

Equalities Statement: Sentencing Bill – Presumption Against Short Sentences

Introduction

1. The Government is acting to drive down reoffending rates, to reduce crime and keep communities safe. Short prison sentences are too often ineffective at reducing reoffending, and may even entrench an offender in criminality, cutting them off from employment and community connection. Community-based sentencing alternatives allow for longer intervention and supervision and have statistically lower reoffending rates. These sentences are less disruptive for individuals, protecting their housing, work and family networks. The Bill includes measures which amend the sentencing framework to address these issues.

Policy summary

2. This measure seeks to alter the sentencing behaviour of judges to ensure a greater number of offenders are diverted away from short sentences of immediate custody of 12 months or less and are instead presumed to receive a Suspended Sentence Order (SSO).
3. Increasing the use of SSOs should reduce reoffending by shifting adults from short sentences of immediate custody onto community-based sentences. Effective community-based sentences can better address individuals' needs and provide reparation for the benefit of the wider community.
4. The Government wants to ensure that the public remains protected. Where there is a significant risk of harm to an individual or where the offender has breached an order of the court or has committed a further offence whilst on licence or subject to post-sentence supervision, the courts will retain full discretion to impose a sentence of immediate custody. The courts will also impose a sentence of immediate custody where there are exceptional circumstances which would justify not passing a suspended sentence. If the offender fails to comply with their SSO requirements immediate custody may still be imposed.
5. No specific offences or offenders will be excluded from this policy.

Ministry of Justice and the Public Sector Equality Duty

6. Under the [Equality Act 2010¹ \(the 2010 Act\)](#), when exercising its functions, the MoJ has an ongoing legal duty (the public sector equality duty or PSED) to pay due regard to the need to:
 - eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
 - advance equality of opportunity between different groups of persons who share a protected characteristic and those who do not; and
 - foster good relations between different groups.
7. We also recognise that, as well as having an obligation not to directly or indirectly discriminate against disabled people, the MoJ as a service provider has a duty to make reasonable adjustments for disabled people.

¹ http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

8. The payment of due regard to the PSED needs to be considered in light of the nine protected characteristics:

- Race
- Sexual Orientation
- Marriage/Civil Partnership
- Gender
- Religion or Belief
- Gender Reassignment
- Disability
- Age
- Pregnancy/Maternity

Sources of Information

9. The latest Ministry of Justice's *Criminal Justice System statistics quarterly*² has been used in order to identify offenders who would be affected by this policy. This was filtered to only include those convicted of immediate custodial sentences of 12 months or less (for all ages and offences) as this is the affected cohort.

Unavailable data

10. Publicly available data about protected characteristics is unavailable for sentenced offenders except for their sex, age, and ethnicity. While there may be other prisoners with protected characteristics who would be affected by this policy change, their eligibility is determined by the type of their sentence and the policy, and not with regard to their protected characteristic.
11. Data on the sexual orientation, race, disability, or religion of victims of offences by this cohort is not available.

Scope of this analysis

12. This analysis focuses on the impact of diverting those on short sentences of immediate custody of 12 months or less to SSOs.

Evidence and analysis

Affected Groups

Offenders

13. The proposed change will have a direct impact on those offenders who are serving custodial sentences of 12 months or less by changing the sentencing framework to increase use of SSOs for this cohort. The result of these changes is likely to mean a greater number of offenders will be diverted away from custody.
14. For this equalities analysis we are comparing the affected group, those who were given a custodial sentence of 12 months or less in 2022, against all of those given an immediate custodial sentence in 2022.
15. Published data that would inform whether individuals among the affected group with certain protected characteristics will be disproportionately affected is limited. However,

² Criminal Justice System statistics quarterly: December 2022.
<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022>

sentencing data provides information according to some characteristics: sex, ethnicity and age.

16. This data³ suggests that some characteristics may be underrepresented in the population affected by this policy (those currently serving a sentence of immediate custody of 12 months or less) relative to the full custodial population. Specifically:
- i. Males appear to be slightly underrepresented; in 2022, of the affected group (those serving sentences of immediate custody of 12 months or less) 91% were male. In contrast, of the full custodial cohort 94% were male.
 - ii. Black offenders appear to be underrepresented; in 2022, of the affected group (those serving sentences immediate custody of 12 months or less) 8% were Black (where ethnicity was stated). In contrast, of the full custodial cohort, 10% were Black.
 - iii. Younger people appear to be similarly represented; in 2022, of the affected group (those serving sentences of immediate custody of 12 months or less) 70% were age 39 or below (where age was recorded). Similarly, of the full custodial cohort, 71% were age 39 or below.
17. By virtue of the underrepresentation of the groups noted above, we acknowledge that any impacts arising from replacing immediate custodial sentences of up to 12 months with SSOs will affect those groups of prisoners listed above less so relative to the current custodial population.

Eliminating Unlawful Discrimination

Direct Discrimination

18. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that this policy is not directly discriminatory within the meaning of the 2010 Act, as the changes from this policy will apply in the same way to all prisoners receiving custodial sentences of 12 months or less regardless of their protected characteristics.

Indirect Discrimination

19. Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not.
20. Our assessment is that receiving a SSO in place of a sentence of immediate custody of up to 12 months does not cause particular disadvantage to any person due to their protected characteristics, subject to the over representation of certain protected characteristics as explained below. If it could be shown that people with a certain protected characteristic were put at a particular disadvantage, we believe it is a proportionate means of achieving our legitimate aim to reduce the number of short sentences of immediate custody.

Discrimination arising from disability and duty to make reasonable adjustments

³ The source data is the 'Sentence outcomes' table in the 'Outcomes by Offence data tool' workbook of the Criminal Justice System statistics quarterly: December 2022.

21. In so far as this policy/legislation extends to prisoners with disability who will be affected by the changes to sentencing, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for all prisoners with disability to make them more or less likely to be in scope of the proposal, but it remains important to make reasonable adjustments for all prisoners with disability affected to ensure appropriate support is given.

Advancing Equality of Opportunity

22. Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of affected offenders where those needs are different from the needs of those who do not share that protected characteristic.

23. This legislation will mean that some offenders who would have otherwise received a sentence of immediate custody will now spend less/no time in custody. This will increase their ability to interact with rehabilitative services aiding a reduction in reoffending.

24. A positive impact on communities will be an improved perception of public safety by reducing reoffending through the use of community-based sentences rather than disruptive short sentences of immediate custody

Fostering Good Relations

25. Our assessment is that diverting offenders from short sentences of immediate custody to SSOs in the way proposed is unlikely to impact on fostering good relations between groups with different protected characteristics.

Continuing Analysis

26. The equality duty is an ongoing duty, and we will continue to monitor and review these measures for any potential impacts on persons with protected characteristics to help ensure that access to justice is maintained. The impact of diverting offenders from short sentences of immediate custody to SSOs will be explored when the data on offenders whose sentence is adjusted broken down by protected characteristics becomes available.