Ministry of JUSTICE

Breaking the Cycle: Government response

Full equality impact assessment

21 June 2011

Produced by the Ministry of Justice

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1. Equality duties

1. Under the Equality Act 2010, when exercising its functions, the Ministry has an ongoing legal duty to pay 'due regard' to:

   - the need to eliminate unlawful discrimination, harassment and victimisation;
   - advance equality of opportunity between different groups; and
   - foster good relations between different groups.

2. The payment of 'due regard' needs to be considered against the nine protected characteristics – namely race, gender, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender identity, pregnancy and maternity.

3. MoJ has a legal duty to investigate how policy proposals are likely to impact on the protected characteristics and take proportionate steps to mitigate the most negative ones and promote the positive ones. MoJ records how 'due regard' has been exercised by completing an Equality Impact Assessment (EIA).

2. Executive summary

4. The Green Paper 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders' was published in December 2010. A Screening Equality Impact Assessment (EIA) was published alongside the Green Paper and provided an initial analysis of the potential impact of the proposed reforms on people with protected characteristics.

5. This Full EIA covers a sub-set of proposed measures from the Green Paper including those that cover legislative changes relating to sentencing. These measures mainly relate to reform of the sentencing framework, out of court disposals, and bail and remand. A number of rehabilitative proposals contained in the Green Paper, e.g. Payment by Results, will be the subject of further policy development and piloting and are not therefore covered in the Full EIA. As specific rehabilitative proposals are developed further, separate EIAs will be produced where necessary. This Full EIA does not repeat the assessment from the Screening EIA[1] but builds on this analysis with particular reference to further information which has emerged during consultation. It accompanies a similar Full EIA relating to the reform of Legal Aid.

[1] The report can be found at www.justice.gov.uk/consultations/consultation-040311.htm

6. During the consultation period a series of discussions were held with a wide range of stakeholders including two that were specifically focused on equality issues. An Equalities Engagement event was also held to improve our understanding of the likely equality impacts of the proposals and, where necessary, how they could be modified or mitigated. This event was attended by over 50 delegates representing all of the protected groups. A Women's Workshop was held to address women's policy issues raised by the Green Paper. Over 60 delegates attended and included representation from Criminal Justice System professionals, academics and volunteers. In addition to the 1,200 responses received from the written consultation, an equality questionnaire seeking views on possible impacts of the proposals and any additional evidence that might be available was sent to 240 stakeholders. Seven responses were received and these, along with the 1,200 responses to the consultation, were reviewed.

7. The main equalities issue raised during the consultation with particular reference to the sentencing reform proposals was the importance of recognising the different needs presented by female offenders. For example, for diversion to take place at the earliest possible point and, for those sentenced, the community orders made taking sufficient account of the different needs of female and male offenders. This issue, together with other points raised, were carefully considered and taken into account when finalising the sentencing and other reforms.

8. In relation to some policy proposals no issues relating to promoting equality of opportunity or eliminating unlawful discrimination were identified in either the Screening EIA or during the subsequent consultation.

9. Potentially positive impacts that will promote equality of opportunity are expected in relation to:

   - reform of remand; and
   - reform of community sentences.

10. **Reform of remand**: this policy proposal seeks to reduce the use of remand in custody by largely restricting it to those who are likely to receive a custodial sentence if convicted. The Screening EIA identified and the consultation confirmed the view that White people, older persons, and women who are remanded in custody are less likely to go on to receive a custodial sentence. The proposal therefore may benefit those in the protected categories of ethnicity, age, and gender who do not go on to receive a custodial sentence.

11. **Reform of community sentences**: this proposal includes measures for enabling offender managers to have greater discretion within the existing law to manage offenders. In addition to those with other protected characteristics, this could potentially address the concern expressed

during the consultation period that community orders need to take account of the different needs presented by female and male offenders.

12. A potential mixed impact associated with the proposed reforms has been identified and addressed with particular reference to **Reforms relating to young offenders**. These proposals include measures to reform referral orders, out of court disposals and remand. The consultation raised concerns about the appropriate use of restorative justice and out of court disposals. The remand proposals may benefit those in the protected categories of ethnicity, age, and gender who do not go on to receive a custodial sentence.

13. A potential negative impact associated with the proposed reforms has been identified with particular reference to the proposed mandatory minimum for **the new offence for knife possession.** The creation of a new offence for adults, with a mandatory minimum prison sentence of 6 months, found guilty of possessing a knife to threaten or endanger may have a differential impact on offenders with regard to their ethnicity, gender or age. We consider any such impact to be justified on the basis that it sends a clear message to those who possess a knife to threaten or endanger.

14. As the proposals are implemented we will monitor the impacts of all of the reforms described above and take appropriate mitigating action if necessary.

3. Context

15. The Green Paper “Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders” was published in December 2010. The overall aims of the proposals that were set out in the Green Paper are to punish offenders, protect the public and reduce reoffending.

16. A Screening Equality Impact Assessment was published alongside the Green Paper. This provided an initial analysis of the potential equality impact of the proposed reforms with respect to the protected characteristics, the promotion of equality of opportunity and the elimination of unlawful discrimination.

4. Methodology and evidence sources

17. The methodology adopted in this Full Equality Impact Assessment is outlined below. It covers a sub-set of proposed measures from the Green Paper including those that cover legislative changes relating to sentencing. These mainly relate to reform of the sentencing framework, out of court disposals, bail and remand. The assessment does not repeat the analysis from the screening assessment but does provide an analysis of further details that emerged during consultation. Where an adverse equality impact has been identified, an explanation is given why

the reform is justified or how any potential adverse impacts will be mitigated.

18. Additional data are included in the assessment where a need has been identified. Details of additional evidence are provided in Annex A. Data on court disposals is from the Court Proceedings Database[2] for 2010. This holds information on defendants proceeded against, found guilty and sentenced for criminal offences in England and Wales. It includes information on the age of the defendant, their gender, ethnicity, the police force area and court where proceedings took place as well as the offence and statute for the offence. Information on gender reassignment, disability, pregnancy and maternity, sexual orientation, religion or belief or marriage and civil partnership for criminal offences may be held by the courts on individual case files. However it has not been possible to assess or collate these data for the Full Equality Impact Assessment because of the practical difficulties presented.

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

20. Further analysis of data on offenders given Community Orders and Suspended Sentence Orders are from data published in Offender Management Caseload Statistics 2010. Data are held centrally for ethnicity, gender, age and disability. The MoJ does not hold data centrally on sexual orientation, pregnancy and maternity, religion or belief, gender reassignment or marriage and civil partnership. The facility exists in some Probation Trusts' case management systems to record sexual orientation and religion but these are not mandatory fields. These data are not returned to MoJ centrally. Disability data are collected and returned to the centre, but are not deemed sufficiently reliable to use in official statistics.

21. Youth data are from the Youth Justice Board's Workload Statistics[3], which include the latest available data on age, gender and ethnicity for youth offenders.

22. Where data relating to certain protected characteristics are not available, information has been drawn from direct engagement with relevant stakeholders (see below). This has proven to be a very useful source of qualitative information about the nature of potential impacts.

23. The following assessment This Full EIA only explores equality impacts arising from a sub-set of proposed measures from the Green Paper, including those that cover legislative changes relating to sentencing, and which are relative to the current position. It is not intended to provide an

[2] Ministry of Justice
[3] Youth Justice Statistics 2009/10, Youth Justice Board/Ministry of Justice Statistics bulletin

analysis of any potential disproportionality within the wider criminal justice system. Such an analysis would consider the extent to which factors other than equality characteristics (such as offence type and offending history) might contribute to the over- or under-representation of particular groups. Two MoJ statistics publications provide this analysis: “Statistics on Race and the Criminal Justice System” and “Statistics on Women and the Criminal Justice System”.

24. We will be monitoring the implementation of these reforms for positive, negative and mixed equality impacts. We anticipate that most of these changes would be implemented towards the end of 2012 We therefore expect to have a first full year’s data on which to base a review commencing in Spring 2014.

25. During the consultation process, following publication of the Green Paper and the Screening Equality Impact Assessment, MoJ sought views on new evidence and the possible impacts that the proposals might have on people on the basis of the nine protected characteristics identified in the Equality Act 2010. More detail is provided in the Stakeholder Engagement section below.

5. Stakeholder consultation and engagement

26. During the consultation process that ran from 7 December 2010 to 4 March 2011, MoJ held a number of stakeholder events across the country to elicit views and improve understanding of the proposed Green Paper reforms. The Green Paper received over 1200 responses.

27. The consultation events were held across a diverse range of locations including Bristol, London, Manchester and Nottingham (up to 100 attendees each) as well as Birmingham, Cardiff, Newcastle and York (smaller groups events).

28. During these consultation events views were actively sought from:

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

- the wider delivery chain including, local authorities, police, other government departments; and
- Inspectorates and Prisons and Probation Ombudsman.

29. A further number of targeted engagement events, more specifically seeking to consult on and with the following issues and stakeholders:

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

5.1 Equalities engagement event

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

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

32. The main equality issues and impacts raised by delegates included:

- the apparent lack of attention to physical disabilities in prison e.g. accessible toilets, British Sign Language translators; facilities for blind people etc;
- lack of clarity as to how transgender issues had been taken into account including the need for staff training on gender identity;
- a concern about 'creaming and parking' whereby service providers might be tempted to improve results by only working with potentially successful offenders and leaving those with disabilities or other protected characteristics out and unsupported[4];

[4] This concern is particularly relevant to Payment by Results and will be considered in the design of the pilots going forward.

- concern that the rationalising of aggravating sentencing factors could water down sentencing of crimes specifically directed toward persons with protected characteristics particularly lesbian, gay and bisexual victims; and
- the benefits of capturing experiential data and for better service user involvement.

33. These issues have been duly noted and considered further either in this EIA or logged for further consideration at the appropriate time with regard to the rehabilitation proposals.

5.2 Women's workshop

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

35. Some of the key issues raised included:

- in developing the provision of residential support for women in drug treatment the approach needs to ensure that services are joined up and successful links are made with all agencies;
- the need for diversion to take place at the earliest possible time, either in custody suites, or if not, in courts;
- community sentence provision for women offenders needs to be flexible, motivational, gender informed and women specific;
- a holistic, motivational, approach to working with young girls is needed across authorities and agencies in a way that addresses involvement in gangs, avoids male dominated placements and provides sustainability of services on transition from girls to adult women; and on resettlement on release; and
- any Payment by Results commissioning framework needs to ensure that women's needs are not marginalised because they are a small group with additional challenging complexities.

36. These issues have been duly noted and considered further either in this EIA or logged for further consideration at the appropriate time with regard to the rehabilitation proposals.

5.3 Equality questionnaire

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

Equality Act 2010. The seven questionnaire responses received have been considered alongside other responses to the consultation.

6. Summary of general consultation responses relevant to equality issues

38. The main consultation responses included the following comments:

- a view that more focus should have been given in the Green Paper to specific groups, such as women, young adults, people with disabilities and learning difficulties, transgender people, older people, prisoners' families and foreign nationals;
- the need to focus on the quality, as well as quantity, of the potential equality impacts;
- individual circumstances should be taken into account when sentencing;
- concerns that any increase in the use of financial penalties may have an adverse impact on women and disabled people due to higher rates of poverty;
- the proposals to remove foreign national offenders raised concerns with respect to those living and working in the UK, as well as the comparative situation with British nationals;
- proposals to reduce the remand population may reduce disproportionality in remand outcomes;
- concern about the inappropriate use of remand for 16 and 17 year olds;
- concern to ensure that the use of restorative justice is appropriate, especially with young people and those with learning disabilities; and
- mental health problems should be identified as early as possible, e.g. when people are on bail.

39. In proportion to the perceived impacts, these issues have been given due consideration in the development of sentencing policy. A number of rehabilitation equality issues were also raised by the consultation and these will be considered as the specific rehabilitation policies are developed and implemented. Where appropriate and proportionate, MoJ will undertake further equality impact assessments of other proposals in the Green Paper before policy decisions are finalised.

40. The generic equality comments made during the consultation with particular reference to potential equality impacts from the sentencing proposals, together with proportionate measures to mitigate, are summarised in Table A below.

Table A: Generic equality feedback from the consultation and potential mitigations

Equality Issue	Mitigation
The need for discretion in addressing the diverse needs of offenders.	We will remove some of the current statutory restrictions to allow greater professional discretion to decide when lower risk prisoners who have been recalled to prison may be released on license.
The need to protect victims of alleged domestic violence, who are predominantly women, when making remand decisions.	We will only use remand places where it is necessary to protect the public from those whose offending and alleged offending is serious enough to warrant custody. Courts will still have the power to remand in cases where there is a risk of domestic violence
Disabled defendants need to understand what's happening to them during the sentencing procedure and the implications of any views they express.	We are making available clear accessible sentencing procedural advice and guidance.
Making new community orders which accommodate disabled offender needs.	We wils ensure reasonable adjustments are made for offenders with both mental health and physical needs.
Lack of any specific consideration of transgendered offender needs.	Prison Service Instruction 07/2011 covers the care and management in treating transgendered prisoners fairly and decently.

41. To the extent that these generic issues applied to specific proposals they are dealt with in turn below.

7. Sentencing reforms

42. The Government's overarching strategy for sentencing and offender management is to deliver effective punishment, improve the rehabilitation of offenders, increase reparation to victims and society, reduce crime, and improve public safety.

43. The reforms covered in this assessment also aim to create a simpler sentencing framework which is easier to operate and understand, makes better use of prison and community to punish offenders and improve public safety, and better supports our aims of improved rehabilitation and increased reparation to victims and society.

7.1 Punishment

Non-custodial Sentences

44. The proposals are to:

- ensure courts have more ways of punishing and controlling offenders by prohibiting foreign travel and imposing longer, tougher curfew orders;
- establish compliance panels to ensure that young people comply with their sentences.

45. In extending the demanding nature of curfews, due regard will be paid to the potential impact on those in protected groups and the need for support and reasonable adjustments being made where appropriate.

46. The law requires a court, before imposing a curfew as part of a community order or a suspended sentence order, to obtain and consider information about the proposed curfew address, including information about the attitude of anyone likely to be affected by the enforced presence of the offender at that address. This may be especially relevant to some of the protected groups.

47. As the proposals are implemented we will monitor the impacts of these reforms and take appropriate mitigating action if necessary.

7.2 Payback

Offenders in custody

48. The proposal is to introduce legislation to allow us to take a portion of money earned by offenders. We will publish plans this Autumn for how these funds will be used to help repair the harm offenders have caused. A full EIA will be published at the time at which secondary legislation is produced, as this will set out the deductions and payment will work in more detail.

49. An EIA on the implementation of the Prisoners Earnings Act 1996 will be published separately.

Offenders on non-custodial sentences

50. This policy is to increase the use of financial penalties by:

- creating a positive duty for courts to consider making a compensation order in all cases where harm, damage or loss is caused to an identified victim;

- working with the Sentencing Council to encourage greater use of financial penalties;
- working to improve further the enforcement of financial penalties; and
- piloting tough new enforcement methods of seizing offenders assets.

51. The screening assessment did not identify any adverse equality impacts that need to be mitigated. Some concern was expressed during the consultation that this may have an adverse impact on women and disabled people due to higher rates of poverty. However we do not anticipate this disproportionate impact will materialise for these or any other protected groups with a low income. Courts already consider offenders' means before deciding the appropriate level for financial penalties and we will be working to improve the provision of means information.

52. The data on compensation orders is given below.

Potential race impacts

53. There is variation in the persons given compensation orders as a percentage of persons sentenced for indictable or triable-either-way offences by ethnic group (Table 1, Annex A). 16 per cent of those sentenced from the White ethnic group were given compensation orders, compared to 11 per cent from the Asian ethnic group, 9 per cent from the Black and 7 per cent from the Other ethnic groups. This is a different pattern to the use of fines, as shown in the Screening EIA, where the proportion of White, Black and Asian people receiving a fine was broadly similar.

54. Therefore there is the potential for a disproportionate impact in reforming compensation orders in relation to race.

Potential gender impacts

55. 15 per cent of men and women sentenced for indictable or triable-either-way offences were given compensation orders (Table 2, Annex A). This is a different pattern to the use of fines, as shown in the Screening EIA, where the proportion of women receiving fines was larger than for men.

Potential age impacts

56. There is variation in the persons given compensation orders as a percentage of persons sentenced for indictable or triable-either-way offences by age group (Table 3, Annex A). 23 per cent of sentenced 10-17 year olds were given compensation orders. For the older age groups this percentage declines with 9 per cent of those sentenced persons aged 60 and over given compensation orders. This is a different pattern to the use of fines, as shown in the Screening EIA, where there was little variation in the use of fines by age group.

57. Therefore there is the potential for a disproportionate impact in reforming compensation orders in relation to age.

Other protected characteristics

58. Due to limitations in the available evidence we are unable to rule out any disproportionate impact. As noted above, some concern was expressed during the consultation that this may have an adverse impact on disabled people due to higher rates of poverty. However, courts already consider offenders' means before deciding the appropriate level for financial penalties and we will be working to improve the provision of means information.

59. As the proposals are implemented we will monitor the impacts of these reforms across all protected characteristics for which we have data, and take appropriate mitigating action if necessary.

7.3 Transparency

Recognising and repairing the harm caused to victims

60. We will ensure that victims have a more central role in the criminal justice system.

61. We will work with the Home Office to develop a framework that supports local practitioners to develop and deliver effective, best practice restorative justice approaches at all stages of the criminal justice system. We will also continue to develop the evidence base for, and practice of restorative justice including by:

- improving its use in community resolution as part of responses to better tackle low-level crime;
- encouraging its use as part of or in addition to out-of-court disposals;
- formally embedding the role of victims in restorative justice at each stage of the process;
- improving the advice sentencers receive about pre-sentence restorative justice practices and how they take restorative justice into consideration in court, including through pre-sentence reports and Victim Personal Statements;
- establishing guidance and minimum standards for youth offending teams, probation and prisons for undertaking more and better restorative justice practices, both pre- and post-sentence; and
- seeking to make the referral order a more restorative disposal for young offenders by increasing the training that is given to referral order panel members, removing the current restrictions on the

repeated use of the order and allowing courts greater flexibility to give a young person who is in court for the first time, and pleads guilty, a conditional discharge as an alternative to a referral order.

62. Consultation highlighted the particular issues that need to be taken into account in using restorative justice appropriately, especially with young people and those with learning disabilities. There were also a number of concerns raised from Women's voluntary and community sector (VCS) groups about the use of RJ in serious sexual or domestic violence cases. MoJ will take this into account as it develops the framework. As the proposals are implemented we will monitor the impacts of these reforms and take appropriate mitigating action if necessary.

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

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

Potential race impacts

65. Statistics and research show that young black people are over-represented at every stage of the criminal justice system[5].

66. In Table 4 (Annex A) we present the data on ethnicity for youths that have been given a referral order or conditional discharge. There is little difference between ethnic groups in the proportion receiving a conditional discharge (3-5 per cent). There is more variation in the proportion given a referral order, with referral orders accounting for 20 per cent of disposals in the Black ethnic group, compared to 15 per cent in the White ethnic group.

67. Therefore there is the potential for a disproportionate impact in reforming referral orders in relation to race.

[5] House of Commons Home Affairs Committee, Second Report of Session 2006–07: Young Black People and the Criminal Justice System

Potential gender impacts

68. In Table 5 (Annex A) we present data on gender for youths that have been given a referral order or conditional discharge. There is little difference between males and females in the proportion receiving a conditional discharge (5 per cent of males compared to 4 per cent of females), or a referral order (16 per cent of males compared to 14 per cent of females).

Potential age impacts

69. This policy proposal applies to young people aged under 18, so only youths will be affected by this policy directly. Table 6 (Annex A) provides data for youths that have been given a referral order or conditional discharge. The use of both disposals increases with age.

70. Therefore there is the potential for a disproportionate impact in reforming referral orders in relation to age.

Other protected characteristics

71. Due to limitations in the available evidence we are unable to rule out any disproportionate impact, although representative organisations and individuals did not raise any additional concerns during the consultation.

72. As the proposals are implemented we will monitor the impacts of these reforms across all protected characteristics for which we have data, and take appropriate mitigating action if necessary.

Responding more effectively to crime

Reform of out of court disposals

73. We will create **a clear national framework** for dealing with offences out of court which we will publish later this year. We will also replace the current youth out-of-court disposals with a system of youth cautions, and youth conditional cautions, repeal youth penalty notices for disorder and promote informal restorative disposals. We will reduce unnecessary bureaucracy by giving the police the power to authorise a conditional caution without referral to the Crown Prosecution Service; and add the option of paying to attend an educational course to adult penalty notices for disorder.

74. The screening assessment did not identify any adverse equality impacts that need to be mitigated arising from the proposal to create a clearer national framework or the changes to the disposals themselves that apply to British and foreign nationals. Some concern was raised during the consultation on the use of conditional cautions for BAME groups and women. Concern was also expressed about vulnerable adults fully understanding and being able to undertake an out of court disposal.

However, the existing Code of Practice for Conditional Cautions sets out detailed requirements concerning when conditional cautions should be given and how they should be administered. In offering a conditional caution the police (and the CPS in certain circumstances) will need to be satisfied that it is appropriate to the offence and the offender, and meets the public interest. An offender must have made a clear and reliable admission of the offence, and must confirm that they understand and accept the consequences of a conditional caution. They must be given the opportunity to receive free and independent legal advice. Only if an offender consents will a conditional caution be administered. As the proposals are implemented we will monitor the impacts of these reforms and take appropriate mitigating action if necessary.

75. The consultation raised concerns about using restorative justice appropriately, especially with young people and those with learning disabilities. The Government fully supports the principle that restorative justice can only be used where the approach is agreed by both the perpetrator and the victim and that pressure should not be applied to victims to make them engage in the process where they are unwilling or not yet able to participate. We will continue to work with experts and stakeholders to ensure that those facilitating restorative justice are sufficiently skilled to identify situations where restorative justice approaches may not be appropriate.

76. Some concern was also raised during the consultation on out of court disposals for juveniles, and the role of the appropriate adult. The changes to youth out-of-court disposals will not in themselves impact on PACE provisions or the availability of appropriate adults. The PACE Codes of Practice require that an appropriate adult should be present for all 10-16 year olds and where, because of the mental state or capacity, the youth (including 17 year olds) may not fully understand the nature and requirements of a Youth Caution or a Youth Conditional Caution. Guidance and statutory Codes of Practice will also set out what needs to be explained to the recipient in terms of the implications of receiving of accepting an out-of-court disposal.

Potential race impacts

77. Statistics and research show that young black people are over-represented at every stage of the criminal justice system[6].

78. In Table 7 (Annex A) we present the data on ethnicity for youths that have been given a police reprimand or final warning. There is variation by ethnic group in the use of these orders, with the Black and Mixed ethnic groups having the lowest proportions receiving these types of disposals.

[6] House of Commons Home Affairs Committee, Second Report of Session 2006–07: Young Black People and the Criminal Justice System

79. Therefore there is the potential for a disproportionate impact in reforming out of court disposals for youths in relation to race.

80. Research and statistics[7] suggest that minority ethnic groups are less likely than white defendants to plead guilty. Out-of-court disposals by their nature must require an acceptance of responsibility as a judgement of guilt where this is contested must remain a preserve of the courts and an independent judiciary. However, our policy may have a positive impact as we are introducing Youth Conditional Cautions nationally and these can be considered and offered before guilt is admitted as long as this is made before accepting the caution.

Potential gender impacts

81. In Table 8 (Annex A) we present data on gender for youths that have been given a police reprimand or final warning. Females are more likely than males to receive a reprimand (39 per cent compared to 21 per cent), whilst there is little difference in the use of final warnings (18 per cent compared to 15 per cent). All disposals are available to offenders regardless of gender and will continue to be so.

82. Therefore there is the potential for a disproportionate impact in reforming out of court disposals for youths in relation to gender.

Potential age impacts

83. The use of reprimands declines with age, whilst for final warnings their use declines for those aged 14 and over (Table 8, Annex A). Our proposals will mean that all statutory disposals will be available nationally and for all 10 to 17 year olds. At present Youth Conditional Cautions and Penalty Notices for disorder are only available for 16 and 17 year olds[8]. At present 10-15s who offend and have received a warning could be disadvantaged as they would have to be prosecuted for an offence whilst a 16 year old could be offered a conditional caution.

84. Therefore there is the potential for a disproportionate impact in reforming out of court disposals for youths in relation to age.

Other protected characteristics

85. Due to limitations in the available evidence we are unable to rule out any disproportionate impact, although representative organisations and individuals did not raise any additional concerns during the consultation.

86. As the proposals are implemented we will monitor the impacts of these reforms across all protected characteristics for which we have data, and take appropriate mitigating action if necessary.

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[7] See pages 40-41 Breaking the Cycle Screening Equality Impact Assessment.
[8] PNDs for 10-15 year olds are used in two areas.

Reform of out of court disposals for youths

87. This policy proposal is intended to:

- replace the current youth out-of-court disposals with a system of youth cautions, and youth conditional cautions, repeal youth penalty notices for disorder and promote informal restorative disposals;
- promote proportionality and professional discretion by removing the rigid 'escalator' of the existing Final Warning Scheme and the prohibition against receiving an out-of-court disposal following a conviction. This will allow police to decide which disposal is appropriate as they do for adults; and
- utilise youth conditional cautions with a streamlined decision making process to ensure that where a young person does not comply with rehabilitation and reparation they can be prosecuted.

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

Pre-trial

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

90. The screening assessment identified that White people remanded to custody are less likely than other ethnic groups to go on to receive a custodial sentence, as are older people compared to people between the ages of 21 and 39, and women compared to men. The proposal may benefit White people, older people and women because they will be less likely to be remanded in custody. In response to concerns raised during consultation regarding the risk of harm to alleged victims of domestic violence, the Government intends to create an exception to the right to bail applicable in such cases to protect this vulnerable group.

91. As the proposals are implemented we will monitor the impacts of these reforms and take appropriate mitigating action if necessary.

Reform of remand for young people

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

93. The consultation raised concerns that custodial remands can occur due to lack of accommodation, and the fact that 17 year olds are currently treated as adults for purposes of remand.

94. The new youth remand order will make securely remanding youths purely because of a lack of suitable accommodation impossible. Unless the individual is charged with or convicted of a violent or sexual offence or an offence which carries a sentence of 14 years or more for adults, if there is no real prospect of a custodial sentence, then a secure remand cannot be made, only a remand to the community (bail) or remand to non-secure accommodation.

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

Potential race impacts

96. In Table 10 (Annex A) we present the data on ethnicity for youth custodial remands. There is some variation in the proportion of those given a custodial remand by ethnic group, with 9 per cent of the Black ethnic group given a custodial remand compared to 4 per cent of the White ethnic group.

97. Therefore there is the potential for a disproportionate impact in reforming remand for youths in relation to race.

98. Statistics and research show that young black people are over-represented at every stage of the criminal justice system[9]. Once they have been charged with an offence, black young offenders are less likely to be given unconditional bail compared to white young offenders.

99. The new remand order for youths will seek to restrict the use of secure custodial remand for only those who have a real prospect of a custodial sentence or have committed a violent, sexual or serious offence. This should reduce the numbers of young people who receive a custodial remand and in addition reduce the numbers of BAME youths who are remanded into secure accommodation.

[9] House of Commons Home Affairs Committee, Second Report of Session 2006–07: Young Black People and the Criminal Justice System

Potential gender impacts

100. In Table 11 (Annex A) we present the data on gender for youth custodial remands. There is little difference between males and females in the proportion given a custodial remand (5 per cent compared to 2 per cent).

101. Currently most 15-17 year old males can only be placed in prison whilst they are being securely remanded in contrast to girls (apart from 17 year old girls) who are remanded in either a secure children's home or secure training centre. The introduction of the new remand order will enable the placement of males and females into any of the juvenile secure establishments regardless so there will be no distinction on placement based on gender (or age). Rather an assessment of need and individual circumstances will determine where a young person will be placed in the secure estate.

Potential age impacts

102. Currently, males and females who are 17 are treated as adults for the purposes of remand. This means that they are securely remanded into prison custody, in contrast to younger children who are normally remanded into secure local authority accommodation. The new remand order will enable 17 year olds to be treated like the rest of the under-18 age group in that they will also have the opportunity to be placed in any part of the juvenile secure estate which has previously been denied to them because of their age.

103. This policy proposal applies to youth offenders, so only youths will be affected by this policy directly. Table 12 (Annex A) provides data on age for youth custodial remands. Youths aged 17 are the most likely to receive a custodial remand.

104. Therefore there is the potential for a disproportionate impact in reforming remand for youths in relation to age.

Other protected characteristics

105. Due to limitations in the available evidence we are unable to rule out any disproportionate impact, although representative organisations and individuals did not raise any additional concerns during the consultation.

106. As the proposals are implemented we will monitor the impacts of these reforms across all protected characteristics for which we have data, and take appropriate mitigating action if necessary.

Custodial sentences

Creation of a new offence for knife possession

107. The proposal is to create a new offence for adults, with a mandatory minimum prison sentence of 6 months, for possession of a knife or weapon to threaten or endanger.

Potential race impacts

108. Table 13a (Annex A) shows that the number of knife possession offences resulting in a caution or conviction that are committed by Black offenders per 1,000 Black population was greater than for other ethnic groups (1.5 per 1,000 for Blacks, compared with 0.4 per 1,000 for Whites and 0.3 per 1,000 for Asians).

109. In Table 13b (Annex A) we present the data on the ethnicity of the offender for those offences involving the possession of a knife or offensive weapon which result in a caution or conviction. An unknown proportion of these offences will fall into the new offence category. There are already differences, with respect to the ethnic background of offenders, in the proportions sentenced to custody and the length of sentence they are given. This may reflect differences in aggravating factors taken into account by sentencers.

110. Our current assessment, based on this evidence, is that there is the potential for a disproportionate impact in relation to race in introducing the new offence with a mandatory minimum prison sentence of 6 months, for possession of a knife or weapon to threaten or endanger.

Potential gender impacts

111. Table 14a (Annex A) shows that the number of knife possession offences resulting in a caution or conviction that are committed by men per 1,000 men in the general population was greater than for women (0.8 per 1,000 for men, and 0.1 per 1,000 for women).

112. Table 14b (Annex A) presents data on the gender of the offender for those offences involving possession of a knife or offensive weapon which result in a caution of conviction. As before, an unknown proportion of these offences will fall into the new offence category. There are already gender differences in the proportions sentenced to custody and the length of sentence given for these offences. These may reflect differences in the aggravating factors taken into account by sentencers.

113. Our current assessment, based on this evidence is that there is the potential for a disproportionate impact in relation to gender in introducing a new offence, with a mandatory minimum prison sentence of 6 months, for possession of a knife to threaten or endanger.

Potential age impacts

114. Table 15a (Annex A) shows that the number of knife possession offences resulting in a caution or conviction that are committed by younger age groups men per 1,000 population was greater than for older age groups (1.6 per 1,000 for 18-20 year olds; 1.1 per 1,000 for 21-24 year olds, and 0.8 per 1,000 for 25-29 year olds compared with 0.5 or less per 1,000 for the older age categories).

115. Table 15b (Annex A) presents data on the age of the offender for those offences involving possession of a knife or offensive weapon which result in a caution of conviction. As before, an unknown proportion of these offences will fall into the new offence category. There are already some age differences in the proportions sentenced to custody and the length of sentence given for these offences. These may reflect differences in the aggravating factors taken into account by sentencers.

116. Our current assessment, based on this evidence, is that there is the potential for a disproportionate impact in relation to age in introducing a new offence, with a mandatory minimum prison sentence of 6 months, for possession of a knife to threaten or endanger.

Other protected characteristics

117. Due to limitations in the available evidence we are unable to rule out the potential for any disproportionate impact for other protected characteristics.

118. As the proposal is implemented we will monitor the impacts of this reform across all protected characteristics for which we have data and take appropriate mitigating action if necessary.

Reform of suspended sentences

119. The proposal is to provide courts with greater discretion in using suspended sentences so that they are able to suspend a sentence for a custodial period of up to two years, choose whether or not to impose community requirements and have the additional options of imposing a fine for breach.

120. The screening assessment and consultation did not identify any adverse equality impacts that need to be mitigated. As the proposals are implemented we will monitor the impacts of these reforms and take appropriate mitigating action if necessary.

Reform of recall

121. The proposals are to remove some of the statutory restrictions in the use of fixed term recall and executive re-release to reduce unnecessary use of Parole Board resources. The screening assessment identified that rates of recall differ by ethnicity, gender and age, with White people most likely to be recalled to prison, men more likely than women and people between the ages of 21 and 49 compared to other age groups. By making recall more efficient, these policies may help reduce this existing disproportionality.

122. We will monitor for any disproportionate impacts and, if necessary take mitigating actions, as we implement this proposal.

Reducing the number of Foreign National Offenders

123. We propose the following reforms:

- prisoner transfer arrangements, which ensure that EU nationals sentenced here serve their sentences in their country of origin, will come into force from December 2011;
- deporting foreign national prisoners on indeterminate sentences once they have served their minimum custodial term; and
- we are piloting the use of simple cautions to divert from prosecution foreign nationals who do not have leave to stay in the UK and have committed certain crimes, on condition that they leave the UK. We will extend this through legislation to conditional cautions.

124. These measures will enable the Ministry of Justice to better manage its prison and probation resources. There will be no discrimination on grounds of ethnicity or nationality; any discrimination will be on the grounds of immigration status which the courts have upheld as legal. We are therefore satisfied that the proposals are fully justified.

125. A pilot scheme of the proposals for foreign national offenders is taking place between December 2010 and June 2011 using simple cautions. Prior to commencing this pilot, the United Kingdom Borders Agency (UKBA) carried out an Equality Impact Assessment. Upon completion of the pilot we will conduct a review of monitoring information of the impact on the groups identified by the assessment.

A simpler framework

126. We have introduced legislation to:
    - ensure that all future sentences are subject to a single set of release arrangements, regardless of the date on which the offence was committed;
    - consolidate the various existing release provisions;

- make the process for calculating remand time more straightforward and efficient by making it a simple administrative process;
- create a single set of rules for the operation of Home Detention Curfew (HDC);
- remove some of the current statutory restrictions to allow greater professional discretion to decide when lower risk prisoners who have been recalled to prison may be re-released on licence;

127. The changes required to ensure that all future sentences are subject to a single set of release arrangements, regardless of the date on which the offence was committed, are mainly technical and a restatement of existing law. There should be no differential impact on offenders as a result of the changes.

128. A single set of rules for the operation of Home Detention Curfew will also be introduced. This will exclude by law all offenders sentenced to 4 years' or more imprisonment regardless of date of offence. Currently, such offenders are excluded under one scheme but may be granted HDC exceptionally under the other scheme. Only 4 prisoners have been granted HDC by virtue of this provision in the 6 years of its operation. We do not therefore consider that the change to one scheme will have a disproportionate impact on any one group.

129. The legislative changes are designed to remove or reduce unnecessary complexity from the law in order to make it easier to understand and operate for a wider range of people with protected characteristics.

Simplifying performance management

130. In addition, these proposals include measures to provide more discretion on how probation services manage offenders, for example by reducing the level of detail with which a programme requirement is specified by the court. In addition to those with other protected characteristics, this could potentially address the concern expressed during the consultation period that community orders need to take account of the different needs presented by women offenders compared to men.

131. The data on the current use of requirements is given below.

Potential race impacts

132. Data on the use of requirements by ethnicity are given in Table 16 (Annex A). The data shows that there was little variation in the use of the Accredited Program attached to Community Orders across ethnic groups (6-9 per cent). There was more variation for Suspended Sentence Orders (7-13 per cent). Use of drug treatment requirements were similar across all ethnic groups, ranging between 3 and 6 per cent. There was also little variation in the use of alcohol treatment

requirements attached to Community Orders or Suspended Sentence Orders.

133. Therefore there is the potential for a disproportionate impact in reforming community order requirements in relation to race.

Potential gender impacts

134. The data on use of requirements by gender are given in Table 17 (Annex A). The data shows that males were more likely to have an Accredited Program attached to their Community Order (10 per cent compared to 5 per cent). Similar patterns were shown for Suspended Sentence Orders (13 per cent compared to 6 per cent). There was little variation in the use of drug treatment requirements (7 per cent of women compared to 5 per cent of men for Community Orders). There was no difference in the use of alcohol treatment and mental health requirements for women and men.

135. Therefore there is the potential for a disproportionate impact in reforming community order requirements in relation to gender.

Potential age impacts

136. The data on use of requirements by age are given in Table 18 (Annex A). The data shows that there was some variation in the use of the Accredited Program attached to the Community Order, with 8 per cent of 18-20 year olds compared to 15 per cent of those aged 60 and over. For Suspended Sentence Orders there was little variation in their use across age groups (11-13 per cent). Use of drug treatment requirements was higher for those aged 25-39 (7-9 per cent for Community Orders) and lower for those aged 18-20 (1 per cent) and those aged 60 and over (0 per cent). A similar pattern was observed for Suspended Sentence Orders. Use of alcohol treatment increased slightly for older age groups, whilst there was little variation in the use of mental health requirements across age groups (0-1 per cent).

137. Therefore there is the potential for a disproportionate impact in reforming community order requirements in relation to age.

Other protected characteristics

138. Due to limitations in the available evidence we are unable to rule out any disproportionate impact, although representative organisations and individuals did not raise any additional concerns during the consultation.

139. As the proposals are implemented we will monitor the impacts of these reforms across all protected characteristics for which we have data, and take appropriate mitigating action if necessary.