature of the range of proposed sentences will lead to inconsistency. The fear is expressed that with such a wide range of sentencing options at their disposal, courts will move far more slowly as they decide which is most suitable for the case in hand.

It also considers that the Custody Plus sentence will prove a popular option and that this might displace at least the heavier end community penalties, with a consequent increase in number of short term prisoners, those most resented by the Prison Service. It is thought that intermittent custody might prove to be a source of discrimination against the unemployed who may be more likely to attract a substantive prison term, and against those who live away from the major centres.

4. The General Council of the Bar and the Criminal Bar Association

The following concerns are expressed within a lengthy and comprehensive response.

[61] 9 October 2002

We have concerns about the proposal that magistrates' sentencing powers should be increased. There is already disparity between magistrates' courts over sentencing and we foresee that the only effect of such a change would be to increase the prison population. Halliday stated that magistrates are the prime reason for an increase in the use of short sentences. Research shows that it is these short-term sentences that do not work. We see no benefit to society as a whole in increasing the prison population when the effect of short sentences is negative.[62]

We view with great concern the proposal contained at Section 5.17. The Government proposes that "Parliament should have a role in scrutinising the draft guidelines drawn up by the [Sentencing Guidelines] Council". This role is not explained or defined in the White Paper.

The rationale for the proposal is said to be that "this will ensure democratic engagement in the setting of guidelines by those who have to consider proposals for, and make the law on, sentencing."

The mechanism for this democratic engagement is not explained. We view this as almost certainly involving interference with the independence of the judiciary. The setting of a tariff for sentencing is the task of the Appellate Courts. Parliament's task is to set the maximum punishment for any offence and to prescribe the range of sentences open to the Courts.

We welcomed the Sentencing Advisory Panel as a group of respected academics and practitioners in the field who could offer their guidance to the Court of Appeal. When considering any such guidance, the Panel conducts a wide-ranging and detailed consultation process, not only for the designated consultees, but also for any member of the public who wishes to take part. Members of Parliament are free to offer their views to the Panel.

However, we believe that, whereas Members of Parliament may have useful observations to make about sentencing in particular areas, they should not have some supervisory control or ultimate say over the proposed Sentencing Guidelines Council's decisions about appropriate tariffs.

Apart from worries about whether Members of Parliament would have the necessary training or expertise to decide sentencing tariffs, it is also obvious that they would be subject to political pressures.

If, following on from particular publicised cases or for other reasons, this resulted in short-term decisions about sentencing tariffs which have to last for a number of years, this would defeat the whole object of the Sentencing Guidelines Council.

The White Paper says that "the public has a right to expect this democratic engagement in a way that does not contravene the proper distinction between the

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[62] *ibid* p 63

> role of Parliament and the independence of the judiciary". We fear that this proposal is likely to lead to a serious contravention of the proper distinction to which the White Paper refers. Democratic engagement is already ensured. It should not involve political supervision of specific sentencing tariffs. Far from guaranteeing a public right, it would remove one - the independence of the judiciary. We do not believe it would lead to better sentencing and is more likely to have the opposite effect. [63]

5. The Law Society

Overall, the Law Society's Criminal Law Committee found the report to be considered, with a laudable aim of modernizing the criminal justice system to ensure greater confidence in it. It considered that the most impressive section of the White Paper is that which deals with sentencing, and that the proposed reforms are so integral to the aim of reducing re-offending, with all the consequences for public confidence, that adequate resources should be allocated to them immediately.[64]

6. Justices' Clerks' Society

The following comments are included in the response to *Justice for All*:

> The Society notes with interest the suggestion that magistates' courts' powers of sentence be extended to 12 months imprisonment. It is the Society's belief that the current 6 month sentence (of which 3 are served) – will be replaced by a 12 month custody/community mix but seeks clarification whether the period in custody will be no longer than 3 months; if so there will be limited scope for discounts for a plea of guilty. The impact of remand time on this and all sentences needs to be clear.
>
> The proposal for intermittent custody raises an interesting question of philosophy. One of the fundamental aspects of prison as punishment is that livelihood is lost as well as liberty. Intermittent custody seems to contradict this. It also runs the risk of being divisive in sentencing terms, being seen as a rich man's sentence; if someone has a job, they can, in effect, pay their way to a less restrictive prison sentence. The interrelationship of intermittent custody and home detention curfew should be clarified.
>
> The Society invites the Government to roll out nationally the proposal whereby a court, dealing with a defendant who already has outstanding fines can make a community punishment order.[65]

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[63] http://www.barcouncil.org.uk/documents/FINALComp14Oct.doc p63
[64] http://www.lawsociety.org.uk/dcs/pdf/ResponseToWhitePaperJusticeForAll.pdf
[65] October 2002, Ref: 50.01

IV The *Criminal Justice Bill*

The provisions relating to sentencing are contained in Part 12 of the Bill (clauses 126 to 252) which is divided into 8 chapters with 15 supporting schedules (schedules 7 to 21). Comment is included only on those clauses which include significant and/or new provisions.

A. Chapter 1: General Provisions about Sentencing

As the Explanatory Notes to the Bill explain:

> Chapter 1 sets out general sentencing provisions. Many of these re-enact existing provisions, which are currently contained in the Powers of Criminal Courts (Sentencing) Act. This Part also introduces new measures designed to aid the sentencing process including setting out the purposes of sentencing in statute for the first time, making explicit the principles which should govern the determination of sentence severity and creating a new body which will produce sentencing guidelines.[66]

Clause 126 would set out the general purposes of adult sentencing[67] which are: the punishment of offenders, the reduction of crime (including its reduction by deterrence and its reduction by the reform and rehabilitation of offenders), the protection of the public, and the making of reparation by offenders to persons affected by their offences. This would further the stated intention within *Justice for All* to set out the purposes of sentencing in legislation for the first time. However, in the White Paper the first and foremost purpose is stated to be the protection of the public, which is stated to be paramount, and there is also reference to the purpose of a sentence to incapacitate, where offenders are physically prevented from committing crimes by removing them partly or entirely from society.

Clause 127 would direct the court, when considering the seriousness of any offence to consider the offender's culpability and the harm, or risk of harm, which the offence caused or was intended to cause. The court would also have to treat each recent and relevant previous conviction as an aggravating factor, so that there would be an increasing requirement to look not only at the crime but also at the offender. As the Explanatory Notes to the Bill point out, this is a strengthening of an existing principle.

Clause 128 would provide for a reduction in sentence for guilty pleas and **Clause 129** would provide for an increase in sentence for racial or religious aggravation. Both clauses would be re-enactments of existing provisions.

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66 p12 The commentary on clauses in the Explanatory Notes indicates which are re-enactments of existing provisions.

67 subject to specified exceptions

Clauses 130 to 134 would provide general restrictions on community sentences, which include youth community orders. Such sentences should only be imposed if the offence is "serious enough" to warrant the imposition.[68] As is pointed out in the Explanatory Notes to the Bill, if an offence/offending history is not serious enough for a community sentence, a fine, conditional discharge or absolute discharge would be appropriate.[69] The requirement(s) forming part of any community sentence should be those considered by the court to be the most suitable, and any loss of liberty must be commensurate with the offence. Regard would be had to any period for which the offender has been remanded in custody.[70] Community sentences would not be available in certain circumstances, including where the sentence is fixed by law.

Clause 134 would target persistent offenders (those previously convicted on at least three occasions). Notwithstanding the "serious enough" test referred to above, the court would have power to make a community order instead of imposing a fine where the offender (aged 16 or over) had committed at least three similar offences in the past. This would be a new power and would further the stated intention that the level of punishment should increase with the frequency of offending. This clause would not limit the court's wider power to treat previous convictions as increasing the seriousness of the offence.[71]

Similarly, **Clauses 135 and 136** would impose general restrictions on discretionary custodial sentences. Such sentences should not be passed unless the court considers the offence, or the combination of the offence and any other offences associated with it, to be so serious that neither a fine alone nor a community sentence can be justified.[72] However, a custodial sentence could be passed if the offender fails to make any necessary expression of willingness to comply with a requirement proposed to be included in a community order or fails to comply with an order for pre-sentence drug testing. Any discretionary custodial sentence should be as short as is commensurate with the seriousness of the offence.[73]

Clauses 137 to 139 would increase the maximum term of imprisonment which a magistrates court may impose for any one offence to 12 months (from the present six months). Magistrates would also have the power to impose a custodial term of 15 months in respect of two or more offences to be served consecutively. The Secretary of State would have power, by order, to increase the limits to 18 months for a single offence and

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[68] This is a re-enactment of section 35(1) of the *Powers of Criminal Courts (Sentencing) Act 2000*

[69] p74

[70] As stated in the Explanatory Notes to the Bill, this clause creates a new addition to the existing remand time provisions and enables the court to have regard to any time spent on remand when putting together the requirements of a community sentence, and deciding upon what restrictions on liberty to be imposed.

[71] **Clause 127**

[72] This is largely a re-enactment of an existing provision.

[73] This is a modified re-enactment

24 months for two or more offences to be served consecutively. This provision, which was outlined in *Justice for All,* has already attracted comment (see above).[74]

Clauses 140 to 142 would impose procedural requirements for imposing community sentences and discretionary custodial sentences in relation to obtaining pre-sentence reports, and in the case of a mentally disordered offender, information about the mental condition of that offender.[75]

As the Explanatory Notes set out:

> For adult offenders pre-sentence reports are written by the probation service on the basis of their analysis of the offender's behaviour, criminal history and needs. They suggest to the court the kind of punishment and rehabilitation that would be appropriate in each particular case and make recommendations as to the particular sentence that should be passed. In the case of mentally disordered offenders the court has to obtain a medical report before imposing a custodial sanction.[76]

Clause 143 contains provisions about the disclosure of pre-sentence reports and **Clause 144** deals with disclosure of reports of local probation boards or youth offending teams. These provisions would consolidate existing provisions.

Clause 145 would enable pre-sentence drug testing (for any specified Class A drug) to be ordered on any convicted offender aged 14 or over in respect of whom the court is considering passing a community sentence. The court has power to fine an offender who unreasonably refuses to comply with the order. The test would enable the court to decide whether drug testing and treatment is necessary, and would be in line with the focus on drugs related crime referred to in *Justice for All*.

Clauses 146 to 149 would make provisions relating to fines. Before sentencing a convicted offender, the court would be able to order a statement as to the offender's circumstances. The Crown Court would be able to impose a fine instead of dealing with the offender in any other way. Before fixing the amount of any fine the court would have to inquire into the financial circumstances of an offender and must fix a fine which reflects the seriousness of the offence and the circumstances of the case.[77]

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[74] Part III C 4 of this paper

[75] This is a re-enactment with amendments of existing provisions in the *Powers of Criminal Courts (Sentencing) Act 2000*

[76] p12

[77] These are more re-enactments

Other measures to combat the widespread problem of unpaid fines, are being looked at but are not included as part of this Bill.[78]

Clause 150 would enact existing provisions for mitigating sentences and dealing with mentally disordered offenders irrespective of the clauses described above.

Clauses 151 to 156 would create the heralded Sentencing Guidelines Council. This is the means by which the Government hopes to establish greater consistency in sentencing between courts. Sentencing guidelines enable courts to approach sentence from a common starting point. The Chairman of the Council would be the Lord Chief Justice. The Explanatory Notes to the Bill explain that:

> This reflects the importance of the role of the Council and the need to ensure proper judicial independence.[79]

Other members, who would each be a member of the judiciary (a Lord Justice of Appeal, a High Court judge, a circuit judge, a district judge or a lay justice), would be appointed by the Lord Chancellor, after consultation with the Secretary of State and the Lord Chief Justice.

The Council itself would be able to frame guidelines and would have to consider whether to do so if it received a proposal from the Secretary of State or the Sentencing Advisory Panel. Sentencing guidelines might be general or limited to a particular category of offence or offender, and the Council would be specifically directed to have regard to various matters including the need to promote public confidence in the criminal justice system. Guidelines, once issued, would have to be reviewed and then revised if appropriate. Once the guidelines were established, courts would have to have regard to them when passing sentence.

The Council would have to include in its guidelines criteria to determine the seriousness of the offence being dealt with. Those criteria would need to include criteria for determining the significance of any previous convictions of the offender.

Guidelines would also be produced as to the allocation of cases between courts and the Council would need to take account of certain factors, including the importance of promoting consistency in decisions relating to mode of trial and the views of the Sentencing Advisory Panel.

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[78] see the House of Commons Committee of Public Accounts, *Collection of Fines and other Financial Penalties in the Criminal Justice System*, 68th Report of Session 2001-2, published 27th November 2002 http://pubs1.tso.parliament.uk/pa/cm200102/cmselect/cmpubacc/999/999.pdf and see also *The Courts Bil,*. HL Bill 12 of 2002-03 introduced in the House of Lords on 28 November 2002 and due for second reading on 9 December

[79] p81

The existing Sentencing Advisory Panel would continue to function and would be able to advise the Council.

The Secretary of State would be given power to propose to the Council that guidelines for specified circumstances should be framed or revised. Where the Council had prepared or revised guidelines, it would be directed to publish them as draft guidelines and consult the Secretary of State about them. This latter proposal attracted criticism from the Bar Council in its response to *Justice for All*.[80] The Explanatory Notes to the Bill state that the consultation would enable formal provision to be made for consultation with Parliament where appropriate.

Clause 157 would impose a duty on the court to state its reasons (in ordinary language) for deciding on the sentence passed, the effect of the sentence, the effect of non-compliance and the power of the court, on application, to vary or review any order forming part of the sentence. The court would have to refer to any relevant guidelines and explain why it regards the offence as being sufficiently serious to merit the sentence given. This would replace existing duties to provide reasons, found in various statutes, and appears to be aimed at improving transparency and general awareness of sentencing.

Clause 158 would expand the existing duty on the Home Secretary in Section 95 of the *Criminal Justice Act 1991* to publish information on the effectiveness of sentencing.[81] Information would have to be published each year on the effectiveness of sentencing in preventing re-offending and in promoting confidence in the criminal justice system.

B. Chapter 2: Community orders for offenders aged 16 or over

Clauses 160 to 162 would make provisions about community orders for offenders aged 16 or over. The Bill would provide for a single generic community sentence to replace the various community orders available under the present law (community rehabilitation orders, community punishment orders, community punishment and rehabilitation orders, curfew orders, drug treatment and testing orders, drug abstinence orders (being piloted) and exclusion orders (not yet commenced)).

The court would be able to impose one or more of the requirements specified in **Clause 160** which are, as stated in the Explanatory Notes:

- Compulsory (unpaid) work;
- Participation in any specified activities;
- Programmes aimed at changing offending behaviour;
- Prohibition from certain activities;

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[80] see part III C 4 of this paper above

[81] duty to publish information on race, gender and costs in the criminal justice system

- Curfew;
- Exclusion from certain areas;
- Residence requirement;
- Mental health treatment (with consent of the offender);
- Drug treatment and testing (with consent of the offender);
- Alcohol treatment (with consent of the offender);
- Supervision;
- Attendance centre requirements (for under 25s).[82]

Some of the requirements would be subject to restrictions and there would also be provisions relating to electronic monitoring.

Clause 161 would provide an order-making power to enable a court to review the progress of an offender under a community order.

Schedule 7 would contain provisions relating to the breach, revocation or amendment of a community order, and would address the problem of enforcement. Included in the Schedule are provisions relating to:

Warning

As the Explanatory Notes state:

> Under *paragraph 5*, if an offender's responsible officer is of the view that he has failed to comply with any of the requirements of a community order without reasonable excuse, he either must give the offender a written warning or start enforcement proceedings. Under *paragraph 6*, if the offender fails again to comply, within a 12 month period and without reasonable excuse, the responsible officer must start enforcement proceedings. The responsible officer institutes proceedings by laying an information before a magistrate or Crown Court.[83]

The court would then be able to issue a summons requiring the attendance of the offender at court or a warrant for his arrest.

Breach

If the court was satisfied that the offender had failed to comply with the community order it would then be able to deal with the offender in one of the ways specified:

- it could amend the terms of the community order to make it more onerous, or
- it could deal with the offender in any way it could have dealt with him if he had just been convicted of the offence, or,
- in the case of an adult offender who has wilfully and persistently failed to comply with the order, it could sentence him to imprisonment for up to 51 weeks, even if the original offence would not have merited such a sentence.

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[82] p13
[83] p115

It would be specifically provided that persistent offenders may be imprisoned, notwithstanding the "so serious" test referred to in **Clause 135(2)**.

Revocation
If new circumstances arose and it appeared just to do so, an order could be revoked (on application) and, if appropriate, the offender could be sentenced as if he had just been convicted of the offence. The new circumstances would include the offender's making good progress or responding satisfactorily to supervision or treatment.

Amendment
An order could be amended (on application) in some circumstances, for example if the offender changed residence.

Subsequent conviction
If an offender was subsequently convicted of another offence, and the court considered it in the interests of justice, the court would be able to revoke the order or revoke the order and re-sentence the offender for the original offence as if he had just been convicted of it.

In each case the court would have to take into account the extent to which the offender had complied with the community order.

C. Chapter 3: Prison sentences of less than 12 months

This chapter would contain details of the new "Custody Plus" sentence which is designed to ensure that offenders receiving short prison sentences are supervised in the community after their release. At present such offenders serve half of their sentence in prison and are then released automatically without being subject to any conditions, and these are often the offenders who reoffend.[84] This chapter would also contain details of what the Government has referred to as the new "Custody Minus" sentence, although it is referred to only as suspended sentence in the Bill.

Custody plus

Clauses 163 and 164 would provide that this new sentence will replace all prison sentences of less than 12 months, except if the court makes an intermittent custody order.[85] An offender would be sentenced to between 2 and 13 weeks in prison and this would be followed by a licence period of at least 26 weeks (but the maximum length of the combined term must not exceed the maximum term permitted for the offence or 51 weeks in respect of any one offence). Provision would be made for the length of sentence where two or more terms of imprisonment are to be served consecutively. The court

[84] see above Section II A – the case for change
[85] see **Clause 165** below

would specify, at the point of sentence, the requirements for the licence period and these would be drawn from the available options under the generic community sentence, and in some cases would be linked to electronic monitoring.[86]

Intermittent custody

Clauses 165 to 168 would provide for the possibility of the custodial part of a sentence of less than 12 months to be served intermittently, if the offender agrees. This proposal for a new type of sentence, which was outlined in *Justice for All*, has received some adverse comment.[87] One of the concerns raised was the lack of available facilities at which such sentences could be served. **Clause 166** would provide that an order for intermittent custody could not be made unless the Secretary of State had notified the Court that appropriate arrangements for implementing such orders were in place in that area and that there was suitable available prison accommodation. The offender would have to comply with pre-specified requirements, drawn from appropriate available options under the generic community sentence, during the licence period (both between periods of custody and after the end of custody, if any part of the sentence still remained). The court would have to consult an officer of the local probation board before making an intermittent custody order in respect of an offender and the Explanatory Notes state that this is intended to assist the court in assessing whether the offender is suitable for intermittent custody. If an offender fails to comply with the terms of the community part of the sentence, he will be returned to custody.[88] The Explanatory Notes to the Bill also state that the sentence is to be piloted in two areas.

Schedule 8 would contain provisions relating to the revocation or amendment of Custody Plus orders and the amendment of intermittent custody orders. In both cases the prison sentence itself would not be revoked but rather the licence conditions. In particular, the court would have power to alter the pattern of temporary release under an intermittent custody order.

Suspended sentence

Clauses 170 to 174 and **Schedule 9** would deal with suspended sentences of imprisonment - also referred to by the Government in *Justice for All* as Custody Minus, although this terminology does not appear in the *Criminal Justice Bill.* It would be possible for the custodial part of a short sentence to be suspended for between 6 months and two years and, during the period of suspension, the offender would be required to comply with one or more requirements drawn from the list of options available for the generic community sentence. The length of time the offender would undertake these

[86] see **Clause 160** above

[87] see, for example, the responses to the White Paper section by the Howard League and by the Justices' Clerks' Society, section III C above

[88] see **Clause 232** below

requirements might be shorter than the entire period of suspension. As explained in the Explanatory Notes to the Bill, this would aim to increase the effectiveness of suspended sentences in correcting offending behaviour.[89] The new provision would amend the position under the present law where sentences can be suspended for between one and two years and can be combined with a fine or compensation order, but not with a community sentence (although a supervision order can be attached). The term of imprisonment would take effect if the offender breached the terms of the requirements, or committed another offence (whether or not that second offence is punishable with imprisonment) during the suspension period.

The court would be able to provide for the offender's progress under a suspended sentence to be reviewed periodically when it might vary any community requirement terms of the order, if appropriate.[90] Courts already have the power to review drug treatment and testing orders[91] and would continue to have this power in relation to the drug treatment and testing requirement of the community sentence.[92] The Halliday Report originally envisaged a more general power for the court to review, but the *Criminal Justice Bill* would restrict the extension of the power to suspended sentences. However, as mentioned above it would be possible to introduce by order a more general power to review progress under community orders.[93]

Schedule 9 would make provisions, including the following, relating to the breach or amendment of a suspended sentence order and the effect of a further conviction. Only one warning would be given for a failure to comply with a community requirement before the offender would be brought before the court. In that event, or if the offender is convicted of another offence during the operational period of a suspended sentence, as is stated in the Explanatory Notes[94], the presumption would be that the suspended sentence would be activated, unless the court considered this unjust. If the suspended sentence was activated, the court would be able to set a shorter term or custodial period, or it could keep the sentence suspended and make the community requirements more onerous, or it could extend either the supervision or operational periods of the suspended sentence.

If the court were to make an order that for a sentence to take effect, it would also have to make a Custody Plus order[95] and so set licence conditions which would apply during the non-custodial part of the sentence.

Part 3 of Schedule 3 deals with amending suspended sentence orders. The Explanatory Notes give the example that this might occur if the offender becomes very ill and cannot

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[89] p15
[90] this power of variation is limited
[91] section 54 of the *Powers of Criminal Courts (Sentencing) Act 2000*
[92] **Clause 190**
[93] **Clause 161**
[94] p119
[95] see **Clause 163** above

undertake the requirements but the court feels it would still be of benefit to have the suspended sentence in place.[96]

D. Chapter 4: Further provisions about orders under chapters 2 and 3

This chapter would provide more detail about the sentences set out in chapters 2 and 3. In particular, it would define the "responsible officer" and would set out his duties relating to the community requirements of a sentence which would be to make arrangements, promote compliance and, where necessary, take steps to enforce the requirements.[97]

Clauses 179 to 195 would contain details of each type of requirement available in relation to community orders, custody plus orders, suspended sentence orders and intermittent custody orders, including the provisions for review by the court of the drug rehabilitation requirement and provisions relating to electronic monitoring.

A court might only impose a particular requirement of a community sentence if suitable arrangements could be made in the area.

Full details and an explanation of each requirement (some of which are re-enactments with modifications) are given in the Explanatory Notes to the Bill. This includes an explanation of the electronic monitoring provisions.

E. Chapter 5: Dangerous Offenders

Clauses 204 to 216 would contain the provisions relating to sentencing "dangerous" offenders. These are offenders who commit a violent offence, or a violent sexual offence and who have been assessed as dangerous to the public. The government had already indicated in *Justice for All* that strengthened measures would be introduced for such offenders.

Sentence for dangerous offenders

Clauses 205 and 206 would apply in relation to conviction for a serious offence. This means an offence set out in **Schedule 11**, (which contains lists of violent offences and sexual offences, all of which carry a maximum sentence of two years or more), and which is punishable by life imprisonment or a determinate term of ten years or more. The court would have to impose a sentence of life imprisonment (if available) if it considered that there was a significant risk of harm to the public caused by the offender committing further offences. If the offence does not carry a maximum term of life imprisonment, the court would have to impose a new sentence of "imprisonment for public protection" if it considered that no other sentence would adequately protect the public. This is a sentence

[96] p120

[97] these duties do not apply if the responsible officer is the person responsible for electronic monitoring

of imprisonment for an indeterminate period and would go further than that envisaged in the Halliday Report.[98] In similar circumstances, a dangerous juvenile would have to be sentenced to detention for life or detention for public protection (again a sentence for an indeterminate period).

Schedule 14 would provide that an offender serving a public protection sentence could apply to the Parole Board to have his licence terminated 10 years after his release from custody, but this would only be granted if the Parole Board considered that the offender no longer posed a risk to the public.

Extended sentence for certain violent or sexual offences

Clauses 207 and **208** would apply in relation to conviction for any of the offences set out in **Schedule 11** (other than those categorised as a serious offence) and would replace the current provisions for extended sentences for sexual and violent offenders.[99] If the court considered that the adult offender would pose a significant risk of serious harm to the public and that the sentence of imprisonment it would otherwise be able to pass would not be adequate to protect the public, the court would have to impose an extended sentence of imprisonment. This would be equal to the sum of the "appropriate custodial term" which would otherwise be passed (at least 12 months), and any further period which the court considered necessary for the protection of the public. The extension period would be up to 5 years for a specified violent offence and up to 9 years for a specified sexual offence. This would actually be added to the period of supervision after release on licence and so would not add to the time spent in prison (see **Clause 226** below). However, release during the whole of the second part of the appropriate custodial sentence would be at the discretion of the parole board and the offender would then be supervised during the extended period after release. It would not be possible to pass an extended sentence of imprisonment which is longer than the permitted maximum for the offence.

Clause 208 would provide that if a juvenile is convicted in similar circumstances, the court must impose an extended period of detention for which the offender would be subject to licence. However, the appropriate custodial term would be limited to 24 months.

Clause 209 would specify how the court would assess that an offender is dangerous and thus poses a significant risk of serious harm to the public. As is stated in the Explanatory Notes:

> The risk criteria are based on the existing provisions at section 161(4) of the Powers of Criminal Courts (Sentencing) Act 2000. When making this assessment the court must take into account all the information available to it about the nature and circumstances of the offence and it may also take into account any

[98] see section II B 2 b above
[99] section 85 *Powers of Criminal Courts (Sentencing) Act 2000*

> information about the pattern of behaviour of which the offence forms a part. *Subsection (3)* states that in cases where an offender has a previous conviction for a serious offence (as defined by Clause 204) there is an automatic assumption that they pose a significant risk to the public, unless the court considers on the basis of the evidence before it this assumption to be unreasonable. For the purposes of the provision in *subsection* (3), *subsection (4)* enables equivalent serious sexual or violent offences committed in Scotland or Northern Ireland (listed in Schedules 12 and 13) to be taken into account.[100]

F. Chapter 6: Release of prisoners on licence[101]

Chapter 6 of the Bill covers the arrangements for prisoners' release on licence, recall to prison following breach of licence requirements, and further re-release. It also contains provisions intended to deal with calculating remand time, calculating how sentences should be served, and drug testing requirements on licence.[102]

As mentioned in **Part II A** above, the Halliday Report was concerned that because no conditions apply during the second (non-prison) half of short sentences, this becomes meaningless and ineffective. It also commented that the final quarter of long prison sentences lack any obvious purpose. The government stated its intentions to increase the amount of post-supervision release, though not entirely along the lines suggested by Halliday (see **Part III** above).

A summary of the existing provisions about release on licence and Home Detention Curfews is given in the Library's standard note *Early Release from Prison – Parole and Home Detention Curfew*.[103]

1. Parole Board

The Parole Board was established in 1968,[104] and became an independent executive non-departmental public body on 1 July 1996.[105] It describes its role as follows:

> The Parole Board for England and Wales exists to make risk assessments to inform decisions on the release and recall of prisoners with the ultimate aim of protecting the public and successfully reintegrating prisoners into the community.[106]

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[100] p98
[101] contributed by Arabella Thorp, Home Affairs Section
[102] The last of these provisions is considered in a section entitled 'Drug Testing Requirements', in a related Research Paper, *The Criminal Justice Bill*
[103] SN/HA/800, 3 April 2001
[104] *Criminal Justice Act 1967*
[105] *Criminal Justice and Public Order Act 1994* s149, amending the *Criminal Justice Act 1991*
[106] http://www.paroleboard.gov.uk/role.htm

Clause 219 and Schedule 15 of the Bill would make no substantial amendments to the constitution and functions of the Parole Board, as they restate with only minor drafting amendments the existing provisions in section 32 and Schedule 5 of the *Criminal Justice Act 1991*.

2. Time calculations

a. Remand

Clauses 220-223 set out the rules for the courts to deduct any time spent on remand from the custodial part of the sentence.

b. Concurrent and consecutive terms of imprisonment

Clauses 237 and **238** set out the principles for calculating the time offenders must spend in custody and on licence where several sentences are passed (on the same or different occasions) under the new rules, and are ordered to be served either concurrently or consecutively.

3. Release on licence

a. Current rules

There are currently three different sets of rules for release on licence, depending on the length of imprisonment imposed:

- **Less than twelve months**: the automatic release date is the halfway point in the sentence.[107] No licence is imposed.

- **Between twelve months and four years:** the conditional release date is the half-way point of the sentence. At this point[108] the prisoner will be released, under supervision on licence until the three-quarters point of the sentence. The last quarter will be entirely free.[109]

- **Over four years - 'parole'**:[110] the earliest date at which the prisoner can be released on parole is the halfway point of his sentence.[111] He is asked if he wants to apply for parole at intervals from the period six months before the halfway point;

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[107] subject to any 'additional days' imposed as a punishment in prison, and assuming no early release on Home Detention Curfew

[108] Again, assuming no additional days or home detention curfew

[109] Unless 'additional days' have been imposed, which has the effect of shunting back the date of release on licence, meaning that there will be less than a quarter of the sentence left at the end of the period of release on licence.

[110] Parole is a form of licence which always carries a supervision requirement

[111] Plus any additional days imposed

decisions are made by a panel of the Parole Board on the basis of reports by prison and probation staff. If he does not get parole he will automatically be released on licence at the two-thirds point. In either case he would be under supervision on licence until the three-quarters point of the sentence, meaning that in some cases the period spent on licence could be as little as five months.[112]

b. New proposals

The Bill proposes a different set of three rules for release on licence, all of which would potentially involve an increase in the amount of time spent under licence compared with the current situation:

- Under the new framework proposed in **Part 12 Chapter 3** of the Bill, offenders serving a sentence of **less than twelve months** would be released on licence under the terms of a "Custody Plus" order,[113] placed into intermittent custody or given a "Custody Minus" sentence. Under "Custody Plus" it is proposed that the licence period must be at least 26 weeks, and a specific set of licence conditions for this is put forward by **clause 164**.[114]

- **Clause 224** sets out the proposed rules for offenders serving sentences of **over twelve months**. Most would now be released automatically on licence at the half-way point of the sentence,[115] and then the whole of the second half of the sentence would be subject to licence conditions (see below) rather than only until the three-quarters point as at present.

- Prisoners serving **extended sentences** for certain violent or sexual offences under **clauses 207 or 208** would be subject to a different licence regime, as set out in **clause 226**.[116] They may be released on licence between the half-way point[117] and the end of the 'appropriate custodial term' only if this is recommended by the Parole Board; and conditions imposed either then or on release at the end of the custodial term would have to be considered by the Board.

4. Licence conditions

The Bill seeks to give both the courts and the Secretary of State new powers to impose licence conditions on offenders to cover their period of release on licence.

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[112] or possibly, in the case of sex offenders, until the end of his sentence

[113] **clause 163**

[114] see discussion above

[115] Still subject to any additional days or home detention curfew. **Clause 240** contains a power that would allow the Secretary of State to alter the proportion of the sentence that must be served in prison

[116] See **Clause 207** above

[117] Again, this proportion could be changed by an order under **clause 240**

Clause 218 would allow the court to make recommendations as to the licence conditions for an offender it is sentencing to imprisonment for twelve months or more (other than the specified serious offenders).

Under **clause 229** the Secretary of State would be given the power to prescribe 'by order' a list of **standard licence conditions** ("the standard conditions") which would be applied as a minimum, and added to according to the type of sentence:

- For prisoners who have **not** been given any sentence of twelve months or more, the court order's conditions and the standard conditions would have to be imposed, and the licence could also include electronic tagging and/or drug testing conditions (**clause 229(2)**).

- The licence for a prisoner sentenced to imprisonment for twelve months or more (including serious offenders serving extended sentences) would have to include the standard conditions, and may also include electronic tagging and/or drug testing conditions as well as a selection of further prescribed conditions. When setting the offender's licence conditions, the Secretary of State would have to have regard to any recommendations made under **clause 218** by the court which sentenced him.

5. Electronic tagging

Home Detention Curfew or 'HDC', popularly known as electronic tagging, was introduced by the *Crime and Disorder Act 1998* and came into effect on 28 January 1999. Prisoners who are serving sentences of between three months and four years are eligible for early release under a curfew which is enforced by electronic monitoring. The release may be anything up to 60 days (shortly to be changed to 90 days)[118] before their normal release date, subject to their serving one quarter of their sentence in custody. Breach of HDC conditions can result in a return to custody, as can being charged with an offence committed whilst on curfew.[119]

The Bill continues and extends the provisions for HDC. **Clause 225** would allow prisoners (other than those specified in **clause 225(3)**) to be released up to 90 days early if they have served at least three-quarters of their custodial period. This would apply to prisoners who are 18 or over whose 'requisite custodial period' is at least 8 weeks. However, a so-called 'Henry VIII clause' is included which would allow the Secretary of State to amend the primary legislation by order, to change the minimum age, minimum eligible custodial period, relevant proportion of custodial period, and maximum number of days early a prisoner could be released.

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[118] Amendment made by the *Release of Short-Term Prisoners on Licence (Amendment of Requisite Period) Order 2002*, which is due to come into force on 16 December 2002. See Fourth Standing Committee on Delegated Legislation, 21 Nov 2002; HL Deb 25 Nov 2002 cc617 ff.

[119] For further information see Library Standard Note SN/HA/800, *Early Release From Prison – Parole and Home Detention Curfew*, 3 April 2001

When a prisoner is released early under this provision, his licence would have to include a curfew condition (**clause 229(4)**). **Clause 231** sets out the details of curfew conditions and electronic tagging, which largely repeat the substance of the existing provisions.[120]

6. Breach of licence conditions

Clauses 232 and **233** set out the proposals for recall of prisoners on licence, including those released under a Home Detention Curfew. The main change in these provisions is that the Parole Board would no longer be involved in decisions on recalls to custody. Instead, the Secretary of State - effectively the prison and probation services - would make the decision, and the Parole Board would have a scrutiny and appeals role: but apparently only in relation to those cases which do not involve breach/failure of an HDC. This appears to be an attempt to ensure the Parole Board is no longer both 'judge and jury' on recall decisions.

The Parole Board would keep its powers in relation to re-release after recall (**clause 234**).

7. Additional days

The power to impose 'additional days' on prisoners as punishment for disciplinary offences has existed for some time. The effect of it is to extend the prisoner's release date and the length of licence after release by the number of days awarded. Parole eligibility is also deferred in this manner. However, the sentence and licence can only be extended up until the date on which the full length of sentence imposed by the courts has been reached.

This was examined recently by the European Court of Human Rights (ECtHR) in the case of *Ezeh and Conners v UK* on 15 July 2002.[121] Both men were challenging the imposition by their prison governors of additional days on their sentences and the refusal of legal representation in their inquiries. The Court held that the nature of the particular charges against the applicants, together with the nature and severity of the potential and actual penalties, meant that they were effectively subject to criminal charges and therefore entitled to the 'fair trial' protections of Article 6 of the European Convention on Human Rights (ECHR).

As a result, the Deputy Director of the Prison Service wrote to prison governors in England and Wales suspending the imposition of added days for prisoners and instructing

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[120] Section 37A of the *Criminal Justice Act 1991*, as inserted by section 100 of the *Crime and Disorder Act 1998*

[121] Applications nos. 39665/98 and 40086/98

governors to strike off added days from prisoners' sentences.[122] However, the Prison Rules have now been amended so that additional days can again be imposed. Only an independent adjudicator may now impose them, and the prisoner must be given the opportunity to be legally represented at the inquiry. The power of prison governors to impose additional days has been removed.[123]

The list of prison disciplinary offences is contained in Rule 51 of the *Prison Rules 1999*.[124] Some of the offences are similar to criminal ones, such as assault, whilst others are particular to the prison system, such as the charge under Rule 51(9) that follows a positive mandatory drugs test. An amendment to the Rules in July 2000 added four new disciplinary offences relating to racist behaviour by prisoners.[125]

Clause 235 would allow the Prison Rules to continue to include provisions on additional days for prisoners who are guilty of disciplinary offences, and is intended to make it clear that additional days would postpone a prisoners' release on licence and extend the period for which a licence remains in force.

8. Foreign nationals

Clause 236 is intended to remove the role of the Parole Board in relation to releasing a prisoner on licence, where the prisoner is serving an extended sentence for a violent or sexual offence under **clause 207 or 208**, AND is liable to removal from the UK under immigration law. Such a prisoner would be automatically released on licence at the half-way point of the special sentence, in order to be deported.

The definition of 'liable to removal' given in **clause 236(2)** includes people who are liable to deportation or removal, and illegal entrants.

A British citizen[126] cannot be deported.[127] The grounds on which a non-British citizen can be **deported** are if:

- the Secretary of State deems his deportation to be conducive to the public good;[128] or

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[122] This letter is not in the public domain, but see 'Prison governors lose power to extend prisoners' sentences' - *Prison Reform Trust press release*, 26 July 2002. It refers only to days added from 2 October 2000, when the *Human Rights Act 1998* came into force giving individuals the right to challenge the actions of a public authority on ECHR issues before the UK courts. Since the ECtHR judgment some prisoners have apparently sought judicial review of the policy about added days imposed before October 2000 but their claims were unsuccessful (telephone conversation with Prison Service official, 16 October 2002).

[123] *Prison (Amendment) Rules 2002*, SI 2002/2116

[124] *Prison Rules 1999*, SI 1999/728

[125] *Prison (Amendment) Rules 2000*, SI 2000/1794

[126] For these purposes the term 'British citizen' includes Commonwealth citizens who had the right of abode in the UK before 1983, but not any of the other categories of British nationality.

[127] *Immigration Act 1971* ss 3(5), 6(2)

- another person to whose family he belongs is or has been ordered to be deported;[129] or
- a court recommends deportation after conviction of an offence punishable with imprisonment.[130]

A person is liable to **removal**[131] under section 10 of the *Immigration and Asylum Act 1999* for:

- breach of conditions of limited leave to enter or remain
- overstaying
- obtaining leave to remain by deception
- being a member of the family of someone who is going to be removed for one of the above reasons.

Other circumstances giving rise to removal, such as where a third country is certified as the state that should deal with a person's asylum claim,[132] are not included in **clause 236**.

The definition of '**illegal entrant**' for the purposes of **clause 236(2)(d)** is a person:

> (a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or
> (b) entering or seeking to enter by means which include deception by another person,
> and includes also a person who has entered as mentioned in paragraph (a) or (b) above.[133]

G. Chapter 7: Other provisions about sentencing

These include the following provisions:

Deferment of sentence

Clause 242 and Schedule 16 would insert new provisions about deferred sentencing into the *Powers of Criminal Courts (Sentencing) Act 2000*. As the Explanatory Notes state:

> In most cases, a court will pass sentence on an offender immediately after his conviction for the offence or offences for which he is before the court. However, the court also has the power to defer sentencing. As at present, the new provisions allow the court to defer sentencing for the purpose of enabling the court to have regard to the conduct of the offender and any change in his circumstances.

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128 *Immigration Act 1971* s 3(5)(a)
129 *Immigration Act 1971* s 3(5)(b)
130 *Immigration Act 1971* s 3(6)
131 Removal is not as prejudicial as deportation, but nor does it give rise to the same rights of appeal.
132 *Immigration and Asylum Act 1999* s11
133 *Immigration Act 1971* s 33(1)

> However, it strengthens the deferred sentence by providing for reparative and other activity to be undertaken during the period of deferment, and extends "conduct" to include reference to how well the offender complies with such requirements. Progress will continue to act as a mitigating factor in the final sentence passed, including imposing a community sentence in lieu of a custodial one when clear progress against undertakings has been made. Sentencing can be deferred only if the offender consents and undertakes to comply with any requirements set out by the court, and only where the court considers that deferment is in the interests of justice. The court cannot remand an offender if it also defers his sentence. As currently, sentence cannot be deferred for more than six months. The court has the power to issue a summons or a warrant to arrest the offender if he does not appear on the date for sentencing specified by the court.[134]

If the offender does not comply with the requirements or if he is convicted of another offence during the period of deferment, he will be brought before the court early for sentencing. Currently, as stated in the Explanatory Notes, as there are no requirements attached to deferred sentences, the offender can only be brought to court early for sentencing if he commits another offence.[135]

Inclusion of drug treatment requirement in action plan order or supervision order.

Under present law, Action Plan Orders are fairly short[136] intensive individually tailored community based sentences combining punishment, rehabilitation and reparation. They can be made as part of a range of powers for dealing with an offender aged between 10 and 17 years old who has been convicted of any offence for which the sentence is not fixed by law. A supervision order, as stated in the Explanatory notes, is a community sentence available for a child or young person aged between 10 and 17 years old. The duration of the order may range from a minimum of six months to a maximum of three years. A range of requirements may be attached to the supervision order such as residence, reparation, night restrictions and activities specified by a youth offending team.

Clause 243 and **Schedule 17** would enable a requirement as to drug testing and treatment to be included in an action plan or supervision order. As stated in the Explanatory Notes:

> The new requirement is available where the court is satisfied that the young offender is dependent on, or has a propensity to misuse drugs and that this dependency or propensity may be susceptible to treatment. The Schedule strengthens the existing interventions available to the court to assist young offenders with a drug misuse problem to address both their drug misuse and offending behaviour. The testing element of the requirement can only apply to those aged 14 years and over and can be included in an action plan order or

[134] p122
[135] p122
[136] 3 months

> supervision order only if the offender consents and the court has been notified by the Secretary of State that arrangements are in place for implementation.[137]

This would further the stated aim in *Justice for All* to enable courts to request drug treatment as part of a range of community sentences where a young person's substance abuse is identified as contributing to offending behaviour.[138]

Clauses 244 to 247 and **Schedules 18, 19 and 20** would alter the penalties for specified summary offences, and either way offences and this would have the effect of making them compatible with the new sentences contained in the Bill. **Schedule 18** would contain a list of offences for which the maximum penalty would be lowered so that they are no longer punishable by imprisonment. The new community order is not limited to imprisonable offences and so would be available for these offences. **Schedule 19** would list offences for which the maximum penalty would be raised to 51 weeks imprisonment so they may be punishable with a "Custody Plus" sentence. **Clause 245** would enable the Secretary of State to amend by order the maximum penalties for other summary offences currently carrying a maximum custodial penalty of 5 months or less.

Clause 248 would increase the penalties for certain drug-related offences. The Explanatory Notes state:

> The drug trafficking offence provisions in the Bill increase the maximum penalty for trafficking controlled drugs which are Class C under the Misuse of Drugs Act 1971 from 5 years' to 14 years' imprisonment. This will enable the courts to continue to impose substantial sentences on cannabis traffickers after the proposed reclassification of the drug from Class B to Class C. Other Class C drugs include benzodiazepines and anabolic steroids. Trafficking includes, among other things, unlawful importing, supply and possession with intent to supply. This provision will also enable the United Kingdom Government to meet its obligations in connection with establishing minimum levels for drug trafficking penalties across the European Union.

Clause 249 would provide that a maximum sentence of 6 months detention and training order would apply to offenders aged fewer than 18 in relation to offences for which the maximum sentence had in other cases been raised to 51 weeks.

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[137] p124
[138] at p99

Appendix: Statistical information on the *Criminal Justice Bill*[139]

This appendix highlights some of the relevant features of sentencing in England and Wales and contains six sections.

1. The present picture

2. Types of sentences passed

3. Length of custodial sentence

4. Discrimination

5. Reoffending rates

6. Tables-

   1a- Offenders sentenced for indictable offences by offence group and type of sentence/order (number)
   1b- Offenders sentenced for indictable offences by offence group and type of sentence/order (%)
   2- Receptions into prison under sentence of immediate imprisonment by offence type
   3- Receptions into prison under sentence of immediate imprisonment by length of sentence
   4- Average sentence length by sentencing court and year of reception

[139] Contributed by Gavin Berman, Social and General Statistics Section

1. The present picture:

In 2000, for all ages of offender and for all offence types

- Approximately 1,425,000 offenders were sentenced, of whom:
- 1,017,000 (71%) were fined
- 156,000 (11%) received community sentences
- 125,000 (9%) were discharged
- 106,600 (7%) were sentenced to immediate custody

Most (1,350,000 – 95%) were sentenced in Magistrates' Courts; the remainder (74,000 – 5%) in the Crown Court.

The distribution of sentences in 2000 was:

Summary motoring offences (607,500)

Fine	89%
Community sentence	5%
Discharge	3%
Custody	2%

Non-motoring summary offences (490,600)

Fine	80%
Community sentence	10%
Discharge	7%
Custody	2%

Indictable offences (326,200)

Community sentence	28%
Custody	26%
Fine	25%
Discharge	17%

Fines are the predominant sentence for all summary offences. Fines, community and custodial sentences predominate fairly equally for indictable offences. Discharges are a substantial proportion of indictable offences.

2. Types of sentence passed

Tables 1a & 1b (below) show the numbers and percentage of offenders sentenced for indictable offences by offence group and type of sentence or order.

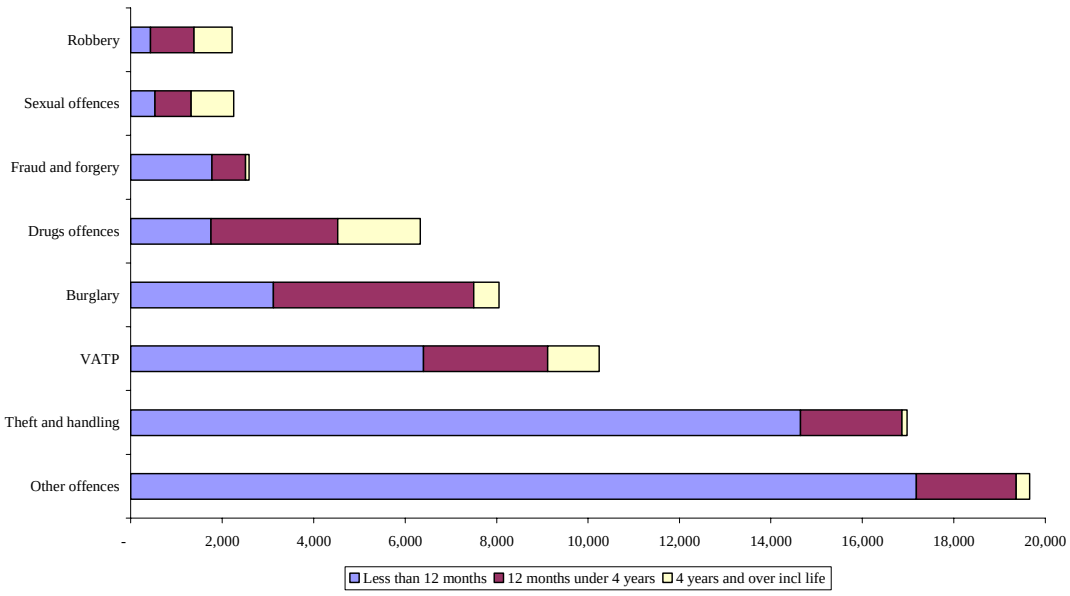
- The total number of offenders sentenced has risen between 1995 and 2000. In the majority of offence groups the number sentenced has risen during this period.

- The exceptions to this are burglary, sexual and motoring offences where there have been falls in the number sentenced.
- In 2000 a quarter of all offenders sentenced for indictable offences were fined (five percentage points down on 1995) while a further quarter were sentenced to immediate custody (five percentage points higher than in 1995). Thirty per cent were given community sentences compared to 28% five years earlier.
- The majority of offenders sentenced for burglary (51%), robbery (73%) or sexual offences (62%) in 2000 were sentenced to immediate custody.
- Around forty per cent of offenders sentenced for violence against the person, fraud and forgery and criminal damage offences in 2000 were given community sentences.
- Fines are the predominant sentence for drug, motoring and other offences.

3. Length of custodial sentence

The chart below (see also table 2) shows receptions into prison under sentence of immediate imprisonment by age, offence group and length of service.

Receptions of all adults by offence group and sentence length



Adult offenders received into prison for robbery, sexual and drug offences all had relatively high proportions of long sentences (four years or more) compared to other offence groups

The number of receptions into prison by length of sentence over the last ten years is shown in table 3 below. In 2000 nearly 70,000 adults were received under sentence of immediate imprisonment into prison, plus a further 2,260 fine defaulters who on average spend about a week in prison. Excluding the fine defaulters, receptions in 2000 were one per cent higher than in 1999 and have risen continuously since 1992 when they were under 37,000. There were 64,100 receptions of adult males and 5,800 receptions of adult females.

The proportion of offenders received into prison under sentences of 12 months or less has increased significantly over the ten year period shown, from 57% in 1990 to 71% in 2000. Fifty eight per cent of offenders received into prison in 2000 are serving sentences of no more than six months.

Table 4 below shows the average sentence length of receptions into prison under sentence of immediate imprisonment, by sentencing court. Crown Court sentences for adult males received into Prison Service establishments averaged 28.1 months in 2000, up from 27.7 months in 1999 and the highest level of the last decade. The average sentence for an adult male received from magistrates' courts was 4.2 months and the overall average was 14.9 months, similar to the overall average in 1999. The average sentence for an adult female received from the Crown Court in 2000 was 22.9 months. Females received from magistrates' courts had an average sentence of 3.5 months and the overall average was 11.0 months, again very similar to the 1999 figure.

4. Discrimination

This section provides a brief statistical summary on gender and race discrimination in the criminal justice system. More detailed information can be found in the two Home Office publications *Statistics on Women and the criminal justice system 2001* & *Race and the criminal justice system.*

Gender
Women are more likely than men to be discharged or given a community sentence for indictable offences and are less likely to be fined or sentenced to custody.

The top seven offences for women sentenced to custody in 2000 were theft from shops (2,350 women sentenced to custody), wounding (480), fraud (460), production, supply and possession with intent to supply a class A controlled drug (410), summary motoring (400), burglary of all kinds (340) and handling stolen goods (300).

Race
Information collected from six pilot areas on magistrates' court decisions indicated that, excluding those defendants committed to the Crown Court for trial, white defendants were more likely to be convicted (64%) than black or Asian defendants (53% and 54%).

For property offences (theft/handling and fraud/forgery) the use of custody at magistrates' courts was similar for white (14%) and black offenders (12%), but above that for Asians (9%). However for violent offences (violence against the person and sexual offences) the use of custody was higher for black offenders (28%) than Asian (20%) and white offenders (14%) although the numbers analysed were small.

Black offenders were more likely to be sentenced to a community sentence and less likely to be fined or given a conditional discharge than white or Asian offenders.

5. Reoffending rates

Reconviction is generally used as a proxy measure of reoffending, although admittedly a poor one, since it has been estimated that only around 2% of criminal offences committed result in convictions, and this ratio varies according to offence. Moreover, first offenders and offenders subject to more intense supervision are more likely to be caught reoffending. Also, someone's further offences may not necessarily be as serious as their previous offences, so reconviction should not always be regarded as an indication of failure. Nevertheless, reconviction rates remain the only available hard measure.

The most recent figures deal with prisoners who were discharged from prison in 1997.[140] A time lag is inevitable because of course former prisoners take time to go out and re-offend, and then to be reconvicted. Also, the standard time period used to gauge reoffending is two years after release (and it could be argued that it should ideally be longer for some types of offence).

The data come from the Home Office's Offenders Index, a database which contains the criminal histories and court appearances of all those people convicted of a standard list offence in England and Wales from 1963 onwards. There is no breakdown by area, partly because future offences may occur in a different area from the first. Data are also linked to records on prisoners discharged on Prison Service and probation service records.

1. Reconviction by type of prisoner

58% of prisoners released from custody in 1997 were reconvicted for a standard list offence within two years. The rates by main group were 54% of adult males, 76% of male young offenders and 51% of female offenders being reconvicted. Older prisoners had lower rates.

2. Trends

The two year reconviction rate for prisoners released decreased between 1987 and 1990 from 57 to 52 per cent and remained around this level until rising to 56 per cent in 1994 and 58 per cent in 1995. About one percentage point of the increase in the rate between 1993 and 1994 (from 53 to 56 per cent) can be accounted for by a widening in the range of offences held on the Home Office Offenders Index. The effect of this change in offence coverage was a little more pronounced on the rate for the 1995 data (1.4 percentage points) and rose to 1.9 percentage points for the 1996 data and 2.5 percentage points in 1997.

[140] *Prison statistics, England and Wales 2000.* Home Office August 2001

3. Possible determinants of reconviction rates; sentence type and original offence

In previous years Prison Statistics has attempted to compare the reconviction rates of those prisoners given custodial or community sentences. Following a recent review this information is no longer provided in the publication. The statistics compared the reconviction rates of all offenders convicted within two years of discharge from prison or from the commencement of a community service. It is argued that it is not accurate to compare prisoner reconviction from the end of a custodial sentence with reconviction from the start of a community penalty.

The latest published information comparing reconviction after custodial and community sentences is shown below, although readers should be aware of the issues raised in the previous paragraph. The two year reconviction rates for those released from or given various types of sentence in 1996 were as follows;

- 57% for those released from custody
- 60% for those given probation
- 50% for those given community service
- 59% for those with combination orders

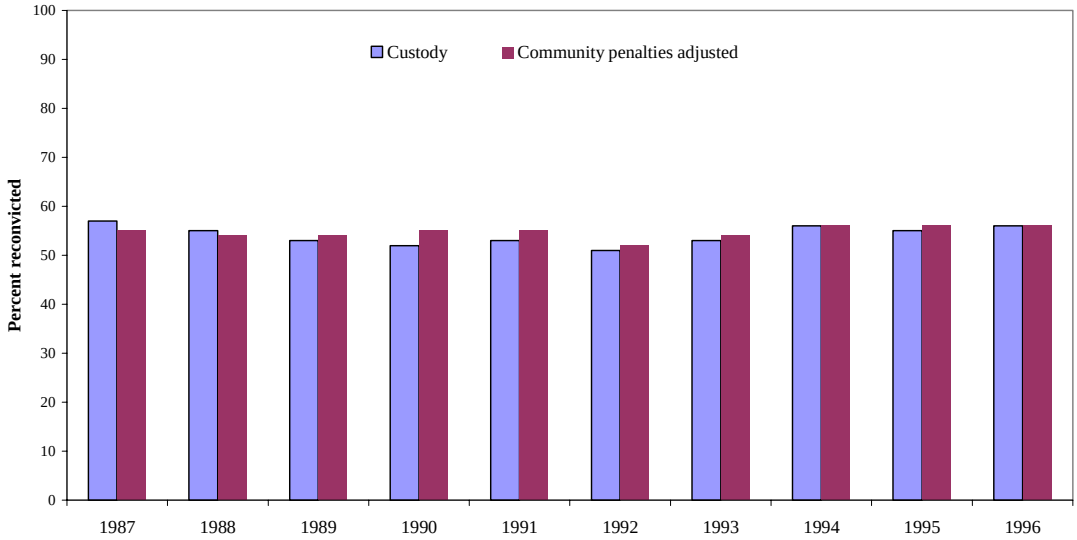
However, the different rates reflect the different offence types and criminal histories of those given different sentences. Such offender characteristics affect the risk of reconviction. **After adjustments are made to correct reconviction rates for community penalties to make them comparable to prisons,[141] the difference in the overall reconviction rates for those prisoners released in the first quarter of 1996 was 1.3 percentage points in favour of custody. This suggests there is little difference between the reconviction rate for custody and all community penalties**. These two variables have remained within three percentage points of each other between 1987-1996.[142]

The difference between reconviction rates for custody and fully adjusted rates for community penalties are illustrated in the chart overleaf.

[141] Those on community service are more likely than those discharged from prison to be convicted of offences committed before the order started and there are also differences in character of those sentenced to community and prison sentences (in age, sex and previous criminal history)

[142] *Prison Statistics, England and Wales 1999,* Home Office July 2000 and earlier editions

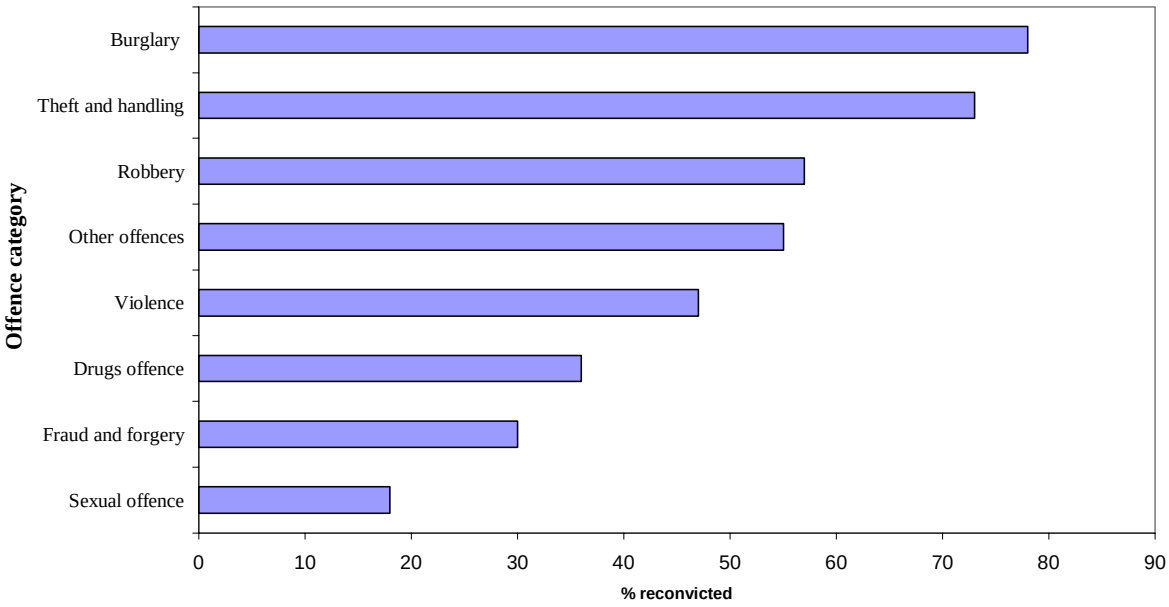
Two year reconviction rates for those released from prison 1987-1996 with the adjusted (a) rate for community penalties



(a) adjusted for offender characteristics and pseudo-reconvictions

More important determinants than type of sentence are sentence length (reconviction is lower for prisoners given longer sentences) and type of offence. Prisoners discharged in 1997 from sentences for burglary or for theft and handling were most likely to be reconvicted within two years (78 and 73 per cent respectively). Those who had served sentences for sexual offences, fraud and forgery or drug offences least likely (18, 30 and 36 per cent respectively). This information is summarised in the chart below.

Percentange of prisoners reconvicted within two years of discharge by original offence in 1997



For all types of offence, reconviction rates for young male offenders were higher than for adult males. For theft and handling, reconviction rates were 86% for young males and 70% for adults. For violence the rates were 62% and 44% respectively. The overall reconviction rates (76% for young males compared to 54% for adult males) are partly a reflection of such differences and partly because a larger proportion of discharged young offenders were originally convicted for burglary, for which reconviction rates are high for all age groups.

Overall reconviction rates differed by ethnic group. For those discharged from custody in 1997 the proportion of white prisoners reconvicted within two years of release was sixty percent. Amongst the other ethnic groups the proportions were 53, 42 and 42 per cent for the black, 'south Asian' and 'other' prisoner groups respectively.

An analysis[143] was performed to examine the extent to which difference in reconviction rates between ethnic groups can be accounted for by differences in the characteristics of prisoners. The results indicated that, after making allowance for these factors, the rate for black prisoners was around 0.9 percentage points lower than predicted and for the 'South Asian' group was 1.9 percentage points above the level expected.

4. Reducing reoffending

Home Office Research Studies (HORS) have looked at this issue in the past. One was aimed mainly at reducing criminality in general, not just reoffending, but recognised that targeting high profile, repeat offenders and repeat victims are among the most effective practices.[144]

The authors recognised that, as outlined above, prison custody is no more successful at preventing recidivism than other forms of sentence, and has the added disadvantage of being the most expensive method. To briefly outline the various costs of disposal, costs per sentence are;

£2,527 for probation orders,
£1,628 for community service,
£3,588 for combination orders,

and there is a net gain to the Exchequer from fines. While cost per sentence for prison is not available, it costs £37,500 gross for a prison place per year. However, prison has the

[143] *Prison Statistics, England and Wales* 2000, Home Office, August 2001
[144] *Reducing offending: an assessment of research evidence on ways of dealing with offending behaviour,* HORS 187, 1998

added advantage of incapacitating a criminal during a term of imprisonment, and for serious offences prison is also seen by the public as a more appropriate punishment.

In contrast to the amount of data on the effectiveness of conventional types of sentence, the HORS pointed out that up to now, carefully designed and evaluated studies to assess the success of alternative forms of intervention and community-based programmes have been few and far between.

Research suggests however that the most effective programmes are skills-based, and involve problem solving and behavioural techniques. Such cognitive-behavioural programmes are more effective than unfocused group or individual counselling or therapy, and reduce reconviction by 15% compared to offenders who attend no programmes.

Programmes that stick closely to five effectiveness criteria have been shown to achieve even higher reductions in recidivism (up to 20%).[145] These criteria were;

- targeting high risk offenders,
- having a high level of programme integrity with well trained staff and well focused unchanging aims
- matching teaching styles to offenders' learning styles (using role play etc) rather than the traditional individual counselling
- using skills based, problem solving and cognitive treatment to address attitudes, beliefs and social interaction
- in general, being community based although this is probably less important than the other criteria

The second HORS study examined factors involved in reoffending, such as social factors, for those given community sentences only. It found that drug use was highly related to reconviction in six study areas. Employment variables were significantly related to reconviction rates, accommodation was related to reconviction, and there was some evidence to show that financial problems and offenders with multiple problems were more likely to be reconvicted.[146]

[145] ibid chapter 8 *Effective interventions with offenders*
[146] *Explaining reconviction following a community sentence: the role of social factors.* HORS 192, 1999

6. Appended tables

Table 1a: Offenders sentenced for indictable offences by offence group and type of sentence or order (thousands)

England and Wales

Offence group and year		**Total**	Absolute or conditional discharge	Fine	Total immediate custody	Fully suspended imprisonment	Otherwise dealt with	Total community sentences
Violence against the person	1995	**29.2**	5.1	3.9	8.4	0.5	1.1	10.1
	2000	**35.5**	4.5	4.0	11.4	0.5	1.0	14.1
Sexual offences	1995	**4.7**	0.4	0.6	2.4	0.1	0.1	1.1
	2000	**3.9**	0.2	0.1	2.4	0.1	0.1	1.1
Burglary	1995	**35.5**	3.6	2.3	13.5	0.2	0.3	15.5
	2000	**26.7**	1.6	0.8	13.7	0.1	0.3	10.1
Robbery	1995	**5.2**	0.2	0.0	3.5	0.0	0.1	1.4
	2000	**5.9**	0.1	0.0	4.3	0.0	0.1	1.4
Theft and handling stolen goods	1995	**116.1**	29.9	33.8	15.6	0.6	1.5	34.6
	2000	**127.6**	28.2	29.1	26.0	0.4	2.4	41.5
Fraud and forgery	1995	**17.2**	3.4	3.6	3.3	0.4	0.3	6.3
	2000	**19.2**	3.4	3.2	3.7	0.5	0.3	8.0
Criminal damage	1995	**9.5**	2.7	1.8	1.0	0.0	0.7	3.4
	2000	**10.2**	2.5	1.7	1.2	0.0	0.7	4.0
Drug offences	1995	**31.6**	4.9	15.5	5.3	0.3	0.1	5.5
	2000	**45.0**	7.3	20.6	8.1	0.3	0.5	8.1
Other (excluding motoring offences)	1995	**41.7**	6.4	21.0	5.8	0.3	2.2	6.1
	2000	**44.6**	4.9	18.8	8.1	0.4	4.4	7.9
Motoring offences	1995	**11.2**	0.7	6.9	1.6	0.1	0.1	2.0
	2000	**7.7**	0.4	3.7	1.7	0.0	0.1	1.8
Total	1995	**301.9**	57.3	89.4	60.4	2.5	6.5	85.8
	2000	**326.2**	53.0	82.1	80.8	2.5	9.9	97.9

(1) Section 53 of the Children and Young Persons Act 1933 was repealed on 25 August 2000 and its provisions were transferred to Sections 90 to 92 of the Powers of Criminal Courts (Sentencing) Act 2000.

Source: Criminal Statistics, England and Wales 2000, Cm 5312

Table 1b: Offenders sentenced for indictable offences by offence group and type of sentence or order (percentage)

England and Wales

Offence group and year		Total	Absolute or conditional discharge	Fine	Total immediate custody	Fully suspended imprisonment	Otherwise dealt with	Total community sentences
Violence against the person	1995	**100**	18%	14%	29%	2%	4%	35%
	2000	**100**	13%	11%	32%	1%	3%	40%
Sexual offences	1995	**100**	8%	12%	51%	2%	2%	24%
	2000	**100**	5%	3%	62%	2%	2%	28%
Burglary	1995	**100**	10%	6%	38%	0%	1%	44%
	2000	**100**	6%	3%	51%	0%	1%	38%
Robbery	1995	**100**	4%	1%	68%	0%	1%	26%
	2000	**100**	1%	0%	73%	1%	1%	24%
Theft and handling stolen goods	1995	**100**	26%	29%	13%	1%	1%	30%
	2000	**100**	22%	23%	20%	0%	2%	33%
Fraud and forgery	1995	**100**	19%	21%	19%	2%	2%	36%
	2000	**100**	18%	17%	19%	2%	2%	42%
Criminal damage	1995	**100**	28%	19%	10%	0%	7%	35%
	2000	**100**	24%	17%	12%	0%	7%	39%
Drug offences	1995	**100**	15%	49%	17%	1%	0%	17%
	2000	**100**	16%	46%	18%	1%	1%	18%
Other (excluding motoring offences)	1995	**100**	15%	50%	14%	1%	5%	15%
	2000	**100**	11%	42%	18%	1%	10%	18%
Motoring offences	1995	**100**	6%	61%	14%	0%	1%	17%
	2000	**100**	5%	48%	23%	1%	1%	23%
Total	1995	**100**	19%	30%	20%	1%	2%	28%
	2000	**100**	16%	25%	25%	1%	3%	30%

(1) Section 53 of the Children and Young Persons Act 1933 was repealed on 25 August 2000 and its provisions were transferred to Sections 90 to 92 of the Powers of Criminal Courts (Sentencing) Act 2000.

Source: Criminal Statistics, England and Wales 2000, Cm 5312

Table 2 Receptions into prison under sentence of immediate imprisonment: by age, offence group and length of sentence

England and Wales 2000
All adults

Number of persons

Age and offence group	All sentence lengths	Length of sentence: Up to 3 months	Over 3 months up to 6 months	Over 6 months less than 12 months	12 months	Over 12 months up to 18 months	Over 18 months up to 3 years	Over 3 years less than 4 years	4 years	Over 4 years up to 5 years	Over 5 years up to 10 years	Over 10 years less than life	Life
All adults													
All ages	**69,873**	**21,730**	**19,288**	**5,802**	**3,050**	**4,603**	**7,937**	**1,667**	**1,327**	**1,521**	**2,147**	**365**	**435**
Violence against the person	10,247	2,917	2,618	866	585	733	1,177	222	209	230	318	48	324
Sexual offences	2,255	160	213	160	33	231	463	62	150	169	459	92	63
Burglary	8,053	1,068	1,335	711	493	1,083	2,328	479	202	211	133	9	1
Robbery	2,216	238	130	63	59	141	543	206	197	223	351	37	26
Theft and handling	16,981	7,967	5,027	1,654	626	725	777	93	36	45	28	1	1
Fraud and forgery	2,585	670	724	382	188	218	286	42	32	20	22	1	1
Drugs offences	6,333	659	638	459	363	549	1,414	448	384	521	734	165	-
Other offences	19,657	7,713	8,231	1,238	563	744	779	97	101	86	81	10	15
Offence not recorded	1,545	337	372	269	140	179	171	19	16	16	20	2	4
Adult males	**64,103**	**19,334**	**17,869**	**5,307**	**2,776**	**4,304**	**7,472**	**1,587**	**1,247**	**1,413**	**2,024**	**352**	**417**
Aged 21-29	**33,711**	**10,039**	**9,666**	**2,978**	**1,513**	**2,339**	**4,089**	**879**	**580**	**604**	**783**	**88**	**152**
Violence against the person	4,911	1,282	1,265	456	297	362	625	112	91	112	157	26	126
Sexual offences	438	55	59	46	28	36	56	10	22	25	81	10	10
Burglary	5,316	671	912	485	325	743	1,568	317	106	106	80	3	-
Robbery	1,393	157	84	37	31	97	358	136	128	128	210	13	12
Theft and handling	8,422	3,693	2,696	884	290	355	409	47	18	18	11	-	-
Fraud and forgery	688	193	236	99	48	44	50	7	6	6	-	-	-
Drugs offences	2,585	311	282	207	154	238	609	207	165	165	217	31	-
Other offences	9,264	3,525	3,962	631	277	375	347	39	39	39	23	5	3
Offence not recorded	694	151	170	134	64	88	68	5	5	5	4	-	1
Aged 30 and over	**30,392**	**9,295**	**8,203**	**2,329**	**1,263**	**1,966**	**3,383**	**708**	**667**	**809**	**1,240**	**264**	**265**
Violence against the person	4,730	1,391	1,204	376	256	320	503	105	108	108	154	21	184
Sexual offences	1,794	104	152	114	1	192	403	50	127	142	375	81	53
Burglary	2,525	362	379	196	146	309	720	160	91	102	53	6	1
Robbery	680	67	34	16	18	28	137	61	62	84	136	24	13
Theft and handling	6,114	2,960	1,642	546	251	298	318	43	16	23	15	1	1
Fraud and forgery	1,432	328	330	223	112	142	205	30	25	14	21	1	1
Drugs offences	2,933	252	269	193	160	249	624	191	171	282	419	123	-
Other offences	9,485	3,686	4,031	557	260	344	383	55	59	44	52	5	9
Offence not recorded	699	145	162	108	59	84	90	13	8	10	15	2	3
Adult females	**5,770**	**2,396**	**1,419**	**495**	**274**	**299**	**465**	**80**	**80**	**108**	**123**	**13**	**18**
Aged 21-29	**2,927**	**1,266**	**729**	**264**	**125**	**148**	**221**	**43**	**32**	**44**	**41**	**5**	**9**
Violence against the person	302	125	81	21	17	26	17	2	4	2	1	-	6
Sexual offences	3	-	1	-	1	-	-	-	-	-	1	-	-
Burglary	148	24	31	20	18	21	30	2	1	1	-	-	-
Robbery	97	8	9	8	7	10	36	7	4	5	3	-	-
Theft and handling	1,352	729	398	128	36	34	25	-	-	2	-	-	-
Fraud and forgery	147	52	48	21	12	8	4	2	-	-	-	-	-
Drugs offences	371	56	40	28	16	32	83	26	19	32	34	5	-
Other offences	438	250	103	28	11	14	20	3	2	2	2	-	3
Offence not recorded	69	22	18	10	7	3	6	1	2	-	-	-	-
Aged 30 and over	**2,843**	**1,130**	**690**	**231**	**149**	**151**	**244**	**37**	**48**	**64**	**82**	**8**	**9**
Violence against the person	304	119	68	13	15	25	32	3	6	8	6	1	8
Sexual offences	20	1	1	-	3	3	4	2	1	2	2	1	-
Burglary	64	11	13	10	4	10	10	-	4	2	-	-	-
Robbery	46	6	3	2	3	6	12	2	3	6	2	-	1
Theft and handling	1,093	585	291	96	49	38	25	3	2	2	2	-	-
Fraud and forgery	318	97	110	39	16	24	27	3	1	-	1	-	-
Drugs offences	444	40	47	31	33	30	98	24	29	42	64	6	-
Other offences	470	252	135	22	15	11	29	-	1	1	4	-	-
Offence not recorded	84	19	22	18	11	4	7	-	1	1	1	-	-

Source: Prison statistics, England and Wales 2000

Table 3 Receptions into prison under sentence of immediate imprisonment, by length of sentence

England and Wales
All adults

Number (and %) of persons

Length of sentence	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
All sentence lengths	**36,471**	**38,312**	**36,832**	**37,358**	**46,232**	**52,772**	**56,713**	**62,089**	**66,309**	**69,218**	**69,873**
Up to 3 months	7,086	7,455	7,370	7,982	11,299	14,320	15,224	17,546	19,722	21,491	21,730
Over 3 months up to 6 months	6,829	7,520	7,111	8,949	12,422	13,818	14,664	15,805	17,161	18,686	19,288
Over 6 months less than 12 months	4,080	4,336	4,090	4,119	4,476	4,915	4,976	5,351	5,630	5,485	5,802
12 months	2,955	3,152	2,998	2,863	3,151	3,263	3,298	3,357	3,416	3,371	3,050
12 months or less	**20,950**	**22,463**	**21,569**	**23,913**	**31,348**	**36,316**	**38,162**	**42,059**	**45,929**	**49,033**	**49,871**
Over 12 months up to 18 months	4,413	4,696	4,303	3,730	4,172	4,322	4,511	4,668	4,915	4,781	4,603
Over 18 months up to 3 years	6,696	6,590	6,292	5,415	6,182	6,981	7,784	8,307	8,328	8,065	7,937
Over 3 years less than 4 years	588	674	632	532	641	762	967	1,214	1,441	1,534	1,667
4 years	969	935	1,043	917	921	1,068	1,368	1,451	1,357	1,293	1,327
Over 12 months up to 4 years	**12,666**	**12,895**	**12,270**	**10,594**	**11,916**	**13,133**	**14,630**	**15,640**	**16,041**	**15,673**	**15,534**
Over 4 years up to 5 years	933	1,018	885	948	968	1,192	1,339	1,545	1,542	1,548	1,521
Over 5 years up to 10 years	1,546	1,498	1,668	1,494	1,563	1,610	1,963	2,147	2,032	2,150	2,147
Over 10 years less than life	186	223	236	207	248	273	341	385	400	403	365
Life	190	215	204	202	189	248	278	313	365	411	435
Over 4 years	**2,855**	**2,954**	**2,993**	**2,851**	**2,968**	**3,323**	**3,921**	**4,390**	**4,339**	**4,512**	**4,468**
All sentence lengths	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**
Up to 3 months	**19%**	**19%**	**20%**	**21%**	**24%**	**27%**	**27%**	**28%**	**30%**	**31%**	**31%**
Over 3 months up to 6 months	**19%**	**20%**	**19%**	**24%**	**27%**	**26%**	**26%**	**25%**	**26%**	**27%**	**28%**
Over 6 months less than 12 months	**11%**	**11%**	**11%**	**11%**	**10%**	**9%**	**9%**	**9%**	**8%**	**8%**	**8%**
12 months	**8%**	**8%**	**8%**	**8%**	**7%**	**6%**	**6%**	**5%**	**5%**	**5%**	**4%**
12 months or less	**57%**	**59%**	**59%**	**64%**	**68%**	**69%**	**67%**	**68%**	**69%**	**71%**	**71%**
Over 12 months up to 18 months	**12%**	**12%**	**12%**	**10%**	**9%**	**8%**	**8%**	**8%**	**7%**	**7%**	**7%**
Over 18 months up to 3 years	**18%**	**17%**	**17%**	**14%**	**13%**	**13%**	**14%**	**13%**	**13%**	**12%**	**11%**
Over 3 years less than 4 years	**2%**	**2%**	**2%**	**1%**	**1%**	**1%**	**2%**	**2%**	**2%**	**2%**	**2%**
4 years	**3%**	**2%**	**3%**	**2%**	**2%**	**2%**	**2%**	**2%**	**2%**	**2%**	**2%**
Over 12 months up to 4 years	**35%**	**34%**	**33%**	**28%**	**26%**	**25%**	**26%**	**25%**	**24%**	**23%**	**22%**
Over 4 years up to 5 years	**3%**	**3%**	**2%**	**3%**	**2%**	**2%**	**2%**	**2%**	**2%**	**2%**	**2%**
Over 5 years up to 10 years	**4%**	**4%**	**5%**	**4%**	**3%**	**3%**	**3%**	**3%**	**3%**	**3%**	**3%**
Over 10 years less than life	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**
Life	**1%**	**1%**	**1%**	**1%**	**0%**	**0%**	**0%**	**1%**	**1%**	**1%**	**1%**
Over 4 years	**8%**	**8%**	**8%**	**8%**	**6%**	**6%**	**7%**	**7%**	**7%**	**7%**	**6%**

Source: Prison statistics, England and Wales 2000

Table 4 Average sentence length of receptions into prison under sentence of immediate imprisonment[1]: by court sentencing and date of reception

England and Wales
All adults

Number of months

	1990[3]	1991[3]	1992[3]	1993	1994	1995	1996	1997	1998	1999	2000
All adults											
Court sentencing [2]											
Crown Court	..	..	26.4	25.1	24.8	24.6	25.8	26.6	26.5	27.2	27.7
Magistrates' court	..	..	4.4	4.7	4.5	4.1	4.0	3.9	3.9	3.9	4.1
All courts	..	..	19.0	17.2	15.7	15.3	16.0	15.9	15.1	14.7	14.6
Adult males											
Court sentencing [2]											
Crown Court	24.9	25.6	26.7	25.4	25.1	25.0	26.1	26.9	26.9	27.7	28.1
Magistrates' court	4.1	4.1	4.4	4.7	4.6	4.2	4.1	4.0	3.9	4.0	4.2
All courts	18.2	18.2	19.2	17.3	15.9	15.5	16.1	16.2	15.4	15.0	14.9
Adult females											
Court sentencing [2]											
Crown Court	19.6	21.3	20.3	20.4	19.7	18.8	21.1	21.4	21.4	21.6	22.9
Magistrates' court	3.5	3.6	3.7	4.1	3.8	3.6	3.4	3.2	3.3	3.3	3.5
All courts	14.5	15.2	15.6	14.4	12.5	11.9	13.1	12.2	11.3	11.1	11.0

[1] Excluding those sentenced to life imprisonment.

[2] Type of court originally imposing a sentence of imprisonment: further sentences may have been awarded at a different court.

[3] Figures are subject to a wider margin of error than those for other years because of a particularly large number of cases with court not recorded: such cases are included in the "all courts" figures.

Source: Prison statistics, England and Wales 2000