



Ministry of
JUSTICE

A guide to criminal justice statistics

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Introduction

This document provides more detail on criminal justice statistics presented in the publication Criminal Justice Statistics and is intended to be used as a guide to concepts and definitions. The examples provided within this document are for the 2011 data as the full validation process is carried out each year on the complete calendar year data.

The key areas covered are:

- An overview of criminal justice statistics detailing the frequency and timings of the bulletin and the revisions policy.
- Details of the data sources and any associated data quality issues.
- Data developments relating to criminal justice statistics.
- A high level background to the Criminal Justice System (CJS) on the topics featured within the bulletin.
- Major legislation coming into effect in the period covered by the bulletin.
- A glossary of the main terms used within the publication.
- A list of relevant internet sites on the Criminal Justice system.

In addition a list of the offence classifications used by both the Ministry of Justice and Home Office for both CJS statistical outputs and crime statistics can be found at: www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics

Overview of criminal justice statistics

This section describes the background to the bulletin, the timing and frequency of the publication and the revisions policy relating to the statistics published.

Background to Criminal Justice Statistics bulletin

On the 17th November 2010 the Ministry of Justice launched a consultation on improving its statistics. One of the proposals was to assess interest in a quarterly criminal justice statistics bulletin which would give a statistical overview of the criminal justice system. The response from the consultation showed there was support for this proposal and a demand for more timely statistics. Full details of the consultation and response can be found at:

www.justice.gov.uk/consultations/565.htm

The bulletin covers statistics from the whole criminal justice system and as a result the following individual Ministry of Justice publications were discontinued:

- Criminal Statistics Annual;
- Sentencing Statistics Annual;
- Sentencing Statistics quarterly brief;
- Provisional Quarterly Criminal Justice System Information;
- Youth Crime: Young people aged 10-17 receiving their first reprimand, warning or conviction.

This bulletin is designated as National Statistics as it is produced to the standards specified in the Code of Practice for Official Statistics. The most recent assessments of Criminal Justice Statistics can be found on the UK Statistics Authority's website at the following address:

www.statisticsauthority.gov.uk/assessment/assessment/assessment-reports/assessment-report-52---criminal-justice-system.pdf

Timeframe and publishing frequency of data

The statistics in this publication are for a rolling twelve month reference period. This time period has been chosen over shorter timeframes to minimise the volatility caused by seasonality - for example reduced court volumes every December when many of the courts are closed over the Christmas period.

Each quarter the latest reference period will be published so statistics will be for the year ending March, June, September and December. The first three datasets will be provisional and the year ending December statistics will be the final release of the calendar year data. As part of the final release, additional annexes will be published containing more detailed breakdowns of criminal justice statistics.

Revisions

In accordance with Principle 2 of the Code of Practice for Office Statistics, the Ministry of Justice is required to publish transparent guidance on its policy for revisions. A copy of this statement can be found at:

www.justice.gov.uk/downloads/statistics/mojstats/statistics-revisions-policy.pdf

The three reasons specified for statistics needing to be revised are changes in sources of administrative systems or methodology changes, receipt of subsequent information, and errors in statistical systems and processes. Each of these points, and its specific relevance to the criminal justice statistics publication, are addressed below:

1. Changes in source of administrative systems/methodology changes

The data within this publication comes from a variety of administrative systems. This technical document will clearly present where there have been revisions to data accountable to switches in methodology or administrative systems. In addition, statistics affected within the publication will be appropriately footnoted.

2. Receipt of subsequent information

The nature of any administrative system is that data may be received late. For the purpose of this criminal justice statistics publication, the late data will be reviewed on a quarterly basis but, unless it is deemed to make significant changes to the statistics released, revisions will only be made as part of the final release containing the calendar year statistics. However should the review show that the late data has major impact on the statistics then revisions will be released as part of the subsequent publication.

3. Errors in statistical systems and processes

Occasionally errors can occur in statistical processes; procedures are constantly reviewed to minimise this risk. Should a significant error be found the publication on the website will be updated and an errata slip published documenting the revision.

Data sources and data quality

This section outlines the different data sources used to compile the statistics presented in the bulletin with discussion on data quality where relevant. The three main sources the statistics are compiled from are:

- Data returns submitted by individual police forces.
- Data extracts from court database administrative systems.
- Data extracts from the Police National Computer.

Out of Court Disposals

Data on Penalty Notices for Disorder, cautions and cannabis warnings are issued and recorded by police forces. These data are received either via the individual police forces or extracted from administrative database systems.

Penalty Notices for Disorder (PND)

Since 2004, when PNDs were piloted, data has been received from the individual police forces on a monthly basis. The two returns provided are details of PNDs issued and their subsequent outcomes. The returns are checked by the statistical teams for completeness and accuracy. Any anomalies in the data are queried with the force and any duplication of data are removed from the database.

On an annual basis a full reconciliation process is undertaken where each police force is given the opportunity to verify the monthly figures they have supplied and make revisions to the annual returns prior to publication.

A new PND for the offence of possession of cannabis was introduced in 2009. Guidance was issued limiting the use of this PND to adults, i.e. to those aged 18 and over. The data submitted in 2011 showed that some PNDs were issued for this offence to juveniles, i.e. those aged under 18. These were queried with the relevant forces and subsequently 68.8 per cent were cancelled.

Cautions

From April 2011 all cautions data are collected from the Police National Computer, the records are validated for accuracy and completeness and amended as necessary. Additionally any apparent cautions given for serious offences, such as rape, are investigated thoroughly with forces. All cautions data prior to April 2011 were collected directly from police forces and have been through the same validation process.

From 2009/2010 the reporting of conditional cautions was made mandatory, including those given to juveniles aged 16 and 17. This meant from 1st April 2009 all returns distinguish conditional cautions from other caution type interventions. In addition Youth Conditional Cautions (YCC), for juveniles aged 16 or 17, were introduced from 1 April 2009.

Cannabis warnings

This data is supplied from the Home Office and extracted using Management Information Systems (MIS). It is collated on a monthly basis and any anomalies are queried with the Home Office.

Court proceedings

The complexities of the criminal justice system and the constraints on resources in collating and processing data limit the amount of information collected routinely so only the final outcome of proceedings at magistrates' courts and the Crown Court (where applicable) is recorded.

Prosecutions, convictions and sentencing

Data sources

Statistics on prosecutions, convictions and sentencing are either derived from the LIBRA case management system, which holds the magistrates' courts records, or the Crown Court's CREST system which holds the trial and sentencing data. The data includes offences where there has been no police involvement, such as those prosecutions instigated by government departments, private organisations and individuals.

From July 1995 all Crown Court data on trials and sentences has been received directly from the Court Service's CREST computer system and from November 2008 all magistrates' courts data has been provided by the LIBRA case management system.

Prior to November 2008 the Police reported on magistrate court proceedings and it is thought that for some police force areas there may have been under-reporting of proceedings, in particular those relating to motoring offences, TV Licence evasion and other summary offences with no police involvement. The extent of under-reporting may vary from year to year.

Validation process

The court system data used in this bulletin go through a variety of validation and consistency checks. Individual records are validated in an automated process that highlights irregularities and inconsistencies. In particular, checks are made, where possible, to ensure that:

- Offences are correct and legitimate for the age of the defendant;
- The sentence given for an offence is applicable in law;
- Hearings are consistent with the court they are heard in; and
- Sentences follow guidelines given the age of the offender and the offence committed.

In general data validation is ongoing to investigate unusual trends or records. For serious offences (such as homicide and serious sexual offences) and severe disposals (such as life imprisonment and indeterminate sentences of Imprisonment for Public Protection [IPP]) individual records are flagged for manual confirmation which further reduces the possibility of error.

For the Crown Court, where these validation failures occur, the data are corrected by referring to original court registers. Approximately 17,000 individual records in 2011 were corrected.

At the magistrates' courts the sheer volume of courts records (around 2.8 million per year compared with 100,000 Crown Court records) means these files cannot follow the same process. The majority of validation failures are subject to automatic amendment and any serious errors are manually checked.

Some examples of the automatic validation checks are given overleaf:

Example 1

A record is received with a fine as the principal sentence when the offender also received a custodial sentence for the same offence. The action taken would be to re-order the disposals so that the custodial sentence is counted as the principal sentence.

Example 2

The sentence recorded is incompatible with the age of the offender, e.g. a 25 year old is given a Youth Rehabilitation Order. If the case occurred at the Crown Court then the court record is examined and the correct age/sentence is recorded. If this is found to be a frequent error at the magistrates' court then additional automated changes will be made to correct the issue.

Example 3

An offence coded 19/16 ("Rape of a female child under 13 by a male" under the Sexual Offences Act 2003) is reporting the sex of the offender as female. This implies that either the offence code is incorrect and needs updating, or the gender has been entered inaccurately. In this case the original court record will be looked up and the statistical record amended.

Example 4

The age of an offender dealt with at a Youth Court is entered as 25, this cannot be correct and the age will default to 17.

Example 5

An adult offender is sentenced at a magistrates' court to a custodial sentence of 18 months (a maximum custodial sentence of six months can be imposed at the magistrates' court). As this is a serious error the court record will be inspected and the sentence amended.

Statistics published

The tables on court proceedings relate to proceedings completed in the year. In this publication a defendant may appear more than once in the tables if proceedings were completed against that defendant on more than one occasion during the year.

In the statistics, the term 'other defendants' is used to denote companies and other bodies such as businesses, local authorities and public bodies. Additionally, following the introduction of the LIBRA case management system, defendants at magistrates' courts can be recorded as sex "Not Stated".

Reporting on the principal offence and principal sentence

Where proceedings involve more than one offence, the tables report the principal offence. The basis for the selection of the principal offence is as follows:

- Where a defendant is found guilty of one offence and acquitted of another, the offence selected is the one for which they are found guilty;
- Where a defendant is found guilty of two or more offences, the offence selected is the one for which the heaviest sentence is imposed;
- Where the same disposal is imposed for two or more offences, the offence selected is the one for which the statutory maximum penalty is the most severe.

The offence shown in the tables on court proceedings is the one for which the court took its final decision and is not necessarily the same as the offence for which the defendant was initially prosecuted, for example when the court accepts a guilty plea from the defendant on a lesser charge.

Unless otherwise stated, the sentence shown is the most severe sentence or order given for the principal offence (i.e. the principal sentence), secondary sentences given for the principal offence and sentences for non-principal offences are not counted in the tables. The exceptions to this rule are the tables containing statistics on compensation, confiscation and forfeiture where any one of the first four disposals may be counted. Examples of how the principal offence and principal sentence are constructed can be found below:

Example 1 – the principal offence

An offender appearing in court on one charge of Actual Bodily Harm (ABH) and one charge of common assault would appear in the tables with the charge of ABH counted as their principal offence as it is the offence with the most severe maximum sentence.

Example 2 – the principal offence and principal sentence

An offender convicted and sentenced for one charge of ABH and one charge of common assault who receives a custodial sentence of 6 months for the ABH and a fine for the common assault would be counted as having been convicted of ABH (the principal offence) and as having received a 6 month sentence for ABH (the principal offence and principal sentence).

Example 3 – the principal sentence and ancillary order

An offender who receives a 6 month custodial sentence for an offence of ABH and a compensation order for that offence would be counted as having received a custodial sentence and counted once in the *total sentenced* column. For the table on compensation orders they would be counted in the table on compensation orders but only if the compensation order and custodial sentence were for the same offence (i.e. both for ABH).

Remands

The statistics in the remands chapter relate to persons remanded in each year in each completed court case rather than to the number of remand decisions (a person may be remanded several times during a case). Cases are recorded in the year in which the final court decisions were made and this is not necessarily the same year in which the person was originally remanded.

From 2008, following the introduction of the LIBRA case management system, the number of custodial remands at magistrates' court proceedings has been over-reported in the data supplied to the Ministry of Justice. Therefore all magistrates' courts remand data published in this chapter are estimates. Data relating to cases tried at the Crown Court are not affected.

For the years 2008 to 2011 the magistrates' courts data has been matched with prisons remand reception data (records when defendants were received into custody). Where a defendant in the court proceedings data was also found to be recorded in the prisons remand reception data, it was taken that the defendant had been remanded in custody at some point. The criteria used to determine whether a match exists (implying a remand status of custody) were surname, initial, date of birth and sex, with the additional criterion being that the date of the reception into prison had to be earlier than the date of conclusion of the case at the magistrates' court. In addition, a degree of fuzzy matching was employed to allow for common variations in the spelling of defendants' surnames.

In 2011, out of a total 1.6 million defendants who were proceeded against at magistrates' courts, approximately 55,000 (three per cent) were remanded in custody at some point. Of all indictable offences, approximately ten per cent were remanded in custody and of all summary offences approximately one per cent were remanded in custody.

Matching process:

Where a matched case exists, we accept that the court remand decision is "custody".

Where a match does not exist the following assumptions are made:

- The remand decisions by the police and magistrates' are considered. If the police remand decision is "bail" and the code at magistrates' court is also "bail", the final remand decision shown will be "bail". Otherwise the remand decision will be "not remanded".
- Where the court remand decision at the first hearing or a subsequent hearing is "bail" and there is no "custody" decision at any hearing then the final remand decision is "bail".
- Those cases flagged as bail throughout the hearing are accepted as bail else otherwise recorded as "Not Remanded". The "Not Remanded" category includes those where the remand status is not stated or not known.

Prior to 2008, estimates of the number of defendants remanded in custody at magistrates' courts were derived by excluding certain police force areas where coverage of remands decisions was outside the accepted norm for the rest of England and Wales. These forces were excluded and the remaining annual year's data were grossed up to produce estimates for England and Wales. Tables Q 3.1 and Q 3.2 show estimates for defendants remanded in custody by the police and at magistrates' courts respectively. The totals in these tables will not sum when presented on a quarterly basis because the annual grossing factor is applied to each quarter's data to generate the quarterly estimates.

Criminal histories and First time entrants

The figures on first time entrants and previous criminal histories have been taken from the Ministry of Justice's extract from the Police National Computer (PNC), the operational database used by all police forces in England and Wales. The PNC covers 'recordable' offences, which are defined as offences that can attract a custodial sentence plus some additional offences defined in legislation. Some non-recordable offences are also included on the PNC, particularly when they accompany recordable offences in the same case. A range of less serious summary offences, such as TV licence evasion and many motoring offences are not recorded on the PNC. Like any other large scale administrative database the PNC is subject to delays and errors on recording and data entry. All the figures shown may be subject to revision in later editions of this publication as more information is recorded by the police.

First time entrants (FTE) to the criminal justice system

A FTE is an offender who has received their first reprimand, warning, caution or conviction for an offence processed by a police force in England or Wales or by the British Transport Police. The measure excludes any offenders who at the time of their first conviction or caution, according to their PNC record, were resident outside England or Wales. Penalty notices for disorder, other types of penalty notice, cannabis warnings and other sanctions given by the police are not counted.

The figures for juvenile FTEs presented in this publication are an update to those found in the publication entitled 'Youth Crime: Young people aged 10-17 receiving their first reprimand, warning or conviction, 2000-01 to 2009-10' published by the Ministry of Justice in October 2010.

The rates of FTEs per 100,000 people in the population are based on Office for National Statistics mid-year population estimates. Where an offender was cautioned or convicted of more than one offence on their first occasion the offence type figures relate to the principal offence on that occasion, this generally being the most serious offence or the offence that attracted the heaviest penalty.

The Local Authority figures have been calculated by mapping individuals to Local Authorities using the home address or postcode recorded by police on the Police National Computer (PNC). For those with no address recorded the postcode of where the offence was committed has been used. For those with no home address information or offence postcode, a model, based on the patterns of offenders dealt with by police stations, has been used to allocate offenders to Local Authorities. The breakdown of FTEs by police force area has been calculated using details of the police force that processed the case rather than the area in which the offender lived.

First offences and further offences

The figures shown for first offences follow the same definition as for first time entrants and therefore agree with the FTE figures. A further offence is any other primary offence recorded on the PNC that resulted in a reprimand, warning, caution or conviction and where the offender had received at least one of these sanctions on a previous occasion.

Criminal Histories

The tables of criminal histories relate to cautioning or sentencing occasions recorded on the PNC for indictable offences, although some figures are for summary offences that are recorded by the police. Where an offender has been cautioned or sentenced on more than one occasion the offender's criminal history on each occasion has been included. Where an offender has been cautioned or sentenced on the same occasion for several offences it is the details of primary offence that have been presented. The figures relate to cautioning or sentencing occasions for offences prosecuted by police forces in England and Wales including British Transport Police; they exclude sentences resulting from prosecutions brought by other authorities such as the Department for Work and Pensions (DWP), HM Revenue & Customs (HMRC) and the Ministry of Defence (MOD). Although some of these cases are recorded on the PNC they may not always be linked to the offender's previous criminal history

and have therefore been excluded. Certain offences, such as benefit fraud, which are commonly prosecuted by non-police authorities, are undercounted in these tables.

The tables show criminal history figures for offenders at each cautioning or sentencing occasion. These criminal history figures are counts of separate previous occasions when the offender received a reprimand, final warning, caution or conviction. They cover all offences recorded by the police on the PNC, including both indictable and summary offences, and include cases brought by non-police prosecuting authorities.

Data developments

Ethnicity

The Criminal Justice System Statistics bulletin includes high level trends on the ethnicity of defendants and offenders given cautions, PND's, and those proceeded against, convicted and sentenced at court. The ethnic breakdown presented in all cases is based on the 4+1 visual appearance/officer identified classification – White, Black, Asian, Other and Unknown.

Historically the recording of ethnicity data for magistrates' courts cases has been poor with high numbers of unknown ethnic identity. The recording of ethnicity data for indictable offences has been more complete than summary offences because in charged cases the defendant will have been seen by the police and asked about their ethnicity. In cases where the defendant received a summons, they will not have been seen by the prosecutor, and may not have appeared in court.

After a considerable programme of work, a substantial improvement in the data were noted in the recording of ethnicity for indictable offences, with 10 per cent of convictions having an unknown ethnicity in 2011 and 2010, compared with 81 per cent in 2001.

In 2011 two per cent of offenders cautioned were of unknown ethnicity and eighteen per cent of PND's were given to offenders of unknown ethnicity.

Breaches

Breaches of court orders that are a criminal offence in their own right (e.g. breach of an anti-social behaviour order) have been included in the published tables since 2009. Prior to 2009 these were excluded from the count of court proceedings because of recording issues and are not included in the published tables.

Historic shortfalls and weighting

Prior to the introduction of the LIBRA case management system, data was supplied by the Police using their legacy systems. In some years problems were identified in the supply of data relating to some offences and some police force areas. The areas affected included Humberside, Merseyside, Northumbria, Staffordshire and Surrey police in 2001 who were not able to supply complete returns for summary proceedings. The data supply problems were:

- In 2001, a single month's shortfall or part thereof was found for indictable and summary motoring offences at Humberside, Merseyside, Staffordshire and Surrey police.
- In 2002, part shortfalls were noted for Merseyside over all offences groups for a five-month period, together with summary motoring and/or summary non-motoring for Gwent, Norfolk and Northamptonshire.

- In 2003 there were shortfalls for South Yorkshire and Thames Valley for summary non-motoring offences. For summary motoring offences the main shortfalls were for Suffolk and Northamptonshire.
- No significant shortfalls were identified in 2004, 2005, 2006, 2007, 2009, 2010 or 2011.

The following estimates have been constructed on the shortfalls in the number proceeded against in magistrates' courts for each year since 2001, arising from the circumstances described in the previous paragraph. For practical reasons it is not possible to include these estimates in the numerous tabulations of court proceedings data produced.

Defendants proceeded against at magistrates' courts by type of offence, adjusted for shortfalls in data, 2001-2011

England and Wales											Number (thousands) and percentages	
Type of offence	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	
Estimated shortfall in data (thousands)												
Indictable	2.2	0.9	0.8	-	-	-	-	-	-	-	-	
Summary non-motoring	3.7	2.2	7.7	-	-	-	-	-	-	-	-	
Summary motoring	2.5	2.5	4.9	-	-	-	-	-	-	-	-	
All offences	8.4	5.6	13.4	-	-	-	-	-	-	-	-	
Number proceeded against with allowance for shortfall (thousands)												
Indictable	503.1	518.0	510.0	453.3	423.4	406.2	404.9	397.5	415.6	438.0	414.0	
Summary non-motoring	575.7	624.2	641.8	665.3	637.0	612.0	599.3	593.3	619.2	607.1	598.0	
Summary motoring	767.3	788.3	862.5	904.0	834.7	761.1	728.4	649.2	659.6	608.1	547.0	
All offences	1,846.1	1,930.4	2,014.2	2,022.6	1,895.0	1,779.3	1,732.5	1,640.0	1,694.4	1,653.2	1,559.0	
Change on a year earlier (percentages)												
Indictable	2	3	-2	-11	-7	-4	0	-2	5	5	-5	
Summary non-motoring	-8	8	3	4	-4	-4	-2	-1	4	-2	-10	
Summary motoring	-3	3	9	5	-8	-9	-4	-11	2	-8	-1	
All offences	-3	5	4	0	-6	-6	-3	-5	3	-2	-6	

Comparison of 'Criminal Justice Statistics' and 'Judicial and Court Statistics'

Crown Court data

The publications Criminal Justice Statistics (CJS) and Judicial and Court Statistics (JCS) both contain data on the number of proceedings heard in the Crown Court. The figures are derived from the same core source (the CREST system), but they are not directly comparable as there are known differences between them. These are due to a number of factors, including differences in the data collation methods and counting methodologies used, which reflect different underlying drivers of the analyses being performed. By way of a broad illustration, Criminal Justice Statistics counts numbers of defendants and focuses on the final outcomes of criminal court proceedings, whilst Judicial and Court statistics counts numbers of cases and focuses on flows through the court system. Work is currently under way to investigate and review the differences between the two sets of statistics and their compilation processes with a view to aligning the two datasets in future.

In 2010/11 the Ministry of Justice, with the support of a methodologist from the Office for National Statistics, undertook work to better understand the differences between the two publications. Among the key differences between the two datasets are:

- Definition of final outcome: Judicial and Court statistics include cases ending as a result of all charges being quashed, discontinued by the prosecution, or where a bench warrant was issued or executed and other outcomes. These outcomes are not counted in Criminal Justice Statistics as the statistics focus on the final outcome of criminal cases and the sentences passed;
- Different validation rules;
- Timing of data extraction;

Magistrates' courts data

For magistrates' courts data the number of proceedings reported in Judicial and Court Statistics exceeds those in Criminal Justice Statistics because the former counts issuance of a bench warrant as the end of a set of proceedings. This implies that a case may be counted once by Criminal Justice Statistics but twice, as two sets of proceedings, by Judicial and Court Statistics.

Background to the criminal justice system

Reporting crime

This section relates to crimes that are reported to the Police and recorded by them. The Criminal Justice System (CJS) cannot work without the support of the community. In particular, victims and witnesses play a vital part in the justice process. If crimes aren't reported, offenders can't be brought to justice.

Investigation

Following the report of a crime the police will investigate, their role is to:

- Investigate the crime;
- Identify suspects;
- Arrest and question them.

Once their investigations are complete, the police will either:

- Charge the suspect, in conjunction with the Crown Prosecution Service (CPS);
- Apply for a summons for the suspect to appear at court;
- Deal with them by using an out-of-court disposal (an alternative to prosecution);
- Resolve the matter informally (e.g. the victim agrees to informal resolution or restorative justice approach);
- Release the individual without charge on the basis they should not face criminal action.

Offences not prosecuted by the Police

Not all offences under law are investigated or prosecuted by the Police. For example television licence evasion is investigated by the TV licensing authority, and offences relating to benefits were prosecuted by the Revenue and Customs Prosecution Office (RCPO) which was an independent prosecuting authority reporting to the Attorney General. The RCPO was merged into the Crown Prosecution Service from 1 January 2010.

Deciding what happens with a case

The Crown Prosecution Service (CPS) is responsible for prosecuting suspects in court. However, the police investigate the alleged offence and in some cases will decide whether to administer an out-of-court disposal or charge the individual.

In the most serious cases, Crown Prosecutors will decide whether to charge a person with a criminal offence, and will determine the appropriate charge or charges. The CPS will decide whether or not to prosecute by applying the Code for Crown Prosecutors to the facts of the particular case. In those less serious cases where the police determine the charge, they apply the same principles.

When a file is received from the police, a Crown Prosecutor will decide whether or not there is enough evidence against the suspect and if it is in the public interest to bring that person to court.

Because circumstances can change, the Crown Prosecutor must keep the case under continual review. If the Crown Prosecutor is thinking of changing the charges, i.e. downgrading the original offence, or stopping the case, they will contact the police wherever possible. This gives the police the chance to provide more information that may affect the decision.

Although the police and the CPS work closely together, both organisations are independent of each other, and the final responsibility for the decision as to whether or not to proceed with an offence that has been charged rests with the CPS. When deciding whether a case should be prosecuted, the police and Crown Prosecutors consider the alternatives to prosecution, i.e. out-of-court disposals, in appropriate circumstances. These include:

For adults (aged 18+), a:

- Cannabis warning;
- Simple caution;
- Conditional caution;
- Penalty Notice for Disorder;
- Fixed Penalty Notice (for driving offences);

For young people (aged 10–17 years), a:

- Reprimand;
- Final warning;
- Penalty notice for disorder;

More information on crime, detection, court procedures and sentencing can be found at the following link: www.direct.gov.uk/en/CrimeJusticeAndTheLaw/index.htm

Out of court disposals

Penalty notices for disorder

Penalty Notices for Disorder (PND's) were introduced in s1-11 of the Criminal Justice and Police Act 2001. Their aim was to provide the police with a quick and effective means of dealing with low-level, nuisance behaviour and are available for a specified range of offences including being drunk and disorderly in a public place, retail theft under £100, behaviour likely to cause fear, alarm or distress, and cannabis possession.

The majority of offences included in the scheme are summary offences where the most likely court outcome would be a fine. The scheme enables the police to issue penalty notices on the spot, in a police station, or at a suitable location such as a suspect's house.

PND's can offer a quick and proportionate alternative to prosecution, which helps to reduce the burden on the courts. The police have less paperwork to complete, allowing them to spend more time on frontline duties and tackling serious crime. PND's provide an efficient means for the police to tackle minor offences which may not previously have warranted the resources required for prosecution.

Under the scheme the police may issue a person who has committed a specified penalty offence with a fixed £50 or £80 penalty. The recipient then has 21 days (the Suspended Enforcement Period - SEP) in which to pay the penalty amount in full or request a court hearing. If the penalty is paid they discharge all liability to conviction of the penalty offence and there is no criminal record. If a court hearing is requested the process defaults to a standard prosecution. If no action is taken within the SEP then a fine of one and a half times the penalty amount is automatically registered (without the need for a court case) against the recipient. The fine will be enforced in the same way as any other fine by the courts.

The scheme is based on the long standing Fixed Penalty Notice scheme for road traffic offences. PND's are issued to individuals and there is no requirement for an admission of guilt nor is a conviction recorded against the recipient. PND's are issued to individuals who are suspected of committing specified penalty offences. The offences are divided into lower and higher tiers which attract penalties of £50 and £80 respectively:

Those offences which attract an £80 penalty:

- Wasting police time or giving a false report;
- Using a public telecommunications system for sending false messages;
- Knowingly giving a false alarm to a fire brigade;
- Causing harassment, alarm or distress;
- Throwing fireworks in a thoroughfare;
- Drunk and disorderly;
- Selling alcohol to person under 18;
- Selling alcohol to a person who is drunk;
- Supplying alcohol to a person under 18;
- Purchasing alcohol for person under 18 in licensed premises;
- Purchasing alcohol for person under 18 for consumption in a bar in licensed premises;
- Delivering alcohol to person under 18 or allowing such delivery;

- Destroying/damaging property (under £500);
- Theft (retail under £200);
- Breach of fireworks curfew;
- Possessing Category 4 firework;
- Possessing adult firework by person under 18;
- Possessing cannabis (from 26th January 2009).

Those attracting a £50 penalty;

- Trespassing on a railway;
- Throwing stones etc. at trains or other things on railways;
- Being drunk in a highway, other public place or licensed premises;
- Consuming alcohol in designated public place;
- Depositing and leaving litter;
- Consuming alcohol by person under 18 in licensed premises;
- Allowing consumption of alcohol by person under 18 in licensed premises;
- Purchase of alcohol by a person under 18.

A new PND for the offence of possession of cannabis was introduced in 2009. Revised statutory guidance on PND's published in July 2009 limited the use of PND's for cannabis possession to offenders aged 18 and over. Since this time a number of forces issued Penalty Notices for Disorder for possession of cannabis to under 18's. Forces have been made aware that these penalty notices are restricted to adults and are reviewing the situation.

PND payment

Once a PND has been issued the recipient has the SEP in which to either pay the penalty amount in full or request a court hearing. No admission of guilt is required and by paying the penalty the recipient discharges all liability to conviction of the offence.

PND's contested at court

As an alternative to paying the penalty amount in full, recipients of PND's can request a court hearing. Just one per cent of penalty notices have been contested at court in each year since PND's were rolled out in England and Wales in 2004. This figure is consistent across all age groups and offences.

Fine registration

If a recipient fails to pay the penalty amount or request a court hearing within the SEP, a fine of one and half times the penalty amount is registered against the recipient by the courts, for enforcement action.

Cautions

A caution can be administered when there is sufficient evidence to provide a realistic prospect of a conviction and it is not considered to be in the public interest to institute criminal proceedings. Additionally, the offender must admit guilt and consent to a caution in order for one to be given. Cautions are intended for low level, often first time, offending. There are two types of cautions, simple cautions and conditional cautions.

Simple Cautions

A 'simple caution' is used to deal quickly and simply with those who commit less serious crimes. It aims to divert offenders away from court, and to reduce the likelihood that they will offend again. If you are given a simple caution you will be officially warned about the unacceptability of your behaviour, that the simple caution forms part of your criminal record and may be disclosed, and the likely consequences of committing further crimes will be explained to you. Young people, aged 10-17, cannot get simple cautions but are instead given similar reprimands and warnings which can also involve interventions to prevent further offending

Simple cautions are currently available for all offences. The decision to offer a simple caution is made by the police except in indictable only offences where the decision must be made by a Crown Prosecutor.

Conditional Cautions

A 'conditional caution' is a caution with conditions attached.

Examples of conditions might be:

- Rehabilitation – conditions that help to change the behaviour of the offender, reduce the likelihood of re-offending or help to reintegrate the offender into society such as an alcohol treatment programme;
- Reparation - conditions that aim to repair the damage done by the offender such as an apology to the victim or to physically repair any damage caused.

In January 2010 punitive financial penalty conditions and a youth conditional caution for 16 and 17 year olds were piloted in five police force areas. An offender has to admit the offence and agree to accept the caution and the conditions. If the conditions are not complied with the offender may be prosecuted for the original offence.

Currently conditional cautions are only available for summary (non-motoring) offences and a few either way offences such as criminal damage and theft. Conditional cautions are available for adults aged 18 or over and in some areas for young people aged 16-17. The decision to administer a conditional caution is currently made by the Crown Prosecution Service.

Like simple cautions, conditional cautions aim to keep lower level offenders from overburdening the court system. They also address the needs of both victims and offenders by dealing with the offender's behaviour quickly, and allowing action to be taken to rehabilitate the offender or to repair the damage caused by the offence.

Court proceedings

If an out of court disposal is not deemed to be appropriate the next step is for court proceedings to be initiated.

Charging - The Criminal Justice Act 2003 requires that the decision to charge a person in all but the most minor or routine offences is now undertaken by the Crown Prosecution Service (CPS). The police remain responsible for responding to allegations that a person has committed a crime, deciding whether an investigation is required and subsequently conducting the investigation. The police can still charge both summary only and either way offences if there is an anticipation of a guilty plea and the likely sentence would be handed down in a magistrates' court.

Under the charging arrangements, the Director of Public Prosecutions' Guidance requires that charging decisions are made - by the police or CPS - in accordance with the Code for Crown Prosecutors following a review of the evidence. The guidance for prosecutors can be found at the following link:

www.cps.gov.uk/publications/directors_guidance/dpp_guidance_4.html

Prosecutors are responsible for making charging decisions in the most serious cases, ensuring pre-charge decisions are timely, and identifying cases appropriate for out of court disposals prior to charge. In police charged cases these are made prior to the first hearing. These arrangements allow for strong cases to be built from the start and cases where there is not enough evidence to bring a prosecution are sifted out as quickly as possible.

Once an accused person is charged, the law requires that they are brought before a magistrates' court as soon as possible. There are three main methods of ensuring the defendant attends court:

- they have been held in custody by the police to appear as soon as practicable.
- they may have been released on bail to attend court.
- they have been summoned to appear in court.

Generally, an arrest warrant may only be issued where

- the offence is triable only on indictment or is punishable with imprisonment; or
- the address of the accused is not sufficiently established for a summons to be served.

No branch of the government or the judiciary can direct a police officer or the CPS to bring criminal proceedings (or not to do so) in a particular case – this includes Ministers of the Crown. The CPS will continue to review cases after a Charging Decision has been made and throughout the court process in accordance with the Code for Crown Prosecutors. If as part of this on-going review, the CPS considers there is no longer sufficient evidence for a realistic prospect of conviction or that prosecution is no longer in the public interest, it may discontinue the proceedings at any time before the start of the trial or committal.

Court jurisdiction

Magistrates' courts: Virtually all criminal cases start in magistrates' courts and 95 per cent of cases finish there. As well as hearing criminal cases magistrates deal with family matters. Cases in magistrates' courts are usually heard by a panel of three magistrates (Justices of the Peace) supported by a legally qualified Court Clerk. There are also around 130 district judges. They are experienced barristers or solicitors who sit alone and deal with more complex or sensitive cases. Magistrates cannot normally order sentences of imprisonment that exceed six months (or 12 months for consecutive sentences), or fines exceeding £5,000. In cases that are triable-either-way (in either magistrates' courts or the Crown Court) the offender may be committed by the magistrates to the Crown Court for sentencing if a more severe sentence is thought necessary.

The Crown Court: The Crown Court deals with more serious criminal cases such as murder, rape or robbery, some of which are on appeal or referred from magistrates' courts. Trials are heard by a Judge and a 12 person jury. Members of the public are selected for jury service or may have to go to court as witnesses. The Crown Court is based at 77 centres across England and Wales. It deals with cases transferred from magistrates' courts. It also hears appeals against decisions of magistrates' courts, and deals with cases sent for sentence from magistrates' courts. Penalty levels vary depending on the court trying the offence.

Proceedings involving young persons

Young people aged between 10 and 17 are mainly dealt with in the youth courts by specially trained magistrates. In youth courts, no person is allowed to be present unless authorised by the court, except for the members and officers of the court, parties to the case (normally including parents/guardians), their legal representatives, witnesses and bona fide representatives of the media. Proceedings may be reported in the press but the young person may not generally be identified.

A child or young person is generally tried in the youth court unless any of the below apply:

- He or she is charged with homicide (such as murder or manslaughter), when they must be sent to the Crown Court for trial;
- He or she is aged 10 and over and under 18 and is charged with a 'grave crime' (an offence for which an adult could be imprisoned for at least 14 years), indecent assault or dangerous driving. These cases may be sent to the Crown Court if magistrates decide that if convicted, the appropriate sentence would be more than they have the power to give;
- He or she is charged jointly with another person aged 18 or over, when both should be dealt with in the Crown Court.

Remand decisions

The police, magistrates and Crown Court may make different remand decisions at each point in the proceedings. The police can release an arrested suspect on bail while they make further inquiries. This means that the suspect is released from custody on condition that they return to the police station on a specified date. The police can also give bail to a defendant who has been charged with an offence. In this situation the defendant is given bail on condition that they appear at a magistrates' court on a specified date.

A magistrates' court may: adjourn a hearing without remand; commit a defendant to the Crown Court for trial or sentence; or remand the defendant either in custody or on bail. There is a statutory right to bail, but this may be denied in specific circumstances, namely where the court has substantial grounds for believing that if a defendant were remanded on bail, he or she would fail to surrender to custody, commit an offence while on bail, interfere with witnesses, or otherwise obstruct the course of justice. The prosecution may, in certain circumstances, appeal to a Crown Court Judge against the decision by a magistrates' court to grant bail. The appeal must be made within 48 hours.

Those charged with, or convicted of, homicide or rape where the defendant has a previous conviction for any of those offences are only granted bail if there are exceptional circumstances which justify it. A magistrates' court has the power to remand a defendant in custody for up to eight days in the first instance but thereafter may remand him/her for up to 28 days, provided that the defendant is present in court and has previously been remanded in custody for the same offence.

The court is not bound to act as recommended by either the defence or the prosecution, or on the historic past recommendations of another court. It must decide, on each occasion, whether the defendant presents such a bail risk as to warrant custody. The court may decide to grant bail, but only under certain conditions and, should these conditions be broken, the defendant would be liable to immediate arrest. The court has to make a risk assessment, balancing the risk which releasing the defendant on bail may pose to the public or the administration of justice, against the consideration that it is a serious step to remand in custody.

Conviction and sentencing

The section below details the main purposes of sentencing and describes some of the major disposals presented in this publication, the web addresses shown below from the Crown Prosecution Service give more detail of sentencing practice and the available orders.

www.cps.gov.uk/legal/s_to_u/sentencing_-_general_principles/

www.cps.gov.uk/legal/s_to_u/sentencing_manual/

When an offender is convicted, in either a magistrates' or the Crown Court, the court can either pass sentence immediately or if further information is required they may adjourn to a later date.

The Criminal Justice Act 2003 set out the five main purposes of sentencing for adults:

- The punishment of offenders;
- The reduction of crime (including its reduction by deterrence);
- The reform and rehabilitation of offenders;
- The protection of the public;
- The making of reparation of offenders to persons affected by their offences.

While courts are obliged to have regard to these principles, sentence will generally be determined according to seriousness of the offence. Seriousness is made up of the harm caused by the offence and the culpability of the offender in committing it.

There is also a statutory aggravating which provides that recent and relevant previous convictions make an offence more serious. There are thresholds of penalty based on seriousness:

- Offences that are **so serious** that neither a fine alone nor a community sentence can be justified;
- Offences that are **serious enough** to warrant a community sentence.

If neither of these thresholds is reached then a fine or a discharge will be appropriate.

Disposals given in court

Immediate Custody

Adults aged over 21 will be sentenced to imprisonment, adults aged 18–20 will be sentenced to detention in a young offenders institution. Maximum penalties are specified for all offences according to the seriousness of the offence. Generally, the maximum custodial penalties are set at one of the following levels:

- 1 month;
- 3 months;
- 6 months;
- 12 months;
- 2 years;
- 5 years;
- 7 years;
- 10 years;
- 14 years;
- life.

One of the characteristics of the criminal law in England and Wales is that offences are defined very broadly. Hence sentences imposed tend to cluster much lower than the maxima.

Short sentences – Under 12 months Those sentenced to **under 12 months** (made under the Criminal Justice Act 1991) spend the first half of their sentence in prison and are then released and considered ‘**at risk**’ for the remaining period. This means they are under no positive obligations and do not report to the probation service but, if they commit a further imprisonable offence during the at risk period, they can be made to serve the remainder of the sentence in addition to the punishment for the new offence. The exception to this is those aged 18–20 who have a minimum of three months’ supervision on release.

Sentences of 12 months or over The Criminal Justice Act 2003 created a distinction between **standard determinate sentences** and **public protection sentences**. Offenders sentenced to a **standard determinate sentence** serve the first half in prison and the second half in the community on **licence** and subject to conditions. Offenders convicted of a sexual or violent offence may be sentenced to a **public protection sentence**. In such cases, the court has to determine whether the offender is dangerous to the extent that there is a significant risk to the public of serious harm through the commission by him or her of a further sexual or violent offence. If the court does consider that to be the case, it may impose a public protection sentence. There are two such sentences:

Imprisonment or detention for public protection (IPP – sections 225 and 226 of the Criminal Justice Act 2003) – where the maximum for the offence is ten years or more and where a life sentence is not available or appropriate. An IPP is an indeterminate sentence; an offender will serve the tariff (minimum term) as set by the judge and then is eligible to be released if considered safe by the Parole Board. The only significant distinction between life and IPP is that, whereas life sentences last for the whole of the offender’s life, the Parole Board can bring an IPP licence to an end after a minimum of 10 years in the community following release.

Extended sentence (EPP – section 227 of the 2003 Act) – where the maximum for the offence is less than 10 years. An extended sentence comprises the normal determinate custodial period plus an extended period on licence. The offender may be released at any time between the half way point and the end of the normal custodial period and is on licence until the end of the extension period.

The **Criminal Justice and Immigration Act 2008** changed the provisions so as to give judges more discretion over the use of public protection sentences; they were to be restricted to offences for which two years real time is justified; and for release from an extended sentence to be automatically at the half way point of the custodial period with licence extending from then until the end of the extension period. These changes apply to cases sentenced on or after 14 July 2008.

Licence For the duration of the licence, an offender is obliged to comply with the terms of that licence. These may include requirements to report to the probation service, restrictions as to where he may live and what work he may undertake, and requirements to attend programmes. If an offender breaches his licence he is liable to be recalled to prison, potentially until the end of his sentence.

Life Sentence

The main types of life sentence and the respective age related variants are as follows:

Mandatory Life Sentences

- Imprisonment for Life – this is the only sentence that can be imposed on anyone over the age of 21 who is convicted of murder.
- Detention during Her Majesty's Pleasure – this is the mandatory sentence for a person convicted of murder who was aged 10 or over but under 18 at the time of the offence.
- Custody for Life – this is the mandatory sentence for a person aged 18 or over but under 21 at the time of the offence who is convicted of murder and sentenced while under 21.

Discretionary Life Sentences

- Imprisonment for Life – this is the maximum sentence for those over 21 convicted of certain serious offences, e.g. manslaughter, attempted murder, rape, armed robbery, arson etc.
- Detention for Life – this is the maximum sentence for a person aged 10 or over but under 18, who is convicted of offences other than murder for which a discretionary life sentence may be passed on a person over 21.
- Custody for Life – this sentence may also be imposed where a person aged 18 or over but under 21 at the time of the offence is convicted of any other offence for which a discretionary life sentence may be passed on an adult.

Under any life sentence the court determines the minimum term to be served in custody before the offender can be considered for release by the Parole Board.

If and when the offender is released he or she remains on licence, and subject to recall to custody, for the rest of their lives.

Mandatory minimum custodial sentences

The Powers of Criminal Courts (Sentencing) Act 2000 introduced mandatory minimum sentences of:

- Seven years for a third Class A drug trafficking offence committed after 30 September 1997.
- Three years for a third domestic burglary committed after 30 November 1999.
- An automatic life sentence for a second serious offence committed after 30 September 1997. This section has subsequently been replaced from 4 April 2005 by indeterminate sentences for public protection.

The Criminal Justice Act 2003 also introduced a mandatory minimum sentence of five years (three years in the case of those aged 16 or 17) for certain offences under section 5 of the Firearms Act 1968.

Suspended sentence orders

These sentences were introduced under the Criminal Justice Act 2003 and are available for offences committed on or after 4 April 2005. They enable a court which passes a custodial sentence of 12 months or less to suspend that sentence for a period of between six months and two years while ordering the offender to undertake certain requirements in the community (drawn from the same list as those available for the community order). If the offender breaches the requirements there is a presumption that the custodial sentence will be given effect.

Community Sentences

Since the implementation of the Criminal Justice Act 2003, there has been a single community order that can comprise up to 12 requirements depending on the offence and the offender. These are:

- Unpaid work (formerly community service/community punishment) – a requirement to complete between 40 and 300 hours' unpaid work;
- Activity – e.g. to attend basic skills classes;
- Programme – there are several designed to reduce the prospects of reoffending;
- Prohibited activity – requirement not to do something that is likely to lead to further offender or nuisance;
- Curfew – electronically monitored;
- Exclusion – not much used as no reliable electronic monitoring yet available;
- Residence – requirement to reside only where approved by probation officer;
- Mental health treatment (requires offender's consent);

- Drug rehabilitation (requires offender's consent);
- Alcohol treatment (requires offender's consent);
- Supervision – meetings with probation officer to address needs/offending behaviour;
- Attendance centre – three hours of activity, usually on Saturday afternoons, between a minimum of 12 hours and a maximum of 36 in total.

Typically, the more serious the offence and the more extensive the offender's needs, the more requirements there will be. Most orders will comprise one or two requirements but there are packages of several available where required. The court tailors the order as appropriate and is guided by the probation service through a pre-sentence report.

Fines

Fines are available to punish all offenders (other than where mandatory minimum sentences apply, such as for murder). In general, the maximum fine that can be imposed by magistrates' courts is defined in terms of level. There are five levels, currently set as follows:

- Level 1 £200
- Level 2 £500
- Level 3 £1,000
- Level 4 £2,500
- Level 5 £5,000

In practice, fine levels are generally much less than the maximum as courts must take account of offenders' means when deciding on the amount to impose. The Crown Court may fine an unlimited amount.

Discharges

A court may discharge a person either absolutely or conditionally where the court takes the view that it is not necessary to impose punishment. An absolute discharge requires nothing from the offender and imposes no restrictions on future conduct. The majority of discharges are conditional discharges where the offender remains liable to punishment for the offence if he is convicted of a further offence within whatever period the court specifies (but not more than three years).

Compensation

In cases involving death, injury, loss or damage, the courts are required to consider making a compensation order, and to give reasons where no such order is made. A compensation order can also be made in addition to any other sentence or order, or can be the only sentence imposed for a particular offence. Magistrates' courts can order compensation up to a maximum of £5,000 per offence, but there is no such limit in the Crown Court. However, courts are required to have regard to the means of the offender when deciding whether to make a compensation order and when deciding on its amount. When the defendant makes payments against financial penalties, compensation orders are paid off before fines.

Further sentences and orders

Other punishments are used to a lesser extent. These include binding over orders, confiscation orders, exclusion orders and disqualification from driving. When a defendant stands convicted before the Crown Court of a drug trafficking offence, the Court is required to determine whether he has benefited from drug trafficking at any time, and if so, to make a confiscation order. The amount to be recovered is what the court assesses to be the value of the defendant's proceeds from drug trafficking, or that which can be realised. The courts have general power to penalise a defendant by making an order for the forfeiture of property associated with the offence.

Sentences specifically for juveniles

Sentencing for juveniles is bound by the provisions of the Crime and Disorder Act 1998 and the Children and Young Persons Act 1933. The Acts set out two main purposes of youth sentencing:

- Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.
- It shall be the principal aim of the youth justice system to prevent offending by children and young persons.

Custodial sentences

The custodial sentences available for juveniles are:

- Detention and Training Order: Detention and Training Orders (DTO's: sections 100–107 of PCC(S)A 2000) were introduced from 1 April 2000 to replace the sentences of Detention in a YOI for 15–17 year olds and the Secure Training Order for 12–14 year olds. A DTO may be given for a term of 4, 6, 8, 10, 12, 18 or 24 months, of which usually half is served in detention and the remainder in the community under supervision.
- Section 91 Powers of Criminal Courts (Sentencing) Act 2000: Section 91 Powers of Criminal Courts (Sentencing) Act 2000 (PCC(S) A 2000) restated the power (originally in section 53(2) of the Children and Young Persons Act 1933) to detain juveniles who commit certain serious offences (mostly those with a statutory maximum of 14 years imprisonment or more in the case of an adult) for a period equivalent to the maximum for which an adult committing the same offence could be imprisoned.
- Section 90 Powers of Criminal Courts (Sentencing) Act 2000: A juvenile offender convicted of murder will be sentenced to Detention during Her Majesty's Pleasure, the provisions of which are found in S.90 of the Powers of Criminal Courts (Sentencing) Act 2000. Offences committed prior to August 2000 would have been sentenced under S. 53(1) (2) Children and Young Persons Act 1933.

- Detention for Life: This is the maximum sentence for a person aged 10 or over but under 18, who is convicted of offences other than murder for which a discretionary life sentence may be passed on a person over 21.

Community sentences

Community sentences for juveniles are supervised by Youth Offending Teams (YOTs) and comprise different orders than are available for adults. The community order is not available for juveniles and a reform of juvenile sentencing means all the orders listed below, with the exception of the Reparation Order and the Referral Order, have been replaced by the Youth Rehabilitation Order for offences committed from 30 November 2009.

Community sentences available prior to 30 November 2009:

- Action Plan Order is a three month programme available for 10–17 year olds and comprises a short intensive community based programme which may include reparation and attendance centre sessions.
- Attendance Centre Orders are available for 10–17 year olds and are run by police with offenders attending on Saturdays for between four and 24 hours. The sessions; usually two hours long, involve physical exercise and group work.
- Curfew Orders with electronic monitoring: Available for 10–17 year olds and for up to three months. The court can order an offender to comply with a curfew backed up with electronic monitoring. The tagged curfews can help to break patterns of offending by keeping offenders off the street and out of trouble at times they are most likely to offend.
- Supervision Order: Available for 10–17 year olds and can last from six months up to three years. The offender is supervised by a member of the YOT. A range of conditions can be attached for more serious offences; these can include drug treatment, residence requirements, curfews, and additional activities specified by the YOT (normally reparation, offending behaviour, group work or anger management).
- Community Punishment and Rehabilitation Order: Available for offenders aged 16+ and the order can last from 12 months up to three years. The order requires an offender to be under supervision and to perform unpaid work for not less than 40 and no more than 100 hours.
- Community Punishment Order: Available for offenders aged 16+ and for between 40 and 240 hours. Involves undertaking unpaid work in the community, typically work such as carpentry workshops, conservation, decorating or caring tasks.
- Community Rehabilitation Order: Available for offenders aged 16+ and lasts between six months and three years. It is the juvenile equivalent of supervision by the probation service and is only available for 'mature' 16 and 17 year olds. It can also come with conditions attached such as residence requirements.

Current community sentences:

- Referral Order: Is given to 10–17 year olds pleading guilty for a first offence only where the court deems a custodial sentence is not warranted. They are required to attend a youth offender panel, which is made up of two volunteers from the local community and panel adviser from a youth offending team (YOT). The panel, with the young person, their parents/carers and the victim (where appropriate), agree a contract lasting between three and 12 months. The aim of the contract is to repair the harm caused by the offence and address the causes of the offending behaviour. The conviction is 'spent' once the contract has been successfully completed. This means that in most circumstances the offence will not have to be disclosed by the young person when applying for work.
- Reparation Order: Available for 10–17 year olds convicted of an offence it must comprise a maximum of 24 hours and must be completed within three months of the date the order is passed. The views of the victim must be sought before a reparation order can be made. If the victim is not prepared to have any further contact with the offender then reparation can be made to the community at large. Reparation cannot consist of financial reparation; courts have other means to enforce financial reparation if they believe it to be suitable.
- Youth Rehabilitation Order (YRO): has replaced most of the previously available community sentences with a 'menu' of requirements that can be tailored to suit the individual risks and needs of an offender. In this respect it is similar to the community order available for adults. The YRO can be made for up to three years.

The following requirements can be attached to a YRO:

- Activity Requirement
- Curfew Requirement
- Exclusion Requirement
- Local Authority Residence Requirement
- Education Requirement
- Mental Health Treatment Requirement
- Unpaid Work Requirement (16/17 years)
- Drug Testing Requirement
- Intoxicating Substance Treatment Requirement
- Supervision Requirement
- Electronic Monitoring Requirement
- Prohibited Activity Requirement
- Drug Treatment Requirement

- Residence Requirement
- Programme Requirement
- Attendance Centre Requirement
- Intensive Supervision and Surveillance (based on the current ISSP)
- Intensive Fostering.

Legislation coming into effect in the reporting period

The legislation described below relates mainly to legislation that came into force in the period from January 2000 to the end of 2010. It is only a short summary of the sections that may have affected the published statistics. The following web site has details of all legislation that has come into force in the intervening period.

www.legislation.gov.uk/

The coverage of the sentencing statistics in this volume may have been affected by the following legislation, which has altered the modes of trial, sentencing framework or significantly altered the range of offences:

- Powers of Criminal Courts (Sentencing) Act 2000
- Criminal Justice and Police Act 2001
- Proceeds of Crime Act 2002
- Criminal Justice Act 2003
- Sexual Offences Act 2003
- Fraud Act 2006
- Criminal Justice and Immigration Act 2008
- Coroners and Justice Act 2009

The **Powers of Criminal Court (Sentencing) Act 2000** consolidated legislation on sentencing and the treatment of offenders that was previously contained within twelve other Acts. It was divided into the following parts:

- Part I Powers exercisable before sentence: covering deferment of sentence, committal to the Crown Court for sentence, powers to remit young offenders to youth courts for sentence and the power for magistrates' to adjourn sentencing to enable a medical exam.
- Part II Absolute and Conditional Discharge: giving the power for a court to discharge an offender absolutely or conditionally in cases where the penalty is not fixed by law or imposed under section 109(2), 110(2) or 111(2) of this act. Conditional discharges require an offender not to commit another offence within a period no greater than three years, if breached the original court is to sentence for the original offence as if he had just been convicted before that court.
- Part III Mandatory and discretionary referral of young offenders: establishing referral orders (see Appendix 1) where offenders aged under 18 who have pleaded guilty to an offence can be referred to a youth offender panel.
- Part IV Community orders and reparation orders: establishing curfew orders, action plan orders and general provisions for community sentences, most of this section was subsequently repealed by the Criminal Justice Act 2003.
- Part V Custodial sentences etc.: consolidated legislation establishing six months as the maximum term for which magistrates' can sentence to custody, also introduced the custodial sentence with extended licence period for specified violent or sexual offences.

- Chapter II of part V contained many provisions regarding the detention and custody of offenders under 21 years of age. Sections 90–91 still apply to offenders aged under 18 convicted of serious offences such as murder or rape and specify the periods of detention that can or should be imposed.
- Section 100 consolidated legislation in the Crime and Disorder Act which introduced Detention and Training Orders (DTO's) for offenders aged under 18 convicted of an offence which would be punishable by imprisonment for an offender aged over 21. A DTO is for a set period of 4, 6, 8, 10, 12, 18 or 24 months with half the sentence to be served in secure accommodation and the remaining period to be served in the community but with supervision by a local social work department or Youth offending team.
- Sections 109–111 consolidated legislation on mandatory minimum terms for: offenders convicted of a second serious offence in which case the minimum term is life imprisonment, a third class A drug trafficking offence in which case the court should impose a custodial sentence of seven years or a third domestic burglary in which case a custodial sentence of three years should be imposed. Section 109 relating to life imprisonment has since been replaced by the provisions contained within the Criminal Justice Act 2003 for IPP sentences.
- Section 118 contained some provisions on the imposition of suspended sentences which have since been replaced by the Suspended Sentence Order.

The **Criminal Justice and Police Act 2001** introduced on the spot fixed penalties for a range of offences including retail theft under £100, behaviour likely to cause fear of harassment, alarm or distress and being drunk and disorderly in a public place. The Act allows local councils to create areas in which drinking could be restricted and the power to confiscate alcohol in these areas. It also introduced a new offence of protesting in an intimidating manner, as well as making kerb crawling, 'hit and run' accidents, and importing obscene material arrestable offences. It also gave new powers to magistrates to remand children aged between 12 and 16 into custody when charged with offences such as theft and criminal damage.

The **Proceeds of Crime Act 2002** consolidated drug trafficking and criminal justice legislation on the confiscation of convicted defendants' earnings. Confiscation orders can only be made in the Crown Court and the powers of magistrates to make a confiscation order were also abolished by this Act.

The Act made the power to confiscate mandatory and the Crown Court must instigate confiscation proceedings if requested by the prosecutor. Confiscation hearings are conducted according to the civil standard of proof, i.e. on the balance of probabilities. In some cases the court is empowered to assume that the defendants assets and earnings from the six years prior to conviction have been derived from criminal conduct and to make an order accordingly, the court is further required to make this assumption following a conviction for drug trafficking.

The **Criminal Justice Act 2003** brought in means to involve the Crown Prosecution Service in charging decisions and to reform the system for allocating cases to court. It introduced a new presumption against bail in certain circumstances where an offence has been committed while on bail or for defendants charged with an imprisonable offence. The Act aimed to ensure that criminal trials are run more efficiently and to ensure a reduction in abuse of the system:

Rules on evidence were changed to allow the use of previous convictions where relevant, and to allow the use of reported (hearsay) evidence where there is good reason why the original source cannot be present, or where the judge otherwise considers it would be appropriate, with effect from 4 April 2005.

A right of appeal for the prosecution against judicial decisions to direct or order an acquittal before the jury has been asked to consider the evidence. This will be introduced to balance the defendant's right of appeal against both conviction and sentence (not yet in force).

The Act provides a sentencing framework that is clearer and more flexible than before:

- The purposes of sentencing of adults are identified in statute for the first time, as punishment, crime reduction, reform and rehabilitation, public protection and reparation.
- The principles of sentencing are set out, including that any previous convictions, where they are recent and relevant, should be regarded as an aggravating factor, which will increase the severity of the sentence, with effect from 4 April 2005.
- Through the implementation of section 167 of the act, a new Sentencing Guidelines Council was established on 27 February 2004. This Council and the Sentencing Advisory Panel worked together to ensure that sentencing guidelines are produced which encourage consistency in sentencing throughout the courts of England and Wales and support sentencers in their decision making (the Sentencing Guidelines Council has since been superseded by the Sentencing Council – see Coroners and Justice Act 2009).
- Sentence lengths of 12 months or over are served in full, with half in custody, half in the community and with supervision extended to the end of the sentence rather than the $\frac{3}{4}$ point as previously, with effect from 4 April 2005.

It brought in changes to the sentences available to the courts:

- The various kinds of community orders for adults were replaced by a single community order with a range of possible requirements, commenced 4 April 2005.
- Serious violent and sexual offenders attracted new sentences, to ensure that they are kept in prison or under supervision for longer periods than previously, with effect from 4 April 2005.
- An increase in sentence length for any offence where it is aggravated by hostility towards the victim on the basis of disability, sexual orientation, race or religion, with effect from 4 April 2005.
- Some new short custodial sentences were introduced. These include custody plus, intermittent custody and a reformed suspended sentence in which offenders have to complete a range of requirements imposed by the court. Intermittent custody was piloted from January 2004 to November 2006, but not implemented, and the new suspended sentence was commenced from 4 April 2005. Custody plus has not been implemented.

The Act also addressed a number of other areas:

- It contains a number of provisions on drug related offending, extending to those aged 14 and above, the provisions to test persons in police detention and at other points in the criminal justice system for specified Class A drugs. It also reclassified Cannabis as a class C drug, introduced on 1 August 2004. This decision was subsequently reversed and cannabis was re-classified as a class B drug from 26 January 2009.
- It established a five year mandatory minimum custodial sentence (three years for 16-17 year olds) for unauthorised possession of a prohibited firearm, with effect from 22 January 2004.
- It increased the maximum penalty for causing death by dangerous driving from 10 to 14 years, with effect from 27 February 2004.
- In relation to juveniles, the Act extended the use of parenting orders by making them available at an earlier stage and introduced individual support orders, requiring young people with anti-social behaviour orders to undertake education-related activities, introduced on 27 February 2004.
- In relation to fines it introduced the financial circumstances order which compelled offenders to inform the court of their financial circumstances so that the court can impose a fine that both reflects the seriousness of the offence and the ability of pay of the offender.

The **Sexual Offences Act 2003** was brought in from May 2004 and repealed virtually all of the previous legislation relating to sexual offences. It included the following main offences, with effect from 1 May 2004:

- Rape and the evidential and conclusive presumptions about consent regarding adults, covering an individual's ability to make a choice or where violence or threats of violence take place.
- Assault by penetration, committing an offence, causing a person to engage in sexual activity without consent.
- Rape and other offences against children under 13, where the offence is committed intentionally.
- Child sex offences, including causing or inciting a child to engage in sexual activity making it constitute an offence regardless of whether the activity incited actually takes place.
- Causing a child to watch a sexual act and child sex offences committed by children or young persons.
- Re-enacting and amending abuse of position of trust under sections 3 and 4 of the Sexual Offences (Amendment) Act 2000.
- Familial child sex offences, including intension and incitement of the offence.
- Offences against persons with a mental disorder.

- Indecent photographs of children redefining a 'child' for the purposes of the Protection of Children Act 1978, as a person under 18 years of age.
- Abuse of children through prostitution and pornography, covering under 18s and under 13s.
- Exploitation of prostitution including trafficking of a person into or out of the UK for sexual exploitation.
- Preparatory offences and sex with an adult relative.

The act also defined the interpretation of the terms 'sexual' and 'consent'.

The Act also introduced new civil preventative orders:

- Notification orders: This is an order which can be made, on application by a chief officer of police, in respect of individuals who have been convicted, cautioned etc. abroad for sexual offences equivalent to the sexual offences listed in Schedule 3 of the 2003 Act. The effect of the order is to make such offenders subject to the notification requirements of Part 2 of the 2003 Act as if they had been convicted, cautioned etc. in the UK of a relevant offence, with effect from 1 May 2004.
- Sexual offences prevention orders (SOPOs): This order replaced both the sex offender order and the restraining order. Therefore, a SOPO can be made on application by a chief officer of police in respect of a convicted sex offender or by a court at conviction. The SOPO is also an improvement on the existing orders. A conditional discharge cannot be received as punishment for breach of a SOPO, with effect 1 May 2004.
- Foreign travel orders: This order enables the courts, in certain circumstances and on application by a chief officer of police, to prohibit those convicted of sexual offences against children aged under 16 from travelling overseas where there is evidence that they intend to cause serious sexual harm to children in a foreign country, with effect 1 May 2004.
- Risk of sexual harm orders (RSHOs): This order, similar to the SOPO, aims to restrict the activities of those involved in grooming children for sexual activity. A previous conviction, caution etc. for a sexual offence is not a prerequisite in applying for a RSHO, with effect 1 May 2004.

None of the provisions in the Act applied retrospectively.

The **Fraud Act 2006** commenced from 15 January 2007 and summarised fraud into three categories:

- Fraud by false representation;
- Fraud by failing to disclose information;
- Fraud by abuse of position.

It also created new offences for:

- Obtaining Services Dishonestly;
- Possessing, making or supplying articles for use in Fraud;
- Sole traders, who are now subject to fraudulent trading charges.

The aim of the Act was to criminalise the intent of a fraudulent act rather than the act itself; this will allow the Act to respond to technological advances which may alter the means by which a fraudulent act can be committed.

The **Criminal Justice and Immigration Act 2008** commenced from November 2008 and was a wide ranging Act which aimed to make further provisions about the criminal justice system; dealing with offenders; the management of offenders; and to amend the Repatriation of Prisoners Act 1984. It created or amended a number of offences, including:

- A new offence of inciting hatred on the grounds of sexual orientation;
- A ban on the possession of extreme pornographic images;
- Clarification of the law on self-defence;
- New civil penalties for serious breaches of data protection principles and made unlawfully obtaining personal data an offence punishable by up to two years in prison;
- Abolished the common law offence of blasphemy and blasphemous libel.

It also made changes to sentencing, including:

- The creation of Violent Offender Orders (VOOs): Civil preventative orders that allow courts to impose post-sentence restrictions on those convicted of violent offences.
- The clarification of sentencing procedures for young offenders.
- The creation of the youth conditional caution and the Youth Rehabilitation Order (YRO) a generic community sentence similar to the adult community order in which a 'menu' of requirements is chosen from to create a bespoke order specific to an offender and their offending behaviour. The YRO came into effect on 30 November 2009.
- Amended provisions in the Criminal Justice Act 2003 so as to give judges more discretion over the use of public protection sentences; for the use of public protection sentences to be restricted to offences for which two years real time in prison is justified or where the offender has previously been convicted of a specified offence (listed in Schedule 15A to the 2003 Act); and for release from an extended sentence to be automatic at the half way point of the custodial period with licence extending then until the end of the extension period. These changes apply to cases sentenced on or after 14 July 2008.

The **Coroners and Justice Act 2009** introduced several new offences:

- Offences relating to encouraging or assisting suicide

- Possession of prohibited images of children.

It also made changes to:

- Retrospective application of genocide, crimes against humanity and war crimes
- Persons suffering from diminished responsibility, partial defence: loss of control relating to murder
- Driving disqualifications for those also sentence to immediate custody
- Added certain terrorist offence to the list for which Indeterminate sentences for public protection are available.

The Act introduced provisions for anonymity in certain investigations and for certain witness. It also established the Sentencing Council to replace the Sentencing Guidelines Council.

Glossary

Absolute discharge: When the court decides someone is guilty, but decides not to punish them further at this time, they will be given a 'discharge'. Discharges are given for minor offences. An 'absolute discharge' means that no more action will be taken.

Average custodial sentence length (ACSL): Average length of determinate custodial sentences given in months. This excludes indeterminate sentences (life or Imprisonment for Public Protection sentences) as the length of these sentences is not recorded.

Example of calculation of average custodial sentence length (ACSL):

Offenders in four cases are sentenced to immediate custody and the sentence lengths handed down are: 6 months, 1 year, 18 months and a life sentence. The calculation of ACSL excludes the life sentence as this is an indeterminate sentence and it is not known how long the offenders will serve in custody. The mean is calculated on the remaining 3 sentences implying the ACSL for these offences is: $(6+12+18)/3 = 12$ months

Community sentence: When a court imposes a community sentence, the offender doesn't go to prison. But the court says there are specific things the offender can, can't and must do while serving their sentence. The magistrate or judge will decide which combination of these 'requirements' will most effectively punish the offender for their crime, while also reducing the risk of them offending again.

Conditional discharge: When the court decides someone is guilty, but decides not to punish them further at this time, they will be given a 'discharge'. Discharges are given for minor offences. A 'conditional discharge' means that the offender won't be punished unless they commit another offence within a set period of time (no longer than three years).

Conviction ratio: The conviction ratio is defined as the ratio of convictions to prosecutions for a principal offence over one year. As trials can span more than one year, offenders found guilty in a reporting year are not always the same defendants who were prosecuted in that year.

Crime: is an action or an instance of negligence that is deemed injurious to the public welfare or morals or to the interests of the state and that is legally prohibited. An incident is counted as a crime if reported to the authorities and following investigation is confirmed as a "crime" and recorded as such.

Disposal: The end result of a trial at court. In this publication the disposals of interest are sentences, but other disposals are possible, for example where there is no finding of guilt and the defendant is acquitted.

Downgrading: A crime recorded by the police that results in a conviction for a lesser offence than initially recorded. For example, following investigation a crime is recorded “Wounding with intent to cause grievous bodily harm” and charged as such but during the court process more evidence comes to light which means that prosecutors believe the more appropriate charge is for a less serious offence of “Actual bodily harm”.

Fine: Fines are the most common criminal sentence, given to punish an offender financially. They're usually given for less serious crimes that don't merit a community or prison sentence. They limit the amount of money offenders have to spend. How much someone is fined depends on how serious a crime is, and the offender's ability to pay.

First time entrants: The basic concept of a first time entrant to the Criminal Justice System is an individual who receives their first criminal sanction following a criminal act.

Formally disposed offending: An offence is said to be formally disposed of if an offender receives a conviction at court or an out-of-court disposal for the offence.

Immediate custody: Prison sentences are given when an offence is so serious that it is the only suitable punishment. A prison sentence will also be given when the court believes the public must be protected from the offender. There are three different types of prison sentence: suspended sentences, determinate sentences (those having a fixed term) and indeterminate sentences (which have only a minimum term and include life sentences).

Mean and median: The average fine has been defined as both the median fine amount and the arithmetic mean. The median fine amount is used as occasional large fines (>£1,000,000) handed down to companies or other organisations can have a misleading impact when using the mean to represent average fine amounts. In this situation the median (the middle number in a sorted list of numbers) is more informative about the true mid-point of the data than a simple (mean) average.

Example illustrating the difference between the mean and the median measure

Defendants in 13 cases were sentenced to the following fine amounts: £5, £5, £10, £10, £10, £10, £20, £20, £20, £20, £50, £50, £2,000. Calculating the average (mean) and mid-point (median) values from this list will produce very different results:

The mean is calculated by taking the sum of all values and then dividing by the number of values. In this example the mean fine amount is £171.54.

The median however looks for the value which lies in the middle of the set of numbers when those numbers are placed in ascending or descending order. In this instance the middle value is £20 (the 7th value in the list).

Therefore in this example the median value of £20 is more representative of the average fine value issued compared to the mean value of £171.54.

Notifiable offence: The term 'notifiable' covers offences that are notified to the Home Office, and they are collectively known as 'recorded crime'. Notifiable offences include all indictable and triable-either-way offences (excluding section 6 of the Bail Act 1976), together with certain closely associated summary offences. Police recorded crime statistics cover notifiable offences.

Otherwise dealt with: includes a number of orders, for example hospital orders, confiscation orders and compensation orders.

Primary/Principal offence: Where more than one offence is considered in a court case or cautioning occasion, the offence that would/did attract the most severe sentencing outcome is deemed to be the Principal offence and other offences also dealt with in that case would be ignored. If two offences in the same case attract the same sentence the offence with the statutory maximum sentence is deemed the 'Principal offence'.

Proven offending: An individual is considered as a proven offender if they receive one of the following sanctions:

- Simple caution
- Caution
- Final warning,
- Reprimand
- Conditional caution
- Penalty Notice for Disorder
- Cannabis Warning
- Prosecution resulting in conviction

Proven Offending Rate (or disposal rate). This is an offence based measure as it measures the number of offences where someone is proven to have committed that offence: There are two ways of measuring this:

- All offence category: A comparison of crimes to outcome for any offence e.g. the number of murders recorded compare to a conviction for any offence.
- Within offence category: A comparison of crimes to outcome for the same offence category, e.g. the number of murders recorded compared to a conviction for murder.

Recordable offence: Recordable offences are those that the police are required to record on the Police National Computer. They include all offences for which a custodial sentence can be given plus a range of other offences defined as recordable in legislation. They exclude a range of less serious summary offences, for example television licence evasion, driving without insurance, speeding and vehicle tax offences.

Triable only on indictment: These offences are the most serious breaches of the criminal law and must be tried at the Crown Court before a judge and jury. These 'indictable-only' offences include murder, manslaughter, rape and robbery.

Triable-either-way: These offences may be tried either at the Crown Court or at a magistrates' court. These offences include criminal damage where the value is £5,000 or greater, theft, burglary and drink driving. Triable only on indictment and triable either way are frequently amalgamated to form indictable offences.

Summary offences: These offences are usually heard only by a magistrates' court. This group is dominated by motoring offences, for some of which fixed penalties can be issued, but also includes such offences as common assault and criminal damage up to £5,000.

Suspended sentence: A court may give an offender a 'suspended' prison sentence if the time they would otherwise spend in prison is under 12 months. With a suspended sentence, the offender doesn't go directly to prison but they do have to meet conditions in the community, set by the court. These conditions can last for up to two years. If the offender breaks these conditions, or commits another offence, they will usually have to serve the original sentence in prison.

Victims: individuals who are subject to an incident punishable under criminal law.

Witnesses: individuals or groups of people who observe an incident punishable under criminal law. A victim may also be a witness. Victims and witnesses can report an incident which following investigation can become a crime. Reporting of an incident by either group will depend on their participation in the event and their perception of the seriousness of the event. If a victim does not report an incident, but a witness does, the police will still investigate and record as a crime if appropriate.

Directory of related Internet websites on the Criminal Justice System

The following list of web sites contains information in the form of publications and/or statistics relating to the criminal justice system that may be of interest.

Justice, www.justice.gov.uk/. This site provides information on the organisations within the justice system, reports and data, and guidance:

- Details of Ministry of Justice Statistical and Research publications, most of which can be viewed on-line, can be found at: www.justice.gov.uk/publications/statistics-and-data/index.htm For historic publications, see the links to 'earlier volumes in the series' (on Home Office site) on individual publication pages.
- Information on the bodies within the justice system, such as HM Prison Service, the Youth Justice Board and HM Courts & Tribunals Service can be found at: www.justice.gov.uk/about/index.htm

The Crown Prosecution Service, www.cps.gov.uk Gives information on the department and provides particulars in relation to legal guidance/victims and witnesses, in addition to details of publications.

The Attorney General's Office, www.attorneygeneral.gov.uk Provides information on the role of the department including new releases; updates; reports; reviews and links to other law officer's departments and organisations.

The Welsh Assembly Government, www.wales.gov.uk Gives information on all aspects of the Welsh Assembly together with details of publications and statistics.

The Scottish Government www.scotland.gov.uk Gives information on all aspects of the Scottish Executive together with details of publications and statistics.

Criminal Justice System Northern Ireland, www.nidirect.gov.uk/justice Provides access to the main statutory agencies and organisations that make up the CJS together with details of publications.

UK National Statistics Publication Hub, www.statistics.gov.uk This is the UK's home of official statistics, reflecting Britain's economy, population and society at national and local level. There are links to the Office for National Statistics and the UK Statistics Authority.

The Sentencing Council, <http://sentencingcouncil.judiciary.gov.uk/> The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice and replaces the Sentencing Guidelines Council and the Sentencing Advisory Panel. The site contains information on: sentencing guidelines; general information on sentencing; and research and analysis undertaken by the Sentencing Council.

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Alternative formats are available on request from
statistics.enquiries@justice.gsi.gov.uk