



Ministry of
JUSTICE

New criminal offences

England and Wales

1st June 2009 – 31st May 2011

Statistics Bulletin

Published 8 December 2011

Preface

The Ministry of Justice committed in its 2011-2015 business plan to establish a gateway to scrutinise all legislation containing criminal offences. It also committed to publish annual figures as part of the planned information strategy.

This publication provides users with information concerning the activity of government departments in creating new criminal offences in England and Wales during the period 1st June 2010 to 30th May 2011, with comparison made to figures from the previous 12 months where available.

This is an Official Statistic produced by the Ministry of Justice to the standards specified in the Code of Practice for Official Statistics. The most recent assessment by the UK Statistics Authority can be found at:

- www.statisticsauthority.gov.uk/assessment/assessment-reports/index.html

Background

Within the normal constraints of collective Cabinet responsibility, individual Government departments have sole responsibility for the development of their own policies and legislation. As part of the Coalition commitment to prevent the proliferation of unnecessary new criminal offences, the Secretary of State for Justice established a Criminal Offences Gateway in June 2010 to scrutinise proposals to create new criminal offences (but not the policy underpinning the legislation). This is in order to test whether the offences proposed are necessary. As part of this commitment, the Ministry of Justice also pledged to counting the number of new criminal offences created each year across Government¹ and to publishing the resultant figures. This is the first time that a Government department has developed a system to record centrally and classify new criminal offences and make them publicly available.

Data sources and quality

The data for the 12 months ending 31 May 2011 have been supplied by an administrative system operated by the Criminal Offences Gateway Team in the Ministry of Justice. The data summarises legislation commenced between 1 June 2010 and 31 May 2011 and has been subject to strict quality assurance processes.

Data for the period 1st June 2009 to 31st May 2010 have been gathered via a retrospective count based on published legislation and to provide an indicative baseline against which the number of new criminal offences can be measured. This one off counting exercise has used the same counting rules as applied to the new criminal offences identified for the period 2010/11 and the legislation included in the retrospective counting exercise has been identified from the Government's Legislation database. The figures have been quality assured by both the criminal offences gateway team and Justice Statistics Analytical Services.

¹ This excludes offences created by the Ministry of Defence, these are specific to the armed forces and do not typically apply to the public at large.

The Ministry of Justice does not monitor repealed offences. The data on repeals has been provided from the Police National Legal Database (PNLD). The Ministry of Justice works in close collaboration with the PNLD team in maintaining a comprehensive list of criminal offences used in England and Wales. Repealed offences are counted on a different basis to that used by the Ministry of Justice for new offences and no comparison should be drawn between them.

Every effort is made to ensure that the figures presented in this publication are accurate and complete. Individual cases are quality assured and validated to ensure as much accuracy as possible. Caution should be taken when extrapolating from subsets of the data due to the small figures reported.

Methodology

Definitions

In this publication a new offence covers both entirely new criminal offences and new offences that replace or re-enact previous offences. The complexity of legislative drafting has meant it is not possible to present these separately.

A repealed offence is a criminal offence which is removed from the statute book by new legislation. The Police National Legal Database categorises individual offences by legislative provision, which differs from the counting methodology used by the Ministry of Justice to record new criminal offences. Even when an offence has been repealed, it may still be used to prosecute historical cases.

Counting rules

To identify a new criminal offence for the purposes of this publication, the following rules have been considered:

- behaviour: identify particular conduct being criminalised.
- legislative drafting: how is the provision drafted? Does it as a matter of common sense read as a single offence or does the drafting create a number of separate offences?
- penalties: does each offence counted carry a single maximum penalty? Or are any of the offences divided into their constituent elements with differing maximum penalties?

A legislative provision drafted as a single offence with a single maximum penalty would be counted as one offence, even if it targets a number of different types of conduct.

A legislative provision that appears to be drafted as a single criminal offence but which in fact criminalises diverse behaviour with differing maximum penalties would be counted as more than one offence, depending on the number of different penalties applied. An example is given below:

Example:

The Misuse of Drugs Act 1971

Large sections of the Act refer to a small number of substantive criminal behaviours, for example 'production of or being concerned in the production of a controlled drug' contrary to section 4(2) of the Misuse of Drugs Act 1971:

"Subject to section 28 of this Act, it is an offence for a person—

- (a) to produce a controlled drug in contravention of subsection (1) above; or*
- (b) to be concerned in the production of such a drug in contravention of that subsection by another."*

The drafting of the provision targets particular behaviour, as opposed to listing every type of drug which it is an offence to produce – thus it looks like a single offence.

However, there are three different maximum penalties available for this behaviour, reflecting the three different drug classifications (i.e. Class A, B and C), e.g. the production of heroin (Class A) carries a maximum sentence of life imprisonment, compared to 5 years for the production of ketamine (Class C).

Applying the Ministry of Justice's counting rules; section 4(2) would be counted as containing three offences:

- 1) an offence of producing or being concerned in the production of a Class A drug with a maximum custodial penalty of life imprisonment (on conviction on indictment) or 6 months (on summary conviction);
- 2) an offence of producing or being concerned in the production of a Class B drug with a maximum custodial penalty of 14 years' imprisonment (on conviction on indictment) or 6 months (on summary conviction), and;
- 3) an offence of producing or being concerned in the production of a Class C drug with a maximum custodial penalty of 14 years' imprisonment (on conviction on indictment) or 3 months (on summary conviction).

Legislation

This bulletin covers new criminal offences in primary and secondary legislation which takes effect in England and Wales. Legislation that applies only outside England and Wales or applies only at a limited local level has not been included.

Accordingly, the following legislative vehicles are not counted:

- Byelaws,
- Transport and Work Act orders,
- Harbour orders
- Private Bills,
- Hybrid Bills,
- Devolved legislation.

In addition, criminal offences created by the Ministry of Defence are not included. These are specific to the armed forces and do not apply to the public at large.

Timing

The point in time at which an offence is counted impacts on the number of offences included within a given period.

Offences in secondary legislation have been counted at the date they come into force. Since the commencement of primary legislation can be very complicated, criminal offences contained in Acts of Parliament are counted from the date of Royal Assent.

International obligations

The UK is a signatory to various international treaties and Government departments are responsible, where appropriate, for implementing into domestic law requirements arising from these international obligations. The Ministry of Justice have recorded where the offence is arising from international obligations, such as European Union legislation.

Example:

The Export Control Order (Libya) 2011

This Order puts in place criminal penalties for breach of directly applicable EU legislation prohibiting trade, technical assistance, financial assistance or brokering in equipment that may be used for internal repression in Libya.

Under the powers of section 2(2) of the European Communities Act 1972 the criminal offences arising from Council Regulation (EU) No.961/2010 of 25 October 2010 were introduced domestically.

Key findings

- In the 12 months ending May 2011 new criminal offences were contained in 33 pieces of legislation; this compares to 92 legislative provisions passed in the 12 months to May 2010.
- From the 33 pieces of legislation 174 new criminal offences were created, a fall of 75.6 per cent on the previous total of 712 for the 12 months ending May 2010.
- According to estimates based on data extracted from the Police National Legal Database, 155 offences were repealed in England and Wales in the 12 months ending May 2011. This compares to 569 offences repealed in the preceding 12 months to May 2010.

New offences

- In the 12 months ending May 2011 the number of legislative provisions containing new offences fell by 64.1 per cent compared to the 12 months ending May 2010. The number of new criminal offences contained within these provisions fell by 75.6 per cent compared to the 12 months ending May 2010.
- Of those offences created in the 12 months ending May 2011:
 - 82.2 per cent (143) were created in secondary legislation, whilst the remaining 17.8 per cent (31) were created in primary legislation.
 - Just over one per cent were indictable only offences (2), 71.8 per cent were triable either-way offences (125), and 27.0 per cent were summary only offences (47).
 - Over three-quarters (76.4 per cent) of the total new offences created in the 12 months to May 2011 carried a possible custodial sentence. The vast majority of these offences (68.4 per cent) were created by Her Majesty's Treasury.
 - 71.8 per cent (125 offences) were concerned with implementing European Union obligations – mostly sanctions in respect of countries involved in acts of terrorism or other conflict.
- Her Majesty's Treasury (HMT) created 93 new offences – accounting for 53.4 per cent of the total new offences in the 12 months ending May 2011. All the offences enforce EU or international sanctions such as asset-freezing measures (e.g. in relation to Iran, Libya, Syria and Somalia).

Repeals

- Just as the number of new offences created has decreased markedly compared to last year, so too have the number of offences being removed from the statute book. In the 12 months ending May 2010 there were 569 offences² repealed in England and Wales, this compares to 155 offences repealed in the 12 months ending May 2011.

- Of those offences repealed in the 12 months to May 2011:
 - 20.0 per cent were indictable only offences;
 - 56.8 per cent were triable-either way offences, and;
 - 23.2 per cent were summary only offences.

² Repealed offences are counted by the Police National Legal Database on a different basis to that used by the Ministry of Justice for new offence and no comparison should be drawn between them.

Table 1.1 Legislation coming into force and offences created by legislative vehicle and source, 1 June 2009 to 31 May 2011⁽¹⁾

	Number and percentage					
	12 months ending May 2010 ⁽¹⁾		12 months ending May 2011			
	Legislative provision	New offences	Legislative provision	New offences		
	%	%	%	%		
Primary	18	19.6	3	9.1	31	17.8
Secondary	74	80.4	30	90.9	143	82.2
Total	92	100.0	33	100.0	174	100.0
Domestic	48	52.2	4	12.1	25	14.4
EU	44	47.8	26	78.8	125	71.8
International	-	-	3	9.1	24	13.8
Total	92	100.0	33	100.0	174	100.0

(1) Data for this period are part of a one-off retrospective historical count of published legislation.

'-' = Nil

Note: Every effort is made to ensure that the figures presented are accurate and complete. Care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Table 1.2 Legislation coming into force and offences created by government department, 1 June 2009 to 31 May 2011

Department	12 months ending May 2010 ⁽¹⁾			Number and percentage 12 months ending May 2011				
	Legislative provision	%	New offences	%	New offences	%		
Cabinet Office	2	2.2	27	3.8	1	3.0	17	9.8
Department For Business, Innovation and Skills	9	9.8	90	12.6	5	15.2	27	15.5
Department For Children, Schools and Families	1	1.1	2	0.3	-	-	-	-
Department For Communities and Local Government	3	3.3	9	1.3	-	-	-	-
Department For Culture, Media and Sport	2	2.2	3	0.4	-	-	-	-
Department For Environment, Food and Rural Affairs	24	26.1	384	53.9	8	24.2	13	7.5
Department For Transport	25	27.2	76	10.7	4	12.1	13	7.5
Department For Work and Pensions	2	2.2	3	0.4	-	-	-	-
Department Of Health	12	13.0	37	5.2	1	3.0	1	0.6
Foreign and Commonwealth Office	1	1.1	10	1.4	1	3.0	7	4.0
Her Majesty's Revenue and Customs	2	2.2	3	0.4	-	-	-	-
Her Majesty's Treasury	3	3.3	17	2.4	12	36.4	93	53.4
Home Office	3	3.3	26	3.7	1	3.0	3	1.7
Ministry Of Justice	3	3.3	25	3.5	-	-	-	-
Total	92	100.0	712	100.0	33	100.0	174	100.0

(1) Data for this period are part of a one-off retrospective historical count of published legislation.

'-' = Nil

Note: Every effort is made to ensure that the figures presented are accurate and complete. Care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Table 1.3 New offences created by government department and legislative driver, 1 June 2009 to 31 May 2011

Department	12 months ending May 2010 ⁽¹⁾		12 months ending May 2011	
	Domestic	EU	Domestic	EU
		International		International
Cabinet Office	27	-	17	-
Department For Business, Innovation and Skills	71	19	-	27
Department For Children, Schools and Families	2	-	-	-
Department For Communities and Local Government	4	5	-	-
Department For Culture, Media and Sport	1	2	-	-
Department For Environment, Food and Rural Affairs	67	317	-	13
Department For Transport	21	55	5	8
Department For Work and Pensions	3	-	-	-
Department Of Health	17	20	-	1
Foreign and Commonwealth Office	10	-	-	7
Her Majesty's Revenue and Customs	3	-	-	-
Her Majesty's Treasury	1	16	-	76
Home Office	26	-	3	-
Ministry Of Justice	25	-	-	-
Total	278	434	25	125

(1) Data for this period are part of a one-off retrospective historical count of published legislation.

'-' = Nil

Note: Every effort is made to ensure that the figures presented are accurate and complete. Care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Table 1.4 New offences created by government department and offence type, 1 June 2010 to 31 May 2011

Department	Summary		TEW ⁽¹⁾		Indictable		Number and percentage	
		%		%		%	Imprisonable	%
Cabinet Office	4	8.5	13	10.4	-	-	9	6.8
Department For Business, Innovation and Skills	2	4.3	25	20.0	-	-	16	12.0
Department For Environment, Food and Rural Affairs	6	12.8	7	5.6	-	-	4	3.0
Department For Transport	11	23.4	2	1.6	-	-	3	2.3
Department Of Health	1	2.1	-	-	-	-	-	-
Foreign and Commonwealth Office	-	-	7	5.6	-	-	7	5.3
Her Majesty's Treasury	23	48.9	70	56.0	-	-	91	68.4
Home Office	-	-	1	0.8	2	100.0	3	2.3
Total	47	100.0	125	100.0	2	100.0	133	100.0

(1) Triable either-way offences. These offences can be tried either summarily or on indictment.

'-' = Nil

Note: Every effort is made to ensure that the figures presented are accurate and complete. Care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Table 1.5 Offences repealed by offence type, 1 June 2010 to 31 May 2011 ⁽¹⁾

	<i>Number and percentage (%)</i>			
	12 months ending			
	May 2010		May 2011	
Summary	277	48.7	36	23.2
TEW ⁽²⁾	287	50.4	88	56.8
Indictable	5	0.9	31	20.0
Total	569	100.0	155	100.0

(1) Data derived from Police National Legal Database (PNLD), Oct 2011.

(2) Triable either-way offences. These offences can be tried either summarily or on indictment.

'-' = Nil

Note: Every effort is made to ensure that the figures presented are accurate and complete. Care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Glossary of terms used in this publication

Byelaws

These are laws of local or limited application made by local councils or other bodies using powers granted by an Act of Parliament. Some byelaws are made by private companies or charities that exercise public or semi-public functions, such as airport operators, water companies or the National Trust.

Commencement date

This refers to the date on which a primary legislative provision comes into force. Different sections of the same Act of Parliament may be commenced at different times, and may even be commenced for different purposes at different times.

Criminal offence

An act punishable by law in criminal courts of England & Wales. This does not include civil offences that may be categorised as criminal for the purposes of ensuring adequate procedural safeguards by the European Court of Human Rights.

Harbour Order

Orders made under powers given in the Harbours Act 1964 for the effective management of a harbour. Formerly under the responsibility of the Department for Transport, applications are now dealt with via the Marine Management Organisation.

Hybrid Bills

Hybrid Bills mix the characteristics of Public and Private Bills. The changes to the law proposed by a Hybrid Bill would partly affect the general public but would also have a significant impact for specific individuals or groups. The Bills passed concerning the construction of the Channel Tunnel are examples of Hybrid Bills.

Indictable only offences

These are the most serious criminal offences and must be tried in the Crown Court. Indictable only offences include murder, manslaughter, rape and robbery.

Primary legislation

General term used to describe an Act of Parliament. It originates as a Bill and is debated in both the House of Commons and the House of Lords, and becomes an Act of Parliament on receiving Royal Assent from the Queen.

Private Bill

Private Bills are usually promoted by organisations, like local authorities or private companies, to give themselves powers beyond, or in conflict with, the general law. Private Bills only change the law as it applies to specific individuals or organisations, rather than the general public. Groups or individuals potentially affected by these changes can petition Parliament against the proposed Bill and present their objections to committees of MPs and Lords.

Public Bill

Public Bills change the law as it applies to the general population and are the most common type of Bill introduced in Parliament. Government ministers propose the majority of Public Bills - those put forward by other MPs or Lords are known as Private Members' Bills.

Re-enactment

Re-making a law that has been repealed.

Repeal

A specific type of legislative amendment where the effect is to remove part or all of a piece of legislation. Amending legislation may specify that words or provisions "shall be omitted" or "shall cease to have effect".

Royal Assent

When a Bill has completed all its Parliamentary stages in both Houses, it will become an Act of Parliament (law) when it receives Royal Assent. Royal Assent is the Monarch's formal agreement to the legislation. This is not necessarily the point at which the legislation comes into effect.

Secondary legislation

Secondary, delegated or subordinate legislation is made by a person or body (usually a Minister) under authority contained in primary legislation. It allows the provisions of an Act of Parliament to be brought into force, supplemented or altered without having to pass a new Act. Secondary legislation includes rules, regulations and orders.

Summary only offences

These offences may only be tried in the magistrates' court (unless a defendant is tried at the Crown Court for a mixture of indictable and summary only offences). Summary only offences are the least serious offences.

Transport and Work Act Order

This is the usual means of authorising a new railway or tramway specific scheme in England and Wales. Applications for orders are made to the relevant Secretary of State or to the Welsh Assembly Government. Applications are made by, or on behalf of, the promoters of the scheme. For more information visit the Department for Transport website here: www.dft.gov.uk/pgr/twa/

Triable either-way offences

These offences may be tried summarily at the magistrates' court or on indictment at the Crown Court, carrying a different maximum sentence depending on where they are heard. These offences include theft and burglary for example.

Contact points for further information

Current editions of this publication are available for download at

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