HOME OFFICE

STRENGTHENING PUNISHMENT IN THE COMMUNITY

A CONSULTATION DOCUMENT

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by Command of Her Majesty
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CONTENTS

CHAPTER 1

SUMMARY

1.1 Community sentences should provide forms of punishment which are effective and which reduce the risk of further crime. The recent publication of new and clearer National Standards for the present range of community sentences mark an important step forward towards this policy goal. But the present statutory framework places limits on the courts' discretion to determine the content of community sentences and combine their elements in a way which properly reflects both the seriousness of the offence and the suitability of the sentence for the individual offender.

1.2 This Green Paper accordingly sets out and seeks views on proposals for legislation for a comprehensive new framework for community sentences, which have been added to the statute book in a piecemeal way over many years. The Government is conscious that those working in the criminal justice system have had to adapt to much legislative change over a short period. It would wish to be satisfied that the changes now proposed would bring clear benefits in terms of reduction in reoffending by those sentenced to community penalties, enhanced reparation to the victims of crime, enhanced protection for potential victims and a larger measure of public support for the probation and social services working in partnership with other bodies to supervise offenders in the community. The Government would therefore welcome views from all those concerned with the criminal justice process on the extent to which the proposals outlined below meet these aims before deciding whether further legislation would be justified.

1.3 The main proposals in this Green Paper are:

- the introduction of a single integrated community sentence—which might be designated "the community sentence"—replacing and incorporating all the current orders available in the adult courts

- the matching of sentence elements to the three principal purposes of punishment in the community: restriction of liberty, reparation and prevention of reoffending
- increased discretion for courts to determine the content of community sentences in individual cases and to decide what restrictions and compulsions should apply to offenders in pursuance of the three principal purposes
- more consistent access for courts to information on the progress and outcome of community sentences
- the removal of the present requirement that offenders consent to community orders.

1.4 The essential proposed change is that the probation service should provide the community sentences which the courts consider to be required for individual offenders, rather than the courts having to select from the restricted range of sentences which the probation service is able to offer.

1.5 **Consultees are invited to comment on these proposals and also on options for applying them to juvenile offenders.**

Comments should be sent by 16 June 1995 to:

Home Office
Probation Service Division
Room 434
50 Queen Anne's Gate
London
SW1H 9AT

CHAPTER 2

INTRODUCTION

Background

2.1 Community sentences are probation orders, community service orders, combination orders (which combine probation and community service), curfew orders, supervision orders (for younger juvenile offenders) and attendance centre orders. Each year about 100,000 offenders in England and Wales are given community sentences to be supervised by probation and social services. Under the Criminal Justice Act 1991 and as amended by the 1993 Act these sentences are available only in relation to offences which are considered by the courts to be serious enough to warrant such a sentence. They are subject to the sentencing principles that the severity of the punishment should correspond to the seriousness of the offence to which it relates, taking account of previous convictions or failure to respond to previous sentences.

Purpose of Community Sentences

2.2 The Government's Green Paper 'Supervision and Punishment in the Community' Cm 966, published in 1990, stated that the main objective of the probation service is "to prevent reoffending by those under its supervision, and ultimately to reduce crime". The probation service pursues this objective through its supervision of offenders under a variety of community orders. Community sentences are intended to punish offenders by restricting their liberty without reducing their responsibility to lead their own lives in a law-abiding way. Offenders are confronted with the effects of their criminal behaviour on their victims and may be required to undertake some form of reparative work for the community. They will be helped, where possible, to lead a new life away from crime.

Present Law and Practice

2.3 The present array of community orders has been established by several Acts of Parliament. Probation was first recognised in statute in 1907. The Powers of Criminal Courts Act 1973 consolidated previous enactments on probation orders and

introduced community service orders. The Criminal Justice Act 1991 further extended the range of community orders, made the probation order for the first time a sentence of the court (rather than an alternative to a sentence) and set them all within a common framework.

2.4 Within that framework, the operation of community sentences is subject to inspection by HM Inspectorate of Probation and, in the case of supervision of juveniles by local authorities, by the Social Services Inspectorate. Required standards of practice to which all forms of supervision are expected to conform are set by the Government. National Standards for the Supervision of Offenders in the Community, first published in 1992 and extensively revised in 1995, have made an important contribution towards more consistent levels of service delivery.

This Paper

2.5 The purpose of this paper is to present proposals for a revised structure of community penalties which would provide the courts with greater flexibility in the range and mix of community orders they can make, as well as giving them a leading role in determining their content.

2.6 Part I reviews the current statutory framework and identifies some of the difficulties presently faced by sentencers in applying the 1991 Act principles of proportionality within the community sentence category. The present arrangements suffer from the drawback that probation and supervision orders do not appear to the public to offer sufficient punishment while community service orders, which do, are not expressly aimed at preventing further offending.

2.7 Part II outlines the proposals for a single integrated community sentence, which would incorporate all the existing community orders and provide the courts with greater flexibility of sentencing options. The proposed new community sentence would allow courts greater freedom in combining the components of existing community orders and more say in the manner of their delivery. The new sentence would operate within the existing sentencing framework and build on the developments in community punishment over recent years.

PART I

CHAPTER 3

PRESENT LAW AND STRUCTURE OF COMMUNITY SENTENCES

Types of Community Sentence

3.1 The courts currently have available to them a range of community orders for adult offenders: probation orders, with or without additional requirements, community service orders, combination orders and attendance centre orders (for those aged 10-20 years inclusive); all but the latter supervised by the probation service. Community service and combination orders are currently only available as penalties for imprisonable offences.

3.2 In most cases, community orders are discrete penalties and are not combined with each other in a single sentence, although an individual offender may be subject to a number of concurrent orders for different offences. Recent changes have introduced a degree of flexibility. The combination order, introduced by the 1991 Act, permits a limited amount of community service to be combined with probation supervision. Curfew orders, also introduced by the 1991 Act but not yet implemented, could in principle be combined with other orders. Attendance centre orders, however, cannot be combined in this way under current legislation.

3.3 For offenders sentenced in the Youth Court, the range of community orders available depends on the age of the offender. Probation orders and community service orders are **not** available for offenders under 16 years. However, the courts may impose an attendance centre order from 10 years or a supervision order for offenders aged between 10 and 17. A supervision order may incorporate a variety of specified conditions and is supervised by social services departments or the probation service.

Recent Development of Community Sentences

3.4 Community sentences have developed piecemeal over many years. The last substantively new penalty to be introduced was community service in 1973. The

framework of proportionality reflected in the 1991 Act, as amended by the 1993 Act, requires that community penalties can only be imposed where the relevant offences, taking account of previous offences or failure to respond to previous sentences, are "serious enough" for such a sentence but not "so serious" that only custody is justified. Community sentences are therefore designed to fill the gap between offences for which a fine or discharge is appropriate, and those for which custody is judged to be required. In practice, this intermediate category is both wide and varied and there can be difficulties in ensuring that sentences include elements that are both effective and appropriate.

3.5 One of the key aims of the 1991 Act was to ensure that all community orders were effective punishments in their own right. The range of sentences was extended by the introduction of the combination order. This allows courts to combine up to 100 hours community service with 1–3 years probation supervision. About half currently include the maximum community service hours.

3.6 The 1991 Act also converted probation orders into sentences in their own right. Previously, probation orders were imposed as an alternative to the court dealing with an offender in some other way. Under these circumstances, if an offender breached the conditions of the order or committed a further offence he or she would be brought back to court and could be sentenced for the original offence as well as the new one.

3.7 In making probation orders sentences of the court, the arrangements in respect of further offences committed during the life of an order have been brought into line with those for other sentences, including custody, fines and community service orders, whereby a subsequent conviction does not in itself constitute a breach of the order. An offender can be breached and punished for failing to comply with the terms of the order, and in cases of serious or repeated non-compliance the order may be revoked and the offender re-sentenced. If the original offence was imprisonable, the court may then impose a custodial sentence.

Curfew Orders

3.8 The Criminal Justice Act 1991 included provisions for the introduction of curfew orders, supported by electronic or other monitoring. The Criminal Justice and Public Order Act 1994 enables the curfew order provisions to be brought into effect on an area by area basis, enabling the planned pilot trials to be conducted during 1995. The trials will provide an indication of the possible future role of electronic monitoring associated with curfew orders in the criminal justice system. Curfew orders will extend the range and flexibility of sentencing options available to the courts, since they may be imposed in isolation or in combination with another community order.

Probation Service Standards of Service

3.9 National Standards for the Supervision of Offenders in the Community were published in October 1992. The 1992 Standards set out the requirements for probation and social services work with offenders and provided a framework for good practice in terms of supervision and the management of risk. The Standards also provided for monitoring and internal review to ensure that standards were met and set out a basis of accountability.

3.10 Independent external review is provided by Her Majesty's Inspectorate of Probation (HMIP). HMIP is responsible to the Home Secretary for inspecting and reporting on the activities carried out by or on behalf of the probation service. This does not, at present, include inspection of attendance centres, most of which are run by the police.

3.11 National Standards provide a broad framework of requirements but they still allow for considerable variation of practice, both as to **content** of any individual supervision programme and the **intensity** of the supervision itself. At the time of their introduction, it was made clear that the 1992 Standards would be subject to an early review.

3.12 The review took the form of a series of consultative workshops held between January and June 1994 designed to provide opportunities for discussion between sentencers, practitioners and people bringing a variety of experiences of the operation

of the standards in order to consider how they might be improved. There were further wider written consultations on each draft revised standard. The 1995 National Standards were issued on the 9th March 1995.

Role of the Courts

3.13 It is the role of the courts to apply the law by imposing community sentences, where appropriate, after considering the seriousness of the offence, its circumstances and those of the offender. The courts will also consider the case for compensation. To assist in these complex sentencing decisions, the court will, in most cases, have available a pre-sentence report (PSR). This will be read in the context of a range of information on the programmes and facilities which are available locally and which may form part of a community sentence. Participation in probation centre programmes lasting up to 60 days or in specified activities which may be provided by specialist independent providers may be made a requirement of a particular order. However, approximately 70% of probation orders are made without specified requirements and in these cases the detailed content of the orders is left largely to the discretion of the supervising probation service. In the case of community service orders, the nature of the work undertaken by offenders is also largely within the control of the probation service.

3.14 Where the court has required a PSR, this may include an indication of the expected level of supervision, together with some elements of the content of any particular order which is proposed. Following the National Standards review, an outline supervision plan will become a required feature of a PSR. This will provide courts with a clearer indication of the form the sentence they pass will take.

3.15 If the terms of a community order are breached, for example by repeated lateness at an attendance centre or failure to perform work properly under a community service order, an offender can be returned to court for failing to comply with the terms of the order.

3.16 The officer supervising the order will provide advice about the seriousness of the breach and the offender's response to supervision and progress under the order so

far to assist the court in reaching a decision about the appropriate course of action to be taken.

3.17 The options available to the court are: taking no further action; giving a warning about future conduct; the imposition of a separate penalty for the breach; or the revocation of the order and re-sentencing for the original offence. The original sentencing court will only know about the breach and the outcome of the proceedings where it continues to be the supervising court for the order and the offender has not moved to another area since it was made.

CHAPTER 4

WHY CHANGE IS NEEDED

The Framework

4.1 The Criminal Justice Act 1991 brought all community orders within an overall framework based on the principle of proportionality and extended the range of orders available. Although the combination order has introduced an additional element of flexibility, community orders remain as discrete sentencing options, with distinctive characteristics and strengths. The 1991 Act did not specifically address the problem of how to apply the principle of proportionality across the growing range of orders. Despite recent developments, the rigidities inherent in the present structure continue to place limitations on the courts' ability to match sentences with seriousness and suitability.

4.2 The piecemeal growth of community orders has also led to some anomalies which are becoming increasingly hard to sustain or justify. Breach procedures and the role and operation of the attendance centre order in particular have created difficulties.

4.3 In addition, there has been some concern that existing orders are not always implemented in the way the courts and public would wish, or enforced as rigorously as they should be. The proposals in Part II of this paper seek to address some of these concerns.

Public Perceptions

4.4 The criminal justice system can only operate effectively if it retains the confidence of society as a whole. It is the view of the Government that the role of community sentences is poorly understood and—perhaps as a result—that they have failed to command the confidence of the public despite the greater prominence and extra resources given to the probation service in recent years. Probation supervision is still widely regarded as a soft option. Although in many cases, this perception may be misconceived, it must be addressed. Both courts and the public have found some

difficulty in squaring their concept of the probation order (with its additionally high social work content) with the notion of a punishment involving a significant restriction of liberty.

4.5 The arrangements in respect of further offences committed whilst serving a probation order, which became a sentence of the court under the 1991 Act rather than an alternative to a sentence, have been brought into line with those for other sentences. In accordance with the principle that a sentence imposed for one offence should not be affected by the existence of a subsequent offence, the commission of a further offence is not itself the trigger for breach action. A probation order may be revoked and the offender re-sentenced if the court considers it to be "in the interests of justice". Whilst community orders may achieve the less obvious success of reducing the rate or seriousness of offending behaviour, it can nevertheless appear anomalous that an order imposed, at least in part, with the aim of preventing reoffending, may be left untouched by a further offence. The Government has therefore decided to consider whether reoffending should in future be a trigger for breach of community orders.

The Courts' Experience

4.6 There is evidence that courts have experienced some difficulties in applying the principle of proportionality to the intermediate band of offences to which community sentences apply. **Clarity** in the purposes of different sentencing options and **certainty** in the implementation of community sentences are necessary aids to consistent sentencing.

4.7 Community orders have grown up in response to different needs and have developed quite distinct identities: probation and supervision orders, with their origins in social work and welfare considerations; and the community service order (originally imposed as a direct alternative to custody), as a punishment with reparative features. When considering seriousness, the two orders are difficult to compare in terms of restriction of liberty or punishment, while under considerations of offender suitability, they offer quite different benefits; and yet both courts and the probation service need

to be able to position them against an assessment of seriousness. Many probation services have in the past made use of seriousness scales in an attempt to graduate community sentences. This practice was found to be undesirable because in some cases it led to over technical and legalistic PSRs which gave the appearance of usurping the role of the sentencer.

4.8 The present system, in which sentencers have to choose between discrete orders which do not properly equate to a scale of seriousness nor claim to address the same objectives, makes sentencing particularly difficult. While balancing the considerations of seriousness and suitability in an individual case will always be a difficult task for the courts, the Government believes that the existing restrictions on combining the various community disposals should be removed to allow sentencers the maximum freedom to develop a sentencing hierarchy.

4.9 It has been apparent to courts and the Government that there has existed a degree of variation in the **impact** of different community orders which has added to the difficulties in the way of consistent sentencing. In part, of course, the impact of any sentence will depend on the circumstances of the offender. For example, a community service order is likely to be more restrictive on the life of an employed compared with an unemployed offender, even if the number of hours is less.

4.10 These variations cannot be completely eliminated but courts deserve the assurance that the **implementation** of orders will be as consistent as possible. The 1995 National Standards tighten up on the minimum levels of supervision required under the various orders and have a major part to play in securing greater consistency.

4.11 In addition, the Government wishes to minimise uncertainty by clarifying the roles of different orders and making the purposes of different disposals more explicit. Greater transparency of purpose could serve to improve public confidence and understanding. If the courts are required to address the purposes of each community sentence in more detail, the Government believes that they should also have more discretion to determine its content.

Certainty of Content

4.12 Once a community sentence has been passed, the sentencing court often does not know in any detail the **content** of the supervision programme in an individual case. The 1995 National Standards require that an outline supervision plan is provided in the PSR and this will add to the court's knowledge, but this plan may be subject to alteration at a later stage. Unless an order is made subject to specific requirements, the court currently has little discretion over how a community sentence is implemented and will be unaware of the ways in which a planned programme may be altered during the life of the order. In many cases, the courts will not wish or need to play a more active role in the implementation of community orders, but the Government believes that they should be provided with the necessary information and discretion to do so if they see fit.

4.13 Where these problems and uncertainties do exist, many of them are best addressed through effective liaison between sentencers and the probation service. With more information, it is likely that the courts will often be content to accept the professional judgement of probation staff. The government has always recognised that good liaison is crucial to effective community sentencing and has proposed measures to give probation areas the freedom to develop their own more flexible liaison structures. In advance of legislation, the probation service and probation committees have been encouraged to review their present liaison arrangements and many have done so. Comprehensive information in the retiring rooms on current programmes, joint sentencer/probation service training events and personal visits to probation facilities all have a role to play.

Certainty of Outcome

4.14 Uncertainty over the content of community sentences extends to their outcome. The original sentencing court may never know whether an order has been successfully completed or what action has been taken in the event of breach. In addition, since reoffending on its own is not an automatic trigger for breach, the court may never know if there has been reoffending during the currency of an otherwise

"successful" order; even though one objective in passing such a sentence may specifically have been the prevention of reoffending. Thus the courts, as a principal user of the probation service, remain largely uninformed as to the effectiveness of their sentence in any particular case.

4.15 Some courts already have arrangements to produce progress reports during the course of an order, and Crown Court judges in particular may receive such reports in more serious cases, such as offenders on intensive probation programmes. The basis for such requests lies in Rule 38 of the Probation Rules 1984, but knowledge and use of this rule varies widely between areas and from court to court.

Effectiveness

4.16 The introduction of an outline supervision plan in all PSRs and the growing familiarity with National Standards should help sentencers to gain a better understanding of the content of different orders and the restrictions and expectations they place on offenders. This in turn should help the courts to target their community sentences in the most effective way.

4.17 Having determined its sentence, there may be some instances in which a court wishes to have greater certainty that a supervision plan will be implemented in a particular way. For example, some recent research suggests that supervision programmes that are clearly structured at the outset, involve directed work and which are consistently carried out as planned, produce better results in terms of lower rates of reoffending than less prescriptive methods.

4.18 The Government believes that there is a good case for empowering the courts to take a more active role in setting the content of community sentences and not simply their maximum length. The Government also believes that the role of feed-back reports should be clarified. Any changes must, of course, be justified in terms of court satisfaction and more effective community sentencing.

Consent

4.19 Under present law, any offender who is made subject to a probation, community service or combination order must give his consent in court before the

order can be made. There are different origins for this requirement for different orders. In the case of probation orders, these were first introduced **as an alternative to a sentence.** In return for the court agreeing not to impose a sentence on the defendant, he or she had to agree to the conditions of the order and consent to be bound by them. Without this consent, the court could not make the order and would be unable to take action if any of the conditions were breached. The 1991 Act made the probation order a sentence of the court, but did not remove the requirement to obtain the consent of the offender.

4.20 Consent to a community service order was made a requirement because such an order involves compulsory work. The European Convention on Human Rights (ECHR) forbids "forced or compulsory labour" (Article 4.2). It was the Criminal Justice Act 1972 (introducing community service orders) which first contained a requirement for consent to be given, although it was felt at the time that such a requirement could make the community service order provisions less effective. A re-examination of the requirements set by Article 4 in the light of subsequent case law (*Van der Mussele*, European Court of Human Rights judgment 29 September 1983, Series A, vol. 70) would suggest that earlier legislators might have been over-cautious in their interpretation. Although Article 4 of the ECHR does not define what is meant by "forced or compulsory labour", Article 4.3 (a) does provide for an exception to this category for "any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention". It is the case that a community service order is imposed following court proceedings offering all the guarantees required, not only by Article 5 but also by Article 6, including all the normal guarantees of a criminal trial. Community service also satisfies other criteria developed by the Commission and the Court, namely that it is not unjust or oppressive, it does not involve avoidable hardship and it is directed at the rehabilitation of the offender and reparation to society.

4.21 Any unpaid work undertaken as a part of a community sentence, therefore, follows the same objectives and contains the same safeguards against abuse as work done in the course of a sentence of detention. A community sentence does not involve detention and is, therefore, less restrictive.

4.22 Changes made by the 1991 Act had no direct implications for the requirement for consent in relation to community service, but the altered status of probation orders has implications for the rationale for consent to these orders. Probation is no longer a voluntary undertaking accepted by the court on condition of good behaviour, but a sentence of the court which requires compliance. Consent is not required at all for an attendance centre order.

4.23 Outside the community penalty area consent is not required for other penalties imposed by the court: for a sentence of imprisonment, which involves a far greater restriction of liberty, or for the imposition of a fine. In addition, it is open to doubt whether the consent given by a defendant is, in the circumstances of a court appearance, either meaningful or unconstrained, given that the effective choice is often between consenting to a community penalty or risking imprisonment.[1] Consent at the point of sentence alone is not a useful requirement for community sentences. It is more important that the offender shows continuing willingness to comply with the supervisor throughout the sentence. The Government therefore believes that the need for consent to any community penalty should be abolished.

Suitability

4.24 The 1991 Act established the principle that when a community sentence is passed it should be, inter alia, that which is "the most suitable for the offender". Offenders' circumstances are complex and courts may recognise a variety of needs. The current range of community orders, developed piecemeal over many years, limits the courts' flexibility to impose sentences with elements of both punishment **and** rehabilitation which could often be most appropriate and provide the public with greater reassurance and confidence in the sentence. The structure of the existing community sentences suggests implicitly that in the majority of cases either probation, with the purpose of securing rehabilitation, the protection of the public and the prevention of reoffending, or community service, with the aim of re-integrating the offender into the community through positive and demanding unpaid work and

[1] The Court of Appeal (in R. V. Marquis, Cr. App. R. 288) has ruled that the offender's consent to a community penalty should be based on a full appreciation and consideration of what the realistic alternatives are.

reparation to the community, will be appropriate, and this perception can be limiting on sentencers. Greater flexibility could ensure that courts are able to make community orders which impose the appropriate restriction of liberty on the offender but at the same time are the most suitable for that particular offender having regard to the other elements of punishment: reparation and the prevention of reoffending.

4.25 The combination order was a first step towards increasing flexibility within the present range of community orders, combining as it does community service with probation supervision. There has been some uncertainty about how combination orders should be regarded and this uncertainty exemplifies some of the unsatisfactory features of the present arrangements which the proposals in Part II of this paper are intended to address.

4.26 Under current provisions, combination orders, like community service orders, can only be given for offences punishable by imprisonment. A combination order can include up to 100 hours of community service in addition to a probation order and it has been characterised as providing a restriction of liberty which is appropriate for amongst the most serious offenders. However, lesser combination orders, involving a limited amount of community service with the minimum of one year's probation supervision, have not been so regarded by the courts.

4.27 The 1992 National Standards anticipated that combination orders would be limited to the more serious offenders and more frequently used in the Crown Court than the magistrates' courts. In practice, out of a total of 9000 orders made in 1993, 70% were made by magistrates in the adult court and 7% in the Youth Court. They were also imposed on a wider group of offenders than was anticipated in the original Standards, reflecting some diversion from the view that the combination order can only be justified for the most serious offences within the community penalty band. The 1995 Standards recognise that the application of the combination order to a wider range of offenders is appropriate.

4.28 The ready acceptance and use of the combination order tends to suggest that the courts see this type of flexibility as a useful addition to their sentencing options and that they might welcome a further extension to their powers to combine various levels of available penalties in seeking the most appropriate sentence.

PART II

CHAPTER 5

AN INTEGRATED COMMUNITY SENTENCE: OUTLINE AND RATIONALE

5.1 In response to the difficulties experienced with the present range of community orders and conscious of the need to increase public confidence, the Government is seeking to strengthen the hands of the courts by removing unnecessary restrictions on their ability to match sentences to offences and offenders.

5.2 As well as greater flexibility of sentencing options, the Government proposes to give the courts more assurance of, and greater control over, the content of community sentences. The objectives in imposing a community sentence will be made more explicit, increasing the transparency of community sentencing, and the court will have more certainty that the purposes of an order will be met in an agreed and accountable way.

5.3 The Government is also concerned to tighten up the enforcement of community sentences. Both the courts and the public have a right to expect that community sentences are demanding of offenders and that sentences imposed are implemented as the court intended. The proposals include measures to give the courts more discretion over the content of community orders while encouraging them to obtain information on the progress of offenders.

5.4 With these aims in view, the Government proposes to introduce a single integrated sentence incorporating and extending the present range of community orders. An offender convicted of an offence so serious that a community sentence would be appropriate would thus no longer be sentenced to probation, community service or another specific order but instead to the new sentence, which might be termed "the community sentence". However, within each order there would be three principal elements:

- restriction of liberty
- reparation
- prevention of reoffending

5.5 In every case where a community sentence was being considered, the court's role would be to address each of these three elements; to decide whether one or more should be met in the sentence passed; and to determine the balance to be struck between the elements chosen. It would **not** be necessary to include a separate provision for each element, although in more serious or complex cases this could be done. The court would have available to it, singly or in combination, **all** the ingredients of existing community orders.

5.6 The overall impact of the sentence in terms of restriction of liberty would have to be commensurate with the seriousness of the offence, allowing for any aggravating or mitigating circumstances. It is, therefore, not intended that any new community sentence should depart from the sentencing framework of the 1991 Act, or that the maximum length of the community sentence should be greater than at present. It is proposed to set out expressly the three elements of the community sentence in any new legislation.

Question:

- Do the three elements match sentencers' concerns in considering appropriate and effective community sentences?

CHAPTER 6

PROPOSED SCHEME: STRUCTURE

6.1 Under a new integrated community sentence, the present array of orders would become options within a set of elements from which courts could choose, either singly or in combination. There would also be scope for some additional elements which are not now available to the courts and which might be useful in individual cases. This development is intended to provide sentencers with greater freedom to match a sentence with an individual offence and offender, giving weight to both seriousness and suitability. The elements of punishment would be selected to meet one or more of the three purposes of the sentence most appropriate for that case: restriction of liberty, reparation and prevention of reoffending.

6.2 The first purpose, **restriction of liberty,** could be met in its simplest form, for example with a curfew or an attendance centre order. Alternatively it could be met by a penalty which also satisfied another element; for example a court might consider that a certain number of hours of community service was sufficient to meet the demand for both reparation and restriction of liberty. Probation supervision also involves some restriction of liberty and the courts will need to consider on a case by case basis whether it involves enough to meet this element of the punishment.

6.3 Restriction of liberty could also take the form of a requirement to participate in specified activities or to forego specified activities. The present law provides for additional requirements to be added to probation orders where these are in the interests of securing the offender's rehabilitation, protecting the public from harm or preventing further crime on his part. In principle these powers are wide-ranging but in practice there appears to be considerable uncertainty on the part of both the probation service and sentencers about their applicability. They are also restricted to probation. For example, at present an offender may be required to reside in an approved probation hostel as a condition of a probation order but not of a community service order. It might nevertheless be desirable and appropriate for his liberty to be additionally restricted in this way to reinforce the work discipline. A different kind of

restriction of liberty might be appropriate in the case of an offender whose victim or separated wife should be protected from further contact with him: he could therefore, as part of the sentence, be required not to go to their homes. A further example is provided by an activity comprising reparation but falling short of community service as now practised (for example by probation and social services mediation and reparation schemes working for and with the victims of crime). These considerations point to establishing clearly the courts' power to include requirements as to activities as possible elements of the community sentence in their own right rather than as ancillary to probation alone.

6.4 **Reparation** could take one or both of two forms: compensation to individual victims or unpaid work for the benefit of the wider community. As at present, the court would specify the beneficiary and the amount of any financial compensation. There would, however, be the additional advantage that the possibility of compensation would be more systematically addressed in all cases involving a community order than may be the case at present, for example, by requiring an assessment in every case on the suitability of reparative activities. As far as reparation to the wider community is concerned, this could, and in many cases would, take the form of community service as at present with the court having the discretion to indicate the kind of work to which the probation service should consider assigning the offender if practicable. But there would be additional flexibility so that, for example, some specific or one-off form of reparation could be added to a sentence whose primary focus was on restriction of liberty.

6.5 Many existing community orders specifically aim to assist in the **prevention of reoffending** and this will remain a central purpose of the new integrated sentence. The Government envisages that probation and social services would, in consultation with the courts, provide a range of programmes designed to reduce reoffending which could be modified as necessary to meet any special requirements of individual cases. Such programmes could include, for example, alcohol education, offence-focused group work, purposeful outdoor activities, remedial literacy tuition or other forms of training designed to improve employability. Each probation service would be expected to have a portfolio of programme packages, ranging from the very intensive

and covering the full maximum three years of supervision permitted to the short and specific. Some of these elements are best provided from within the probation service's own resources and expertise; others could more effectively and efficiently be bought in or provided in partnership with other bodies or agencies. Each programme would have to be managed or co-ordinated by a designated probation officer who would be responsible for the personal supervision and support of the offender through regular contact and for enforcement of compliance with the required elements of the sentence. But it would be for the court to decide at the point of sentence which of the core programmes to specify (or whether they should be modified in any way appropriate for that case).

6.6 This change of emphasis towards programmes is not intended to diminish the importance of the personal interaction between probation officer and offender, which is often a key to effective motivation to change attitude and behaviour. It is consistent with the competencies to perform work activities to expected standards required of probation staff defined in 1994. It is, however, intended to make the task of reducing reoffending more consistent and systematic.

6.7 If the Government decides to introduce legislation for a new integrated sentence, the courts will have a new freedom to combine a wider variety of ingredients. Wider choice and potentially more complex orders, while offering the opportunity for more closely targeted sentences, also have the potential for confusion and the overloading of sentences with unnecessary elements.

6.8 However, the responsibility on the part of the courts to give consideration to the applicability of the three purposes which the elements could serve in an individual case should itself facilitate a structured approach to the sentencing decision. The use of discretion in relation to the selection of ingredients by the courts of first instance, will be subject to the supervision of the superior courts in the usual way so that sentencing guidelines can be expected to crystallize through key judgments.

Question:

- Will the courts' ability to impose a more flexible community order lead to more appropriate and effective sentencing?

CHAPTER 7

PROPOSED SCHEME: SCOPE

Young Offenders

7.1 In sentencing offenders under 18, the courts are required to consider the welfare of children and young persons who appear before them. Such considerations are underpinned by a number of conventional obligations including the UN Convention on the Rights of the Child. This constitutes an important distinction between the sentencing of adults and young offenders. In terms of sentencing provisions for adults and young offenders 16 and 17 year olds enjoy a transitional status as "near adults" and community sentencing arrangements for the age range 10-17 years involve a number of distinctive features. The range of sentences available, the supervising agencies and breach arrangements all differ from the adult courts, and there is the additional element of parental involvement and responsibility.

7.2 In terms of the different community orders available in the Youth Court, the supervision order is available for 10-17 year olds but not adults. A wide variety of requirements can be added. The attendance centre order bridges the two courts and is available for 10-20 year olds. Probation, community service and combination orders are available for offenders aged 16 and above as will be curfew orders.

7.3 On breach arrangements, custody is not available for breach of supervision orders, other than those supervision orders and specified activities which have been specifically made as an alternative to custody, or attendance centre orders when made in respect of offenders under 15 years old.

7.4 Local authority social services departments play a substantial role in the Youth Court, particularly in relation to the writing of PSRs and the supervision of supervision orders. The probation service tends to be more involved with the older group of offenders; in addition a variety of voluntary sector organisations play an important role.

7.5 In the context of these differentiating features, it would not be possible simply to apply an integrated community sentence model to all offenders under 18. Nor

would it be desirable, or even possible, to leave existing arrangements for under 18s as they are and commence the new sentence at age 18. There would seem to be three main options.

7.6 Under the first, the basic reformed community sentence model would apply (with a number of modifications, including the need to reflect the developing nature of children and young persons) to **those under 18.** The supervision order and attendance centre order would be subsumed under the terms of the new order. This order would thus rely on considerations of the same elements as in the case of adults—restriction of liberty, reparation and reducing reoffending—although the youthfulness of offenders might be reflected by reduced maximum thresholds (or a number of maxima for different age bands). The main difference between these arrangements and the current ones would be the introduction of a more formalised reparative requirement for the entire age range; currently community service orders are only available for 16 year olds and above, and while supervision orders with their multifarious requirements can contain elements of a reparative nature, these are a good deal less formal than the existing community service order. The elements of the new sentence met by probation centres in the adult sentence could be met by involvement in what are currently intermediate treatment or specified activities.

7.7 Under the second option, the basic community sentence model would apply to offenders **from the age of 16 upwards.** For those under 16, a more radically different set of arrangements would be devised. For 16 year olds and above, this makes some considerable sense as all the community sentences which are being subsumed under the new order are currently available for them. Also currently available is the supervision order, which might conceivably continue to be available for 16 and 17 year olds as a sentence **separate** from the new generalised community order or simply be subsumed by it.

7.8 For under 16s the option would be to retain the existing range of community sentences; i.e. supervision order and attendance centre order as separate sentences, or to develop an analogous new community sentence combining elements more appropriate to the age range involved (e.g. perhaps emphasising school attendance, parental involvement and reducing the emphasis on formal reparation).

7.9 Under a third model the basic new community order would apply only to those **aged 18 years** and above. For those under 18 a new system along the lines of that described in paragraph 7.6 would be created. A variant of this would be to give courts a flexibility to select either the adult or the juvenile arrangements for 16 and 17 year olds. This would allow the transitional status of this age group to be retained in the new framework.

7.10 Whatever model was accepted consideration would need to be given to the question of which agency or agencies should supervise community orders imposed on offenders under the age of 18. Currently, responsibility for supervision orders is shared between local authority social services departments and probation services. Recent inspections by the Social Services Inspectorate and HM Inspectorate of Probation have drawn attention to the extent to which arrangements vary from one area to another, without indicating strongly the relative effectiveness of any particular configuration of services.

7.11 HM Inspectorate of Probation could not recommend any particular management model as best practice. None was without its problems. However, combined teams, where local authority and probation staff worked together but were managed separately, appeared least satisfactory when compared with the efficiency of separate agency-based teams or the effectiveness of integrated teams.

7.12 The 1995 National Standard for supervision orders stresses the importance of effective co-ordinated arrangements for the assessment and supervision of young offenders, to ensure that programmes and, where relevant, accommodation are properly matched to need. In the absence of clear evidence of best practice the standard leaves the form of those arrangements to be determined locally.

7.13 The introduction of a new sentence covering all or part of the Youth Court age range would provide an opportunity for the distribution of responsibilities to be reconsidered in the light of further work on effectiveness to be undertaken. A number of options are possible. For example, lead responsibility for the supervision of all offenders above a prescribed age could be assigned to the probation service, with

social services taking the lead in the supervision of all offenders below it. Alternatively, where there is integrated working it may be necessary to prescribe which agency takes the lead. On the other hand, there may be arguments for retaining the flexibility of the status quo. Other structures may present themselves in the light of the sentencing framework which finally emerges.

7.14 **The Government would welcome views on whether change to the existing arrangements for under 18s is required and if so on what form it should take.**

Throughcare

7.15 Although many of the principles of the proposed scheme for community sentences might be adapted to the period of an offender's supervision under licence following release from prison, it is not the Government's intention to extend the scope of these proposals to cover the more serious offences which now attract custodial sentences.

Imprisonable/Non-Imprisonable Offences

7.16 There are a large number of summary offences, for which imprisonment is not available. All these offences can attract a probation order but not community service. In 1993, of the 453,100 people sentenced for **all** summary (non-motoring) offences only 4,700 were made subject to probation orders, of which nearly all were for summary offences for which imprisonment **was** available.[1]

7.17 The vast majority of those summary offences which are not imprisonable are not ones where a probation order would, in any event, be likely to be appropriate; many of the offences are regulatory in nature and unlikely to be serious enough for a community penalty of any description.

7.18 Under the new integrated sentence, it would not be practical to replicate current arrangements, leaving probation supervision available for the whole range of offences with some other ingredients only available for imprisonable offences. The

[1] 3,178 accounted for by the four offences of assaulting a police officer, common assault, taking without consent and summary criminal damage.

flexibility of the new order and the integration of the ingredients would be undermined. The two viable options are to restrict the new order, including probation supervision, to imprisonable offences or to extend it, including community service, to non-imprisonable offences.

7.19 In practical terms, restricting the new integrated order to those offences that are imprisonable would not be removing from the courts a sentencing option which they have used with any frequency. It could be argued, given the wide availability of custodial sentences in the present structure of maximum penalties, that those offences which currently do not carry a term of imprisonment would rarely, if ever, be serious enough for a community sentence.

7.20 However, it is also the case that extending the new penalty to all offences would have no more than marginal sentencing effects. In addition, it could reasonably be suggested that, as community penalties are no longer alternatives to custody, it would be more appropriate if the whole range of ingredients was available for cases where custody is not.

Questions:

- Should the integrated sentence be available to the Youth Court and if so how?
- Should the integrated sentence be available in the adult court for all offences or for imprisonable offences only?

CHAPTER 8

THE COMMISSIONING COURT AND THE ROLE OF THE PRE-SENTENCE REPORT (PSR)

8.1 The new community sentence is designed to give courts more choice and flexibility but will also provide an opportunity for the probation service to develop its assessment skills and to offer more detailed information and advice on supervision programmes and facilities. This implies a continuing role for the PSR and underlines the importance of the 1995 National Standards in assuring the courts that PSRs will be of high quality in terms both of content and timeliness.

8.2 To assist in the preparation of relevant PSRs and supervision plans, when the PSR is commissioned the court should be able to give a preliminary non-binding indication of the view which it takes of the seriousness and, where appropriate, an indication of what, if any, emphasis there should be, within the overall restriction on liberty imposed by the sentence, on reparation and the prevention of re-offending. The present law allows the courts to give preliminary indications of seriousness in some circumstances, but some have been cautious in doing so in order not to prejudice the sentencing options at a later hearing (which might be before a differently constituted court).

8.3 It is not envisaged that courts should be under any **duty** to give an indication when asking for a PSR. There may well be circumstances in which this would be neither appropriate nor prudent, for example in the Crown Court if a guilty plea is entered and the case is not formally opened or in circumstances where very few facts are known. Additional information about both the offence and the offender are often revealed during preparation of a PSR of which the commissioning court could not be aware.

8.4 Nevertheless, preliminary indications given by the court can be an important means to ensure that the PSR is properly targeted and relevant to the court's needs. The courts must be provided with adequate information to enable them to make good

use of the enlarged powers envisaged in this Green Paper. The primary source of this information is likely to be the PSR and the probation service will be better able to provide relevant and concise information and advice in each case if it is given some guidance on what is in the court's mind. This could contribute to cost savings if unrealistic proposals leading to further adjournments are avoided. Information provided in specific cases will need to be set against background knowledge of local facilities and programmes.

8.5 The Government would welcome views on whether it would be helpful, against this background, to bring forward legislation to clarify the non-binding nature of any indication of seriousness given solely to guide the PSR writer, and to confirm the court's power to impose a custodial or more severe community sentence following the PSR irrespective of any indication which may have been given. The PSR writer should provide an analysis of the offence and the offender and an assessment of the most suitable ingredients for a community sentence, **taking account of any preliminary indications given by the court.** A single package will be proposed which may contain one or more ingredients to meet the three possible sentencing elements.

8.6 The package should include an outline supervision plan, where a supervision element is proposed and, where an element of unpaid work is proposed, specify the type of unpaid work which would be suitable for the offender. Suitable proportions of each element of the sentence should be proposed. It may also be appropriate for the report to explain what other options among the ingredients have been considered and why they are regarded as less suitable.

8.7 The choice of proposal should address the elements of the integrated sentence: restriction of liberty, reparation, prevention of reoffending, and have regard to: protection of the public; the range of programmes and activities available locally (including those available in partnership with the independent sector) and the type of offender for whom they are most suited; and appear to stand a reasonable prospect of successful completion by the offender. The PSR will also need to include an assessment of the offender's attitude to the proposed sentence ingredients, in

particular to any community service, as an indication of the likely level of compliance with its terms. This will be particularly important if the requirement for consent to a community sentence is removed.

Questions:

- Will preliminary indications which address the principal objectives of a community sentence produce better targeted PSRs?
- Is there a case for legislation, to give the courts clear authority to give such an indication without requiring them to do so?

CHAPTER 9

THE SENTENCING COURT

Determining the Elements of the Sentence

9.1 The PSR should provide the sentencing court with a proposed integrated community sentence, drawn up in the light of any indications given by the commissioning court. Additional information may, of course, modify a court's initial assessment of seriousness or, more likely, the balance between the required elements of a community sentence; for example, giving prevention of reoffending a higher priority than restriction of liberty. Taking account of all the information available, the court will determine the purposes of the sentence and the elements chosen to secure them: the amount of any compensation, the hours of community service to be carried out etc.

9.2 It will be important that courts do not overload the sentences with unnecessary ingredients. In addition to considerations of proportionality, if the Government decides to legislate to bring in the new integrated sentence, **it will have to be delivered within planned resources**. Any greatly increased overall demand can only lead to a reduction in the level of service. Greater choice should not necessarily entail greater consumption.

9.3 It is proposed that the sentencing court, if it so chooses, should be able to determine in more detail the way in which the ingredients of the sentence are delivered. For example, a court could indicate the broad type of unpaid work the offender should do: that it should be physically demanding, making good damage caused by vandalism, or be work directly related to the needs of victims, the disabled or the elderly. The probation service will need to keep the courts informed of current work projects.

9.4 National Standards lay down the expected levels of contact with offenders under the different orders currently in force. It is proposed that courts, where appropriate, should also be able to specify the intensity of supervision required for an

individual offender. In many cases courts may choose to confirm the contact level set out in the supervision plan, but the court will have discretion to vary this. The court will also be encouraged to indicate the objectives of each ingredient of the sentence so that progress can be measured against them.

9.5 By these means, not only will the supervising probation service and the offender have a clearer idea of the court's expectations, but this greater transparency of purpose will also extend to victims and the wider public.

Feed-Back Reports

9.6 The proposals set out so far have been aimed at securing greater flexibility and certainty for the courts and greater transparency in the objectives of community sentencing. Courts will be able to combine sentence elements and specify their character more closely. Most probation services already provide information to sentencers on completion rates of the different types of order, but less information is provided on the progress and outcome of individual sentences. In many straightforward cases information on progress will not be required, but in more serious or complex cases the Government believes that courts may wish to have feed-back from the supervising officer.

9.7 Powers already exist for courts to require a report on the progress of an offender under supervision (Probation Rules 1984, Rule 38). However, Rule 38 appears to be little-known and in most probation areas its provisions are rarely exercised. The Government does not propose to extend the power to call for reports but believes that feed-back reports can provide an additional resource for sentencers in specific cases of concern. Probation services are not equipped to deal with a large number of requests for routine reports, so it is desirable that the purpose of such reports and the circumstances in which they would be appropriate should be considered in consultation between the probation service and sentencers. Feed-back reports might, for example, be particularly useful in the case of an offender who had already been given a community sentence for a previous offence or where participation in a new drug or alcohol treatment programme was to form part of the sentence.

9.8 When a case fits the agreed criteria, the court should consider at what point in the sentence a written report is required. The request and date required should be announced in open court. The report would be sent to the sentencing court and should specifically address any objectives of the sentences stated in court and/or identified in the supervision plan. It should also include the amounts remaining of each element e.g.hours of community service, days of supervised activities etc and details of any further offending. Further offending whether or not it triggers breach proceedings, will be relevant to considering the effectiveness of any work done to prevent reoffending.

9.9 The provision of feed-back reports in individual cases should not be seen as a substitute for systematic arrangements under which probation services provide the courts they serve with regular information about the performance of supervision programmes or facilities which are available. The provision of such performance reports will play an essential part in the dialogue between courts and probation services about the portfolio of programme packages foreshadowed in paragraph 6.5 above.

Questions:

- Should courts make explicit the purposes of the elements of an integrated sentence?
- Would sentencers value the provision of feed-back reports in appropriate circumstances?
- What are those circumstances?
- Would the value of the feed-back reports be less if not returned to the individual judge originally responsible for the case or to the sentencing bench in the case of the magistrates' court?

CHAPTER 10

PROPOSED SCHEME: SUPERVISION

Implications for Management and Probation Service Practice

10.1 It would be important for the new order to be managed as a separate, single and integrated order of the court. As with the present combination order, a probation officer would be identified as the **supervising officer** and given overall responsibility for the management and co-ordination of the different elements of the sentence. Officers supervising the probation programmes for the prevention of reoffending element and those supervising the unpaid work element of the order would carry the same responsibility as officers presently supervising probation orders and CSOs. Where responsibility was split between officers, each would have a responsibility to make sure that an overall view could be and was taken of the offender's progress through the order as a whole. This responsibility would apply particularly to the supervising officer in overall charge. There would need to be regular contact between officers to exchange relevant information; and important developments and particular improvements and successes, or problems and unacceptable behaviour should be notified promptly. The supervising officer should review the sentence as a whole on a three-monthly basis in consultation with the other officers involved.

10.2 Managers would have additional responsibilities to provide local practice guidelines on the new scheme for line management and supervising officers.

10.3 The scheme would allow for some flexibility by probation services in the scheduling of elements. There would be the opportunity to schedule early work (as with the present probation order and, therefore, combination order) with maximum contact during the first three months, during which time all or most of the unpaid work requirement would be completed. This approach would be supported by recent research which shows that **high intensity** work within a short period at the start of a sentence is often the most successful. However, the scheme could also allow for the scheduling of the unpaid work after other specific programmes, for example, to

remedy drug or alcohol misuse, or to deal with housing or training needs, in order to increase the likelihood of successful completion of the unpaid work element. It would also be possible to schedule some elements of the order for certain times of year only (particularly relevant for a curfew order restricting attendance at matches during the football season). In this way the effectiveness of the order can be maximised with the different elements of the order supporting and reinforcing each other, thereby securing compliance and increasing the chances of successful rehabilitation.

Record Keeping

10.4 Integrated and cross referenced systems of recording would have to be developed by services. This would allow for the supervising officer (see above) to monitor compliance and take decisions on enforcement action. It would also provide the information necessary for the supervising officer to produce a feed-back report if one had been requested by the court.

Enforcement

10.5 The proper enforcement of community sentences is essential both in the interests of justice and in securing the confidence of courts and public. The 1995 National Standards have tightened up the requirements on the probation service to warn offenders who are in breach of their orders and bring them back before the courts. The Government also expects probation services to have good management information about enforcement and to develop strategies for reducing the risk of breach.

10.6 Consideration has also been given to the possibility of enhancing enforcement procedures more directly by extending the powers of the supervising probation officer, so that the courts could authorise the supervising officer to punish early or minor failures to comply with a community sentence with an additional limited and clearly defined penalty. The arguments for this option are that it would create a graduated response to encourage offenders to complete community sentences while preserving rigorous standards of enforcement and relieving the courts of the initial stages of the enforcement burden.

10.7 While the Government sees some advantages in this option, it also raises important issues of principle. It is for the courts to provide the safeguards of a full hearing of the facts. The Government's present view, therefore, is that failures to comply with the terms of a sentence to an extent which cannot properly be dealt with by way of a formal warning by a probation officer should continue to be brought before the courts to deal with. The courts already have the power to punish breach by imposing a fine, substituting a new community sentence or adding requirements, or by imposing a custodial sentence.

10.8 On this basis enforcement of the new sentence would follow the procedures set out in the 1995 National Standards as follows:

- any apparent failure to comply to be dealt with as soon as possible and in any event within **two working days**
- the incident and any explanation and its acceptability or otherwise to be recorded
- breach proceedings to be taken at any stage of the order and without prior warning if the failure to comply is serious, such as an attempt to avoid its completion or serious misconduct
- at most two warnings within any 12 month period of the order to be given before breach proceedings are instituted
- the oral or written report to the court in enforcement proceedings would address the offender's progress under all parts of the order
- the court decides, if the breach is proved, whether to strengthen the community sentence or punish the breach in other ways.

Questions:

- Are there other important issues for management which should be considered at this stage?
- What support is there for the Government's view that the probation service should not itself have powers of punishment?

CHAPTER 11

THE REQUIREMENT FOR CONSENT

11.1 It is a requirement of the present law to seek the **explicit** consent of offenders before sentences involving probation supervision or community service can be passed. This appears anomalous to many sentencers, and a derogation from the authority of the court. Consent given in such circumstances may not, in any event, be a good guide to a defendant's likely compliance with an order, and the whole procedure can give the impression of a court being hesitant in its decisions or, worse, subject to the whims of an offender.

11.2 It is proposed that imposition of the new community sentence will not require the explicit consent of the offender. Successful community supervision relies on the co-operation of the offender and the giving of consent has sometimes been seen as a first step towards co-operation. If it is removed, the PSR must provide courts with a full assessment of the likelihood of an offender's co-operation and compliance with a proposed community sentence. This will provide courts with an indication of the offender's attitude but courts should, nevertheless, have the power to pass the sentence they judge to be most appropriate. An offender who appears not to be well motivated to abide by the terms of an order when it is only a possibility, may take a different view once such a sentence is passed; or a probation officer may succeed in convincing the offender of the value of a proposed treatment programme. Once sentence is passed, as with a fine, it is a matter for the offender whether to comply with the order or not; and in the same way that failure to pay a fine may result in the imposition of a term of imprisonment in default, failure to comply with a community sentence should carry the risk that a custodial sentence will be substituted.

11.3 In the particular case of the probation order, the present requirement for consent may be seen as a loose end left over from the pre-1991 Act status of the probation order as an alternative to dealing with the offender in some other way. All community orders are now sentences of the court and yet not all are treated in the

same way in relation to consent; an attendance centre order, for example, does not require the offender to consent. With a new integrated community sentence, more tailored to the individual offender, the reasons for explicit consent need to be re-examined.

11.4 Within the present range of orders, community service has a particular claim to require consent (see 4.20 above). However, the key issue is not consent at the point of sentence but the offender's willingness to comply throughout the sentence, bearing in mind that at no stage may any element of physical compulsion be applied or threatened. If a court can be assured that the terms of the order and the effect of a failure to comply are understood, the Government believes that the court should be free to make the order. It would then become a matter for the offender whether to comply or not, in which case he would be brought back before the court for re-sentencing.

11.5 For some offenders, a short period in prison may appear more attractive than a lengthy community sentence which requires self-discipline and effort. In addition, it could be argued that giving consent to a community sentence may be an offender's first step to co-operation with his own rehabilitation and is therefore valuable in its own right. Nevertheless, the Government believes that, with relevant information provided by the probation service, it is a matter for the court, not the offender, to decide on the appropriate sentence.

Questions:

- What is the role of consent in community sentencing?
- Does it need revising?

CHAPTER 12

RESOURCE IMPLICATIONS

12.1 Implementation of proposals for a revised structure for community penalties, if accepted, would need to be carefully planned and managed. The work would build on the experience gained by Government Departments and the agencies of the criminal justice system in implementing the 1991 Act.

Direct Costs of the Scheme

12.2 As noted above, it is not intended that the overall effect should be to increase the total quantity of punishment imposed since decisions will continue to be subject to the principle of proportionality. The courts will be able to tailor a sentence more appropriately, drawing on a wider range of options, and this flexibility could allow for lower as well as higher cost permutations. However, the direction and magnitude of any changes in sentencing patterns under the new arrangements are hard to predict.

12.3 If there were to be a marked increase in the overall burden of community sentencing—more elements, longer orders, additional conditions—there would clearly be significant extra costs of supervision for the probation service. It will be important that sentencers and the probation service are aware of the cost implications of complex orders. The new arrangements must be delivered within planned resources if the courts are not to overload orders with unnecessary ingredients which could impair the level and quality of service provided.

12.4 In order to establish the likely impact of the new sentence from this point of view, it is the Government's intention, following publication of this Green Paper, to conduct a series of hypothetical sentencing studies, using a selection of cases in which sentencers would be asked to put themselves in the position of applying the new form of sentence and probation officers would be asked to advise them through PSRs on the same basis. In this way it should be possible to establish an indication of likely sentencing patterns under the proposed new framework. The studies should also help

to show whether there is a risk of increased costs through longer hearings and more complex argumentation in them.

12.5 Before a new integrated sentence could be introduced, considerable training effort would be required for sentencers, court staff and the probation service. The training effort will need to address not only the rationale of the integrated sentence but also any new requirements for greater sentencing transparency.

12.6 The Government will look to the sentencing studies to provide a better assessment of the balance of likely costs and savings. Comments from respondents to this Green Paper would also be particularly welcome.

Implications for IT and Statistics

12.7 The proposals would require changes in the IT systems operated, or being introduced, by the criminal justice agencies and Central Government. As such systems are increasingly being introduced to support operations as well as management information and statistics, the need for the changes to be implemented in time will be all the more necessary. The main systems affected include:

- probation service
- magistrates' courts
- Crown Court
- police systems
- Home Office statistical systems.

12.8 It is estimated that, depending on the timing of any possible legislation in relation to the implementation programmes for the above systems, the costs of incorporating the necessary changes should be within £1m.

ANNEX A

OPTIONS AVAILABLE UNDER NEW SENTENCE

- Supervision up to 3 years
- Attendance at a designated centre for supervision:

  e.g. Probation Centre up to 60 days
- Community Service up to 240 hours
- Specified activities/treatment
- Financial compensation to victim
- Curfew
- Ban on attending specified places
- Ban on undertaking specified activities

ANNEX B

SUMMARY OF COMMUNITY SENTENCES AVAILABLE FOR YOUNG OFFENDERS AND ADULTS

Age	*Sentences available*
10—13 years	• Absolute discharge • Conditional discharge • Bind over (of offender or parents) • Fine (for which parent can be made responsible) • Compensation Order (for which parent can be made responsible) • Money Payment Supervision Order • Attendance Order • Supervision Order with conditions such as: — psychiatric treatment — educational requirements — night restriction requirements — specified activities — residence requirements • Detention under Section 53 for manslaughter and murder
14 years	• *All the above plus* • Detention under Section 53 for serious crimes carrying 14 year maximum only
15 years	• *All the above plus* • Detention in a Young Offender Institution (up to 12 months)

16 and 17 years

- *All the above plus*
- Probation Order with:
  - requirement of residence
  - activity requirement
  - probation centre requirement
  - mental treatment requirement
  - requirement of treatment for drug and alcohol dependency
- Community Service Order
- Combination Order

In addition some young offenders beyond parental control may meet criteria set out in the Children Act 1989 for the making of a Care Order in civil proceedings. Children subject to Care Orders may in certain circumstances be placed in secure local authority accommodation.

18 years and over

- *All the above (excluding Supervision Order) plus*
- Suspended Sentence Supervision Order

ANNEX C

SUMMARY LIST OF QUESTIONS

Chapter 5: An Integrated Community Sentence: Outline and Rationale.

Question:

Do the 3 elements [restriction of liberty, reparation, prevention of re-offending] match sentencers' concerns in considering appropriate and effective community sentences?

Chapter 6: Prosposed Scheme: Structure

Question:

Will the courts' ability to impose a more flexible community order lead to more appropriate and effective sentencing?

Chapter 7: Proposed Scheme: Scope

Paragraph 7.14: The Government would welcome views on whether change to the existing arrangements for under 18s is required and if so on what form it should take.

Questions:

1. Should the integrated sentence be available to the Youth Court and if so how?
2. Should the integrated sentence be available in the adult court for all offences or for imprisonable offences only?

Chapter 8: The Commissioning Court and the role of the Pre-sentence report (PSR)

Questions:

1. Will preliminary indications which address the principal objectives of a community sentence produce better targeted PSRs?
2. Is there a case for legislation to give the courts clear authority to give such an indication without requiring them to do so?

Chapter 9: The Sentencing Court

Questions:

1. Should courts make explicit the purposes of the elements of an integrated sentence?
2. Would sentencers value the provision of feed-back reports in appropriate circumstances?
3. What are those circumstances?
4. Would the value of the feed-back reports be less if not returned to the individual judge originally responsible for the case or to the sentencing bench in the case of the magistrates' court?

Chapter 10: Proposed Scheme: Supervision

Questions:

1. Are there other important issues for management which should be considered at this stage?
2. What support is there for the Government's view that the probation service should not itself have powers of punishment?

Chapter 11: The Requirement for Consent

Questions:

1. What is the role of consent in community sentencing?
2. Does it need revising?

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