

The Crime and Courts Bill

Fact Sheet: Community Sentencing

Community Sentencing

1. The Government is committed to providing a criminal justice system that protects the public from crime, properly punishes those who have committed an offence, reduces offending and is sympathetic to the needs of victims. Community sentences form a vital part of our criminal justice system as they provide judges with a meaningful disposal for offences whose seriousness falls short of meriting custody.
2. The sentencing framework for community orders is set out in the Criminal Justice Act 2003 (“the 2003 Act”). The 2003 Act created a single community order which allows courts to tailor community orders to fit the crimes of individual offenders by providing courts with the ability to create a community order containing one or more requirements drawn from a menu of twelve. A community order can contain any number of the following requirements:
 - **Unpaid work** (known as community payback);
 - **Residence** (requiring an offender to reside at a place specified in the court order);
 - **Mental health treatment;**
 - **Drug rehabilitation;**
 - **Alcohol treatment;**
 - **Supervision** (requiring an offender to attend appointments with probation officer);
 - **Attendance centre** (requiring offenders under 25 to attend a particular centre at specified times);
 - **Prohibited activity** (requiring an offender to refrain from participating in certain activities as set out in the court order);
 - **Curfew** (confining an offender to his or her home for a specified number of hours per day);
 - **Exclusion** (prohibiting the offender from entering a place specified in the court order);
 - **Programme** (requiring the offender to participate in an accredited programme such as anger management courses);
 - **Activity** (requiring the offender to participate in certain activities such as attend basic skills classes).
3. Once sections 72 and 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are commenced, courts will also be able to impose a foreign travel prohibition requirement and an alcohol abstinence and monitoring requirement.
4. Community orders are widely and frequently used by sentencers. In 2011, around 170,000 offenders (13% of those sentenced) were given a

Community Sentence¹. The average length of a community order supervised by the probation service in the same year was 12.3 months. In 2011, 50% of all community orders supervised by the probation service contained a single requirement; 35% had 2 requirements; and 15% had 3 or more. In the same year, around one third of offenders supervised by the probation service were given community payback alone and around 10% supervision alone. Supervision requirements are often given in combination with other requirements, and account for around one third of all requirements supervised by the probation service.²

5. As with all sentences, the 2003 Act provides that courts can only impose a community sentence on an offender if the offence they committed was serious enough to warrant such a sentence. Courts must seek a pre-sentence report from probation before imposing a community order unless the court considers, given the circumstances of the case, that this is not necessary. Courts must also have regard to the five purposes of sentencing: the punishment of offenders, the reduction of crime (including by deterrence), the reform and rehabilitation of offenders, the protection of the public and the making of reparation by offenders to persons affected by their offences.
6. Offenders who unreasonably fail to comply with the requirements of an order, must either be issued with a written warning or returned to court by their offender manager. Only one warning may be issued within a 12 month period. Any second unreasonable failure to comply within 12 months must result in a return to court. Where a court finds the offender in breach, it must either make the order more onerous, or revoke the order and re-sentence for the original offence. Once section 69 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is commenced, courts will also be able to fine offenders for breaching their community order.
7. In 2011, around 125,000 Community Orders were terminated by the probation service. Of these, two-thirds had run their full course or were terminated early for good progress while 14% were terminated for failure to comply with requirements, 10% following conviction for a further offence and 10% for other reasons.³

Punishment and Reform: Effective Community Sentences

8. Sentences served in the community can be effective at tackling the causes of re-offending. For similar offenders, re-offending rates in 2008 for those

¹ Criminal justice statistics March 2012, <http://www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics>

² Offender Management Caseload Statistics 2011, <http://www.justice.gov.uk/statistics/prisons-and-probation/oms-quarterly/oms-quarterly-editions>

³ Offender Management Caseload Statistics 2011, <http://www.justice.gov.uk/statistics/prisons-and-probation/oms-quarterly/oms-quarterly-editions>

serving community orders were 8.3 percentage points lower than those serving short-term custodial sentences.⁴

9. However, at present community orders do not always inspire public confidence. Many community orders do not contain any visibly punitive or demanding element. For example, in 2011 around 10% of community orders contained just a supervision requirement, while the average length of a community order has fallen by around 10% since 2006.⁵ The percentage of successfully completed orders is also still too low. The Government wishes to increase public confidence that community orders provide an adequate sanction for criminal behaviour.
10. The existing flexibility in the community sentence framework is also not always used to its full advantage. Similarly, sentencers currently make little use of existing powers to impose financial penalties on offenders subject to community orders. The Government wishes to encourage sentencers to be creative in their mix of requirements and disposals when imposing community orders, in order to balance punishment, rehabilitation and reparation to victims and communities.
11. To this end, the Government published in March 2012 the consultation *Punishment and Reform: Effective Community Sentences*.⁶ The consultation sought views on the following proposals:
 - Requiring courts to include a **punitive element** in every community order;
 - A new **intensive community punishment** order;
 - A power for courts to **seize offenders' assets** as a standalone punishment;
 - Using new **technology to track the location of offenders** to enforce existing community order requirements, and for the wider purpose of deterring crime;
 - Giving courts or probation staff the power to issue **fixed penalties to deal with breaches of community orders**;
 - Making greater use of **restorative justice** within the sentencing framework;
 - More **effective use and enforcement of fines and compensation orders**.
12. The consultation also set out the Government's plans on alcohol abstinence and monitoring requirements, and on female offenders who receive community sentences.

⁴ Compendium of re-offending statistics and analysis 2011, <http://www.justice.gov.uk/downloads/statistics/mojstats/2011-compendium-reoffending-stats-analysis.pdf>

⁵ Offender Management Caseload Statistics 2011, <http://www.justice.gov.uk/statistics/prisons-and-probation/oms-quarterly/oms-quarterly-editions>

⁶ Cm 8334 - <https://consult.justice.gov.uk/digital-communications/effective-community-services-1>

13. In light of the 247 responses to the consultation received, the Government has revised a number of its initial proposals and published a formal response to the consultation, and associated Impact and Equality Impact Assessments, on 23 October 2012.⁷ In an accompanying written ministerial statement, the Government announced its intention to table amendments to the Crime and Courts Bill to give legislative effect to a number of the proposals outlined in the consultation.

Community Sentencing Reforms

A punitive element in every community order

14. To ensure community orders inspire public confidence courts will for the first time be required to impose a requirement that fulfils the purpose of punishment as part of every community order, unless there are exceptional circumstances that would make it unjust to do so. A court will be able to exercise this duty by imposing a fine, instead of or in addition to, other measures if it considers that to be appropriate.

15. The duty does not specify what requirements courts should impose, on the basis that what is punitive for one offender may not be punitive for another. However, the Government's expectation is that a punitive element might generally include a restriction of liberty that represents a recognisable sanction to the public (such as a curfew, exclusion, or community payback).

Restorative justice

16. Restorative justice (RJ) can have positive impacts both on victim satisfaction and on reducing re-offending. Research by the Ministry of Justice of a number of RJ pilots suggests that RJ has the potential to be associated with high levels of victim satisfaction. This is particularly so for the conferencing method of RJ, which was associated with 85% overall victim satisfaction. The evaluation of the pilots found that overall there was an estimated 14% reduction in the frequency of re-offending⁸.

17. The Government considers that access to RJ should be available for all victims at all stages of the justice process, so that, where appropriate, they can opt in at a time that is right for them. The major gap at present is the usage of RJ between conviction and sentencing. The RJ provisions in the Crime and Courts Bill will make it explicit that courts will be able to defer sentencing to allow for an RJ intervention, in cases where both victim and offender are willing to participate. Guidance will make it clear that either the victim or offender will be able to request RJ and that RJ will only take place where both the offender and the victim have been assessed as fully able, willing and suitable to engage in a restorative justice activity.

⁷ Cm 8469 - <https://consult.justice.gov.uk/digital-communications/effective-community-services-1>

⁸ Shapland, J., Atkinson, A., Atkinson, H., Dignan, J., Edwards, L., Hibbert, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A. (2008) Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes. Ministry of Justice Research Series 10/08

18. The offender's participation in restorative justice activity will not automatically affect the sentence he receives. It will be for the court to decide whether or not the offender's participation will affect the sentence that is imposed – but there is no expectation that it will lead to offenders escaping punishment

Compensation orders

19. Following the removal of the cap limiting magistrates' courts fines to £5,000 by section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the current £5,000 cap on a single compensation order that applies in the magistrates' courts for adult offenders is also to be lifted.

Extending the electronic monitoring requirement to allow location monitoring

20. It is already possible to monitor electronically compliance with the requirements of a community sentence or suspended sentence order. However, in practice only compliance with curfew is monitored due to the limitations of the current radio frequency technology. Following recent developments in technology, the Government expects that in the future, location monitoring technology (for example, GPS) will be used under existing court powers to monitor compliance with other community order requirements (such as exclusion).

21. We are extending the existing electronic monitoring requirement to enable courts to impose electronic monitoring to monitor an offender's location as part of a community order (rather than just monitoring compliance with other requirements). This will be useful for the purposes of deterring crime, public protection and crime detection. There was support from respondents for this measure so long as its purpose was clear and safeguards were considered.

22. Implementation will be subject to the relevant technology being affordable and fit for purpose, and to appropriate safeguards for its use being in place, and to further consultation on safeguards. The Government proposes to publish a code of practice setting out the appropriate tests and safeguards for the use, retention and sharing of any collected data.

Asset seizure and financial penalties

23. Courts are currently required to have regard to offenders' financial circumstances when fixing the value of a financial penalty. Amendments will make it clear that when the court makes a financial circumstances order offenders will be under an obligation to disclose their assets as well as income to the court so the Courts have this information when making this assessment.

Data sharing for setting and enforcing financial penalties

24. Courts for the first time will also be able to access Her Majesty's Revenue and Customs (HMRC) and the Department for Work and Pensions (DWP)

databases before and after sentencing an offender. This measure aims to improve the courts' ability to determine accurately the appropriate level of fine (or compensation order) for the offender concerned, hence ensuring a better chance of recovering fines. Fines that take into account the defendants financial circumstances will be set at the correct level and, with appropriate payment terms, are more likely to be paid. Additionally, this measure makes it easier to track an offender, and enforce payment, if they default on payment.

25. It is the Government's view that, taken together, this package of reforms will help ensure that community sentences are properly punitive, are taken more seriously by offenders and do more for victims. Ultimately, stronger and more sensible community sentences will strengthen the criminal justice system and contribute to reducing crime.

Ministry of Justice
October 2012