



Ministry
of Justice

A Smarter Approach to Sentencing

September 2020

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A Smarter Approach to Sentencing

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

September 2020



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ISBN 978-1-5286-2140-3

CCS0920194198 09/20

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

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Ministerial Foreword



It was clear thirty years ago when I first started practising as a criminal barrister that there were problems with sentencing. In the time since, governments have come and gone and there have been at least seventeen major pieces of sentencing law. Despite that legislative hyperactivity, few big strides have been made towards a sentencing regime that really works.

The system we have today can be complex and is too often ineffectual. Victims and the public often find it difficult to understand, and have little faith that sentences are imposed with their safety sufficiently in mind. The courts can find it cumbersome and difficult to navigate, with judges' hands too often tied in passing sentences that seem to make little sense. The new Sentencing Code is a good start in tidying up the system, however we must be mindful not just of how sentences are handed down, but also how they are put into effect.

There are times when sentencing fails so drastically that the consequences are catastrophic and immediate.

The recent terror attacks in Britain sadly illustrate this all too well. On two occasions offenders were released into the community according to the law but clearly too early, only to commit horrifying acts of violence. We owe it to the victims, their families and the wider public to ensure that the system does all it can to protect innocent people from any dangerous threat, including sex offenders and those who would harm children.

At the other end of the spectrum, failures in sentencing lead to never-ending cycles of criminality, with low-level offenders stuck in a revolving door of crime.

Our prisons are full of these types of criminals and in many cases their offending is fuelled or exacerbated by poor mental health or substance misuse. Yet our system of sentencing is not properly equipped to support them to address these and other causes of their offending. This means they have little hope of rehabilitation and we as a society have little hope of cutting the crime they commit in the longer term. In addition to the social impact of this failure, it represents a scandalous waste of valuable public funds.

What we need is a new, smarter approach to sentencing. A system that takes account of the true nature of crimes – one that is robust enough to keep the worst offenders behind

bars for as long as possible, in order to protect the public from harm; but agile enough to give offenders a fair start on their road to rehabilitation.

This will of course require legislation to give the courts more powers of enforcement, but it will also mean giving them more meaningful options in the sentencing toolkit. Every department in government should be a justice department and that means we must all come together – in healthcare, in welfare, in national and local government – to pull on every lever at our disposal to make criminal justice work better.

This White Paper is about fulfilling our manifesto commitments to the British people – to bring in tougher sentencing for the worst offenders, more tagging, tighter community curfews, better treatment to break the cycle of crime, improved employment opportunities for offenders, and a root-and-branch review of the parole system. It is an opportunity to strengthen the system, so that it is more balanced and able to tailor its approach to any given situation. The measures contained within it will grow trust and confidence in the sentencing system to protect the public from the harmful effects of crime, whatever form they take.

A handwritten signature in black ink that reads "Robert Buckland". The signature is written in a cursive, slightly informal style.

Rt Hon Robert Buckland QC MP

Lord Chancellor and Secretary of State for Justice

Introduction

This paper sets out the government's proposals for important changes to the sentencing and release framework in England and Wales. The system of sentencing and the administration of community and custodial sentences has evolved in a piecemeal fashion. At the heart of this paper is the commitment by the Prime Minister to have a justice system that keeps people safe, as well as one which the public understand and have confidence in. We need a sentencing framework that works effectively, which can only be achieved through taking a smarter approach and targeting specific cohorts of offenders. We will do this by: (1) keeping dangerous offenders off the streets for longer to protect the public; (2) ensuring that punishment is appropriate for the crime committed; (3) working to tackle the many complex causes of offending; and (4) providing the opportunity and support to reform for those who truly want to turn their backs on crime.

This paper sets out a combination of clear proposals for legislation, as well as broader areas for reform on which we invite consideration.

As set out in the Queen's Speech, we will bring forward legislation in order to deliver on our bold agenda set out in the following pages.

The Conservative Manifesto outlined a number of areas for action, committing to:

- Introduce tougher sentencing for the worst offenders and end automatic halfway release from prison for serious crimes. For murderers of children, there will be life imprisonment without parole.
- Expand electronic tagging for criminals serving time outside jail, including the use of sobriety tags for those whose offending is fueled by alcohol.
- Create tougher community sentences, for example by tightening curfews.
- Tackle drug-related crime, and at the same time take a new approach to treatment so we can reduce drug deaths and break the cycle of crime linked to addiction.
- Improve employment opportunities for ex-offenders.
- Conduct a root-and-branch review of the parole system.
- Maintain the ban on prisoners voting from jail.

The paper sets out plans to deliver on these commitments, and go further with wider sentencing reform, to improve public safety and public confidence.

The role of sentencing

An effective criminal justice system is the basis of a free, fair and safe society. Sentencing plays a crucial role in that system – it is the means through which the public, victims, and

offenders see justice being done. There are five key principles of sentencing that it is vital we uphold: punishment, reduction of crime, reparation, rehabilitation and public protection. We need to ensure that we are effectively delivering all of these core principles to create a smarter sentencing framework, and uphold a fair justice system that works for everyone.

While criminal offences have maximum penalties set by Parliament, a variety of factors contribute to the final sentence handed down to an individual in court. A single offence may attract a wide range of penalties depending on the circumstances of the case. This sentencing framework is complex and nuanced, and it is the role of the independent Sentencing Council to issue guidelines to assist sentencers in making these critical decisions.

The government works closely with the Sentencing Council, whose guidelines must be adhered to by the court unless it is in the interests of justice not to do so. When producing guidelines, the Council is required to consult with the Lord Chancellor and Justice Select Committee, and to give consideration to any sentencing guidelines proposed by the Lord Chancellor in relation to any offences or category of offenders.

This process ensures that sentences set by the law are properly and consistently considered and applied by the numerous courts across England and Wales. We understand this crucial role that sentencing plays in our criminal justice system, and that is why it is fundamental that the laws guiding sentencing are fit for purpose.

Identifying the problems in the system

Underpinning the proposals in this paper are concerns around three fundamental problems in our current sentencing framework:

- **Automatic Release:** Sentences passed by judges and magistrates in our courts are criticised, often not for their overall length, but for the shortness of the time offenders actually spend in custody. The blanket use of automatic early release has undermined confidence in the system. Too many serious and dangerous offenders are still released too early from custody; this risks public safety, and means the time spent in prison does not always properly fit the crime. In the last 12 months, we have seen the horrendous consequences of dangerous offenders being released from prison automatically at the halfway point of their overall sentence, with terror attacks at Fishmongers Hall and in Streatham. We promptly introduced emergency legislation and new Counter-Terrorism sentencing legislation to address this issue for terrorist offenders, but we have not fully addressed this issue for other types of serious and dangerous offenders.
- **Improving Confidence:** Confidence in non-custodial sentencing options is low, and we need to win back the confidence of the judiciary and the public in our delivery of community sentencing. Sentencers and the public need to be sure that there are

effective non-custodial options for low-level offenders. We want to ensure that a wider range of non-custodial sentencing options are available to the courts, by capitalising fully on Electronic Monitoring technology, alongside enhanced community supervision delivered by a reformed National Probation Service and an expanded use of existing non-custodial conditions.

- **Addressing the Causes of Offending:** We have not done nearly enough to tackle the causes of offending, particularly where it is driven by drug and alcohol misuse. In 2018/19, 28% of men and 42% of women entering prison reported having a drug problem.¹ These issues are associated with offending, particularly low-level, repeat offending. Whilst we have had routes available to help treat and manage these needs in the justice system, as well as mental health needs, there have been too few options available to sentencers, and not enough confidence in the quality of these services.

This paper sets out our plans for reform across sentencing to address these critical weaknesses in our system, both in terms of the legislative framework and delivery, to create a smarter approach to sentencing.

Our vision for reform

The sentencing framework must become more nuanced. At the moment it does not always target different groups of offenders effectively. Some of the most serious criminals can be released after serving only half of their sentence in prison. More low-level offenders could serve sentences in the community, if more effective sentences were available. Where offenders want to turn their lives around, it is essential that the right support or treatment is available to them. Our aim is to create a framework that is smart and takes a more targeted approach.

The government's top priority is protecting the public; it is essential that we have a sentencing framework that delivers this and ensures victims and the wider public have confidence that the punishment fits the crime in every case. Serious sexual and violent offenders should spend a longer proportion of their sentence in prison. For dangerous offenders, automatic release poses too much of a risk, and therefore there must be a mechanism for all dangerous offenders to come before the Parole Board prior to release.

But delivering public protection and confidence across the system is not just about better use of custody. In many cases – particularly for lower-level offending – effective community supervision keeps the public safer by providing interventions early to deflect offenders away from future offending. We can achieve this through ensuring we use the best technology available to monitor offenders, and that we provide support for those who want to turn their lives around. As part of our reforms we propose to develop a tough

¹ *HMIP Annual Report 2018/19*, HM Chief Inspector of Prisons for England and Wales, 2019.

community-based package based on a long and highly restrictive curfew, which will make full use of GPS and other electronic monitoring technologies.

Strengthening the way that offenders are supervised in the community requires a stronger, world-class probation service – one that keeps the public safe through effective community sentences which combine punishment with tailored programmes and treatment requirements to address specific criminogenic needs. With the support of skilled practitioners, a successful period of probation supervision can challenge and motivate offenders to address the causes of their offending. Through our reform programme, our aim is for probation practitioners to have the time, support and tools to develop productive relationships with those they supervise, to deliver interventions directly, and to place offenders with other rehabilitative services.

There is more that we, across government, need to do to address reoffending. Reoffending weakens public confidence in the criminal justice system's ability to deal with offenders. It also has a significant financial cost, not only to the criminal justice system, but to wider society; our current estimate of the total cost of reoffending is £18bn each year.² We must better supervise and support offenders on community sentences and following release from custody if we are to address this critical issue, helping them gain employment, find accommodation, and move away from substance misuse.

Our approach to youth sentencing is already distinct and targeted. It focuses on the statutory aim of preventing offending by children and on the welfare of the child. We want a youth justice system that recognises the unique needs of children, tackles the underlying reasons why children offend, and intervenes early to provide support and to divert them where possible. There are areas where we can do more to ensure this, and if we deliver more effective community sentences, we will ensure that fewer children end up requiring custodial sentences. Where children commit the most serious and dangerous offences we must, as with the adult framework, ensure that the courts can pass appropriate sentences that properly reflect the seriousness of their crimes.

This paper aims to address specific offender needs and treat all offenders in the system fairly. To reduce crime and make a difference to victims, we need to consider the underlying causes of offending and reoffending, and take an evidence-based approach to rehabilitating offenders. However, this must include looking at offenders' demographics and backgrounds. Central to confidence in the criminal justice system is the way in which different groups are treated; inconsistent – and worse – outcomes for one group relative to another weakens the fulcrum of fairness on which the system rests. At Annex A we consider the different needs of Black and Minority Ethnic offenders and do the same for female offenders at Annex B, and outline the ways in which the government is addressing underlying disparity in the system.

² *Economic and Social Costs of Reoffending*, Ministry of Justice, July 2019.

Executive Summary

The following proposals will create a smarter sentencing framework, addressing specific points where we have identified issues whilst keeping in mind the system as a whole, to ensure we are taking a consistent and joined up approach.

Protecting the Public from Serious Offenders

The government's top priority is protecting the public; it is essential that we have a sentencing framework that delivers this and ensures victims and the wider public have the confidence that the punishment fits the crime in every case.

We will do this by ensuring that serious sexual and violent offenders spend a longer proportion of their sentence in prison. For dangerous offenders, automatic release poses too much of a risk, and therefore there must be a mechanism for all dangerous offenders to come before the Parole Board prior to release. In Chapter 1 we set out proposals for legislative changes to deliver this.

Abolishing automatic halfway release for certain serious offenders

We have already legislated so that serious sexual and violent offenders who receive a standard determinate sentence (SDS) of 7 years or more must serve two-thirds of their sentence in prison, with the final third served supervised on licence and subject to recall to prison. This will mean around 2,000 serious offenders will spend longer in custody.

We now propose to legislate to extend this approach to other specified serious violent and sexual offenders who receive sentences of between 4 and 7 years.

A new power to prevent automatic early release for offenders who become of significant public protection concern

There is a small number of offenders who receive an SDS with automatic early release who are assessed to present a terrorist threat, but who are in prison serving a sentence for a non-terrorism-related offence. There is also a small number of offenders who present a significant danger to the public for other reasons but whose offending behaviour did not meet the threshold for imposition of a sentence with Parole Board oversight, meaning that the court imposed an SDS. For these cases, we will introduce a new power to prevent their automatic release before the end of their sentence. Under this power, the Secretary of State for Justice will be able to refer the offender to the Parole Board to assess whether it would be safe to release them before they have served their full sentence in prison.

Whole Life Orders

Where an offender commits the premeditated murder of a child, we will legislate to ensure that the expectation is that a Whole Life Order (WLO) will be given, meaning they will spend the rest of their life in prison with no prospect of release by the Parole Board. We will also allow judges the discretion to impose WLOs on offenders aged 18 to 20 in very exceptional cases.

Longer tariffs for discretionary life sentences

We will legislate to change the way that discretionary life sentence tariffs are calculated to base the tariff length (the minimum period that must be spent in prison) on what the two-thirds point of an equivalent determinate sentence would be, rather than basing it on the halfway point, which is how life tariffs are currently calculated. This will mean life sentence prisoners having to serve longer in prison before they can be considered for release.

Increasing the time sex offenders serving a ‘SOPC’ must spend in prison

For certain sexual offenders who receive a Sentence for Offenders of Particular Concern (SOPC), we will legislate to ensure the earliest point at which they can come before the Parole Board for consideration for release is two-thirds through their custodial term. This will ensure that, for all SOPC cases, release by the Parole Board may only take place after two-thirds of the custodial term has been served.

Repeat offenders

For repeat offenders who commit key offences of a serious nature, including “third strike” domestic burglary and “second strike” possession of a knife or offensive weapon, the law provides minimum custodial sentences. Concerns have been raised that offenders too often receive sentences below the statutory minimum, failing to provide the appropriate level of punishment and deterrence.

We will change the criteria for passing a sentence below the minimum term for repeat offences with the aim of reducing the prospect that the court would depart from the minimum custodial sentence.

Supervising Offenders in the Community

Delivering public protection and confidence across the system is not just about better use of custody. In many cases – particularly for low-level offending – effective community supervision keeps the public safer by providing interventions early to deflect offenders away from future offending, by ensuring we use the best technology available to monitor offenders and by ensuring that we provide support for those who want to turn their lives around. Building on the lessons of the past, in this chapter we will set out a new vision for community supervision.

Community Sentence Treatment Requirements

Where an offender's needs have been identified, we will enhance the options for supervising them effectively. We are expanding the availability and usage of Community Sentence Treatment Requirements (CSTRs), to deliver tailored interventions to help support rehabilitation of those with a range of treatment needs so that we are addressing the underlying causes of the offending behaviour.

In order to further support effective scale-up of the CSTR Programme, MoJ will commit new justice funding to the CSTR Programme this financial year, in addition to the significant funding already committed by NHS England in their 2019 Long Term Plan. MoJ will also continue to develop conversations with the Welsh Government on their engagement with such work. It is critically important that we address the fundamental drivers of crime and ensure that we work towards stopping crime in the first place.

Ensuring community requirements are robust and responsive

We have introduced secondary legislation to roll out new tagging technology, the Alcohol Abstinence and Monitoring Requirement (AAMR), across England and Wales – to help break patterns of alcohol-induced offending. We will consider legislating to make it possible to impose this for longer.

As part of increasing the use, capability, and delivery of Electronic Monitoring (EM) technology on community sentences, we will legislate to increase the maximum period of EM curfew from 12 months to two years to deal with more serious offenders serving community sentences, and also allow and support more flexible use of curfews. We will also give probation staff the power to vary EM requirements.

We will legislate to remove the little-used Attendance Centre Requirement from the community sentence framework, streamlining the menu of community options and maximising use of other requirements which are more responsive to the rehabilitative needs of individuals.

House Detention Order

We propose to develop a pilot for a new, robust community-based package for offenders who have not responded to existing community sentences. This will be based on a lengthy and restrictive curfew, which would be accompanied by other measures to address rehabilitation and prevent further offending as needed.

Addressing individual issues through tailored assessments

Many offenders who come before the court are struggling with a range of complex needs which have led them into a pattern of offending. If the probation service can better diagnose those issues at the outset in their pre-sentence reports (PSRs), courts have a better chance to tailor community sentences that target those issues and break the cycle of offending. Following on from the evidence that a number of people are sent to prison on short sentences without a PSR being conducted, we will pilot new ways of delivering timely

and high quality PSRs, in order to improve sentencing outcomes and to increase the chances of successful compliance.

Deferred sentencing

We will encourage courts to use existing legislation, and existing services such as Liaison and Diversion as well as community advice and support services, to deliver more effective routes for people into services and materially changing their justice pathway, especially vulnerable women.

Out of Court Disposals

We will simplify the Out of Court Disposals (OOCs) framework so very low-level offenders can be dealt with swiftly and proportionately, without coming before a court. We believe it is time to move a two-tier legislative framework, comprising community resolutions and conditional cautions.

Problem-solving courts

We will bring forward plans to pilot problem-solving courts, which will incorporate a number of evidenced problem-solving components such as regular judicial monitoring and the use of graduated sanction and incentives, for offenders with a high level of needs and often prolific offending behaviour. We intend to pilot these problem-solving court models in up to five courts.

Neurodivergence

In order to be effective, rehabilitative programmes need to match individuals to programmes based on their risks, needs and responsivity. Neurodivergent offenders are likely to need additional support to undertake Community Order requirements and effectively engage with rehabilitation programmes normed to the needs of neurotypical offenders. We will be launching a national 'Call for Evidence' to obtain a clearer picture of prevalence and the current national provision to support offenders with neurodivergent conditions in the criminal justice system. Too many orders will simply fail if these conditions are not recognised at the outset.

Empowering Probation

Probation services play a crucial role in protecting the public while working with offenders to turn their lives around. We recognise there has been significant external scrutiny of the current system, all of which has identified significant challenges and the need for reform.

To support a more robust criminal justice system, we are implementing a new sustainable model for probation services in England and Wales, to be in place by June 2021, and supported by additional investment. Under the future system, we will:

- Unify sentence management under the New Probation Service;
- Create 12 new probation regions;

- Deliver effective and innovate rehabilitation services through the public, private and voluntary sectors;
- Modernise our estate and technology; and
- Ensure our staff can thrive and develop.

Reducing Reoffending

Rates of reoffending are still too high across England and Wales. This means individuals are repeatedly posing a danger or a menace to their community and undermining public confidence in the criminal justice system. In 2018/19, around 80% of those who were convicted or cautioned had already received at least one previous conviction or caution.³ Therefore, in order to cut crime and protect the public, we have to tackle reoffending. We must better supervise and support offenders following release from custody if we are to address this critical issue.

Supervision of individuals to reduce reoffending

We will use electronic monitoring to strengthen our supervision of offenders who have the highest offending rates.

Cross-Government Reducing Reoffending Strategy

It is also vital that we offer support to individuals in prison, following release, and in the community, which gives them the opportunities and the tools to turn their backs on crime. We know what helps people escape the vicious cycle of crime: a job, a home, and substance misuse treatment.

In this section we introduce cross-government work underway to develop ambitious plans to reduce reoffending, focusing on employment, accommodation, and substance misuse. This government recognises that we need to take a comprehensive and strategic cross-government approach to tackle this persistent issue. Therefore, we will publish an update on this work, and more detail on our plans going forward, before the end of this year.

Criminal records

We know that lack of employment is a major barrier to rehabilitation after release from custody. We set out proposals for legislation on reform to the criminal records regime, to reduce the time periods after which some sentences become spent for the purpose of some criminal record checks.

³ *Criminal Justice System Statistics Quarterly: March 2019*, Ministry of Justice, August 2019.

Youth Sentencing

The approach to youth sentencing is distinct from that for adults and focuses on the statutory aim of preventing offending by children and on the welfare of the child, but for the very small number of children for whom custody is necessary, it is important that custodial sentences reflect the seriousness of their offending. In addition to wider local and national work to improve youth justice outcomes, we are proposing legislative change in two key areas.

Serious offences

Where custody is required for public protection, we think reforms are necessary to improve the coherence of current sentences. We must ensure that courts have the tools they need to pass appropriate sentences which properly reflect the culpability of a child and the seriousness of their offending, and that sentences work fairly. We will legislate to:

- Modernise the Detention and Training Order, the most common custodial sentence, ending inflexible fixed lengths and the prescriptive 50/50 custody-community split.
- Move the release point to two-thirds for those who receive a sentence of 7 years or more for serious violent offences relating to homicide and for all serious sexual offences to ensure that time spent in custody reflects the seriousness of the offence committed.
- Ensure age and seriousness of crime is better factored into starting points for murder sentencing, and reduce the number of tariff reviews available into adulthood for murder.

Tougher community sentences and reforms to the remand tests

Community sentences can be more effective than custody at reducing reoffending and we intend to give the courts the tools they need to deliver stronger high-end community sentences to effectively supervise behaviour in the community. We also want to avoid the unnecessary use of custodial remand for children. We will legislate to:

- Make greater provision in the Youth Rehabilitation Order for location monitoring and for flexibility around curfews. We will also make sure that Youth Offending Teams or probation staff (as appropriate) are the Responsible Officers for Youth Rehabilitation Orders rather than the Electronic Monitoring Provider.
- Pilot extended duration and mandatory location monitoring within the most intensive current community sentence (Youth Rehabilitation Order with Intensive Supervision and Surveillance).
- Abolish reparation orders to simplify options available to sentencers.
- Strengthen the legal tests for custodial remand to raise the threshold for imposing custodial remand and require courts to record their rationale.

Next Steps

The government will bring forward legislation next year to deliver on the proposals set out in this paper.

Wider Programme of Reforms

Action already taken

1. Whilst this paper focuses on new areas for reform, the government has already made significant progress this year on strengthening our sentencing framework.

Sentencing Code

2. The law governing sentencing procedure is overly complicated and has suffered from piecemeal reform, making it difficult for practitioners to follow and for the public to understand. Courts are spending time revisiting sentences and hearing appeals, or working out what law applies. This reflects badly on our justice system, it wastes time and money, and means victims are left waiting longer for resolution.
3. In 2014, the government agreed that the Law Commission should begin work on a major reform to address this – drafting a new Sentencing Code to bring together the sentencing procedural law that courts rely on, setting out the relevant sentencing provisions in a clear, simple and logical way, and repealing old or unnecessary provisions. We have passed paving legislation in the last year, and in March this year, the Law Commission's Sentencing Bill was introduced to Parliament.

Reforms to ensure terrorist offenders spend longer in prison

4. Over the last 12 months, the attacks at Fishmongers' Hall and in Streatham highlight the continued risk facing the UK from terrorism. Each attack was committed by a known terrorist offender who had been automatically released from custody at the halfway point of their sentence.
5. The government took swift and decisive action following the Streatham attack, introducing and passing the Terrorist Offenders (Restriction of Early Release) (TORER) Act in February 2020 to make sure that prisoners convicted of terrorist or terrorist-connected offences cannot be released before the end of their custodial term or sentence without Parole Board approval. The Act also provided that, in all cases, the earliest point of release by the Parole Board would be the two-thirds point in the sentence – including for terrorist offenders already serving a standard determinate sentence.
6. The Counter-Terrorism and Sentencing Bill, introduced to Parliament on 20 May 2020, goes further: it will ensure that serious and dangerous terrorism offenders will spend longer in custody, properly reflecting the seriousness of the offences they have committed. The Bill introduces a new type of sentence – the 'Serious Terrorism Sentence' – with a minimum 14-year custodial period, to be served in full, for the

most serious and dangerous terrorist offenders where the level of offending does not engage a life sentence. This new sentence includes much longer post-release supervision with a minimum licence period of 7 years up to a maximum of 25 years.

7. The Bill also requires certain serious terrorist offenders who receive an extended determinate sentence (EDS) to serve the whole of the custodial term in prison with no prospect of earlier release by the Parole Board, followed by longer extended licence periods of up to 10 years. It ensures too that, going forward, those who commit all bar the most minor terrorist offences will no longer be eligible for a standard determinate sentence (SDS) but must be given a SOPC (if the court does not impose a life or EDS sentence). This will improve our ability to supervise and monitor terrorist offenders on release by ensuring a minimum 12-month supervision period.

Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020

8. The current sentencing framework requires that offenders who receive a standard SDS serve half of their sentence in custody, and half on licence in the community with the possibility of recall. We do not believe that is the right approach for offenders who – whilst assessed not to be dangerous at the point of sentencing – have committed a crime so serious that the maximum penalty is life, and have received a sentence of 7 years or over.
9. In April 2020, the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 moved the automatic release point for those offenders from the halfway point of their sentence to two-thirds. This means that the sexual and violent offenders to whom this applies will now spend longer in prison, with the remaining third of their sentence spent on licence and subject to recall.
10. Reforms in this paper build further on this approach.

Helen's Law

11. 'Helen's Law' has been the subject of a long-running campaign following the appalling murder of Helen McCourt in 1988 whose body has never been found. The government has worked to develop legislation to address the concerns raised in this powerful campaign – ensuring that the Parole Board, when considering the potential release of an offender serving a sentence for murder or manslaughter, must take into account the failure to disclose the location of their victim's remains. The Bill also responds to the concerns raised in the Vanessa George case. Where a child abuse offender refuses to identify their victims, the Parole Board again must consider the failure to disclose this information when assessing the offender for release on licence.
12. The Bill was introduced in the House of Commons on 8 January 2020.

Alcohol Abstinence Monitoring Requirement

13. New developments in electronic monitoring provide some of the most exciting opportunities for innovation across the criminal justice system. This year we have already legislated to make “sobriety tags” available for use on community sentences for the first time. These tags perform around-the-clock monitoring of an offender’s sweat to determine whether alcohol has been consumed and can be a hugely valuable tool in breaking an offender’s relationship with alcohol-fuelled offending. Rollout of this technology will begin before the end of the year and, building on the rollout of GPS location monitoring tags last year, adds further to the toolkit available to sentencers.

Sentencing transparency

14. Sentencing is crucial to understanding the consequences of offending – for the offender themselves, for victims and for the public. However, it is also complex and technical, often making it hard to understand.
15. In June this year, the government introduced legislation (the Crown Court (Recording and Broadcasting) Order 2020) to allow the broadcasting of sentencing remarks of High Court and Senior Circuit judges. These will be filmed in some of the most high-profile courts across the country, including the Central Criminal Court (Old Bailey). Broadcasting sentencing remarks will allow the public to see justice being delivered in the most serious cases and help them understand how these complex sentencing decisions are made. Filming in the Crown Court is expected to commence as soon as practicable after recovery from COVID-19 disruption.
16. We are currently investing in introducing digital technology into the criminal courts. Once these reforms are complete, they may provide opportunities for better and more cost-effective ways of sharing further Crown Court sentencing remarks more widely, through audio clips or transcription.

Reforming probation

17. The probation service plays a crucial role in protecting the public while supervising offenders in the community or following release from prison. We are unifying probation to bring services together under the National Probation Service (NPS). Our reforms will deliver a platform for tougher community sentences by strengthening supervision and support for offenders while providing a critical level of resilience and stability for core services.
18. From June 2021, the NPS will be responsible for all offender supervision services for low-, medium-, and high-risk offenders. It will also take on responsibility for delivery of unpaid work requirements, accredited programmes and other structured interventions to address rehabilitative needs. The NPS will retain its current role of providing advice to courts. Alongside this, we have launched a Dynamic Framework which will

allow the NPS to commission rehabilitative services such as accommodation and education, training and employment from other providers, including the voluntary and community sector, in a way that is responsive to the needs of local areas.

19. We are also reforming operational structures to reflect these new responsibilities. In the current system, there are 7 NPS divisions and 21 Community Rehabilitation Company (CRC) Contract Package Areas. In the future, there will be 12 NPS regions across England and Wales. We have appointed a Regional Probation Director for each region, responsible for delivery of NPS services together with commissioning of services from the market and better partnership working.
20. These reforms will be backed by investment in additional probation staff and in improvements to learning and development, buildings and digital services. In 2020/21 we have secured an additional £155 million for probation services.

Reforming the courts

21. It is important that victims and the wider public have full confidence in the criminal justice system, from start to finish. The criminal courts play a crucial part in this; this is where justice is seen to be done, and where all of the elements of a criminal case come together to offer a resolution to victims, defendants, witnesses and families. We need to ensure that our courts are fit for the modern, digital world, and processes are streamlined so that we deliver swifter justice.
22. We are seizing opportunities for reform to ensure that the courts work fairly and efficiently. COVID-19 has presented unprecedented challenges for the criminal justice system and rapid recovery of the courts system is ongoing, with positive momentum being outlined in the recent publication of the COVID-19: Update on the Her Majesty's Courts & Tribunals Service (HMCTS) Response.⁴ These reforms are instrumental in helping the system recover from the global pandemic, but they will also leave us with a more robust, more resilient system for the future.
23. Technology has a big part to play. We have invested in more audio and video technology: rolling out the Cloud Video platform and introducing temporary measures under the Coronavirus (Emergency) Act 2020 to enable remand hearings to be held virtually from police stations and allow defendants to participate in court hearings from prison via live links. We are investing £142 million to upgrade our courts and ensure that all courts are digitally enabled.

⁴ *COVID-19: Update on the HMCTS response for criminal courts in England & Wales*, HM Courts & Tribunal Service, September 2020.

24. Her Majesty's Courts & Tribunals Service (HMCTS) are also delivering high quality digital services, which allow the public to respond to jury summons online, rather than via the antiquated paper system, and submit pleas online for lower harm cases.
25. In addition to these improvements, the new Common Platform will act as a 'central hub' enabling the Crown Prosecution Service (CPS), HMCTS, legal professionals and the judiciary to access all appropriate information about a case in one place. This supports better end-to-end visibility of cases and improves system-wide efficiency and collaboration.
26. We must also consider how we can best support victims of crime as court users. Criminal behaviour has a devastating impact on victims' lives. We want to improve confidence in the criminal justice system and ensure that victims and witnesses feel comfortable coming forward and giving evidence. Alongside record investment in victim services, we want to go further and reform the system itself to ensure that it works better for victims and witnesses. An example is the use of section 28 to allow vulnerable victims and witnesses to record their cross-examination prior to trial, which is being rolled out and will be in place in all Crown Court Centres by the end of the year. This will make it possible for complainants who are under the age of 18 or are suffering from a mental or physical disorder to give evidence and be cross examined without being in the same courtroom as the accused. We will also guarantee victims' rights through a Victims' Law.

Reforms already underway

27. As well as there being a number of areas where the government has already legislated in the last year, there are also new areas which do not fall within this paper, but on which the government intends to act.

Memorial vandalism

28. The government has been appalled to see pictures and reports of violence and vandalism at protests this year. There can be no justification for defacing statues and symbols of British history, or for damaging memorials to those who died serving their country. The fact that people feel able to do this with impunity suggests the law as it stands is inadequate.
29. The public are also rightly concerned about the respect for memorials of all types, including statues and gravestones. Memorials can have historical significance as part of our national heritage, or have other symbolic, cultural or emotional importance. When damage or desecration occurs to memorials, the law must recognise the range and level of harm that is caused.

30. The government will be reviewing the law in this area to ensure that where memorials are damaged or desecrated the courts are able to sentence appropriately at every level for this particular type of offending.

Driving offences

31. The government wants to see safer roads for all road users. Whilst many deaths and injuries on the road are the result of a tragic accident, too many of these incidents involve criminal behaviour, and we want to better equip the courts to deal with such cases where the culpability of an offender is particularly high.
32. The government has consulted on driving offences and penalties relating to causing death or serious injury and in forthcoming legislation we will introduce provisions that will increase the maximum penalty for causing death by dangerous driving from 14 years' to life imprisonment and to increase the maximum penalty for causing death by careless driving whilst under the influence of drink or drugs from 14 years' to life imprisonment. We will also close a gap in the law by creating a new offence of causing serious injury by careless driving.⁵

Assault on emergency workers

33. In 2018 we strengthened the law with the Assaults on Emergency Workers (Offences) Act ('the 2018 Act'). The 2018 Act modifies the criminal offence of common assault or battery for instances where it is committed against emergency workers, such as police officers, prison officers, fire service personnel and many frontline healthcare workers, who are acting in the course of their functions, with a maximum penalty of 12 months' imprisonment.
34. The 2018 Act also provides that more serious assaults committed against emergency workers may be aggravated on sentence within the current statutory maxima for these offences. These offences include assault occasioning actual bodily harm (five years' maximum penalty), assault occasioning grievous bodily harm (five years' maximum penalty) and assault occasioning grievous bodily harm with intent (maximum life imprisonment).
35. The number of assaults on emergency workers is increasing. The COVID-19 pandemic has reminded us all of the vital frontline role they play. On 13 July, the government launched a targeted consultation with representative groups for emergency workers, as defined by the Assaults on Emergency Workers (Offences) Act 2018, and other key stakeholders, including the judiciary, CPS and legal practitioners, on doubling the maximum penalty for assaulting an emergency worker. We sought feedback on how the legislation is operating in practice and whether the

⁵ *Response to the consultation on driving offences and penalties relating to causing death or serious injury*, Cm 9518, Ministry of Justice, October 2017.

current maximum penalty provides the courts with sufficient powers to reflect the seriousness of the offending.

36. The large majority of those who responded were in favour of doubling the maximum penalty from 12 months to 2 years to ensure that emergency workers have sufficient protection from the law to enable them to carry out their duties and the maximum penalty reflects the severity of the offence.

Parole Board

37. To support the government's commitment to protect the public from dangerous criminals, it is essential that we have a robust and effective parole system – which is there to ensure that offenders are not released if they continue to present a danger to the public. For sentences which involve discretionary release by the Parole Board, a thorough and sophisticated risk assessment is conducted to ensure that release is only granted where the offender can safely be supervised in the community subject to licence conditions.
38. The government committed to undertake a root and branch review of the parole system and that will be launched shortly. This is not because of concerns about the decisions that the Parole Board are taking; we are confident that the parole system is working well to protect the public and the Parole Board are expert at making those difficult decisions about release. But we want to take further steps to increase confidence and transparency in the parole system; to improve the experience of victims; and to consider whether more fundamental reform to the system in the longer term might deliver further improvements. The Review will look at all this and ensure the parole system is as robust and effective as possible.

Reforming the courts

39. While sentencing procedure has been deemed to be overly complicated, the same could be said about the criminal court procedures that precede sentencing. The procedures used in our courts have also formed and evolved over centuries, and as a result can be inefficient. The government is committed to delivering further reforms aimed at simplifying and streamlining a number of these processes in order to deliver swifter justice.
40. Local Justice Areas are geographical boundaries used to organise and administer the work of magistrates' courts. At the moment, the system of Local Justice Areas can create perverse situations, where cases are assigned to a court in the Local Justice Area where the crime was committed, even if another court (in a different Local Justice Area) is actually closer to the scene of the crime. They also make it harder for work to be efficiently moved across the country, including when a defendant is charged with multiple offences in different parts of the country. We want to build more flexibility in the system by removing these geographical restrictions and

make it simpler for a single court to deal with offences committed around the country by the same defendant.

41. We want to streamline the way the most serious indictable offences are dealt with. Currently, magistrates' courts are involved in every case of murder and rape, holding a hearing to formally "send" the case to the Crown Court for trial. This is an unnecessary process and we would like to entirely remove it. We also want to remove historic anomalies, such as those which make it difficult for the Crown Court to send a case back to the magistrates' court, despite it not being a good use of court time or good value for money.
42. We want to remove antiquated and paper-based processes, using technology to make criminal proceedings more efficient and more accessible. For certain summary-only offences, such as travelling without a train ticket, we would like to offer defendants an automatic online process that could be speedily completed. This will ensure the quicker resolution of such cases and protect court time for more serious offences.
43. Technology will also aid us in improving the way we handle either-way crimes, that can be heard either in the Magistrates' or the Crown Court. Currently, defendants are only able to indicate a plea online for low-level offences: we want to extend this online process to all crimes. Defendants should also be able to indicate online whether they wish to elect for a jury trial, enabling the case to be sent more quickly to the Crown Court. This will help to modernise the court system and increase the numbers of decisions which can be made outside of the traditional courtroom.

1. Protecting the Public from Serious Offenders

Chapter Summary

Public protection is the government's number one priority. Key to that is ensuring that serious offenders spend longer in prison, and that dangerous offenders are assessed by the Parole Board prior to release. We are proposing a series of legislative changes in this area which are set out below.

Abolishing automatic halfway release for certain serious offenders: Move the automatic release point from halfway to two-thirds for certain serious offenders sentenced to a standard determinate sentence (SDS) of between 4 and 7 years.

Preventing automatic early release for offenders who become of significant public protection concern: Introduce a new power to prevent automatic release before the end of sentence for offenders who receive an SDS but go on to pose a significant future risk to the public.

Whole Life Orders (WLOs): Expand the criteria for WLOs so that it will be the default position for offenders who commit the premeditated murder of a child and allow judges the discretion to impose WLOs on offenders aged 18 to 20 in very exceptional cases.

Changing the way discretionary life sentence tariffs are calculated: Require courts to base their calculation of a life tariff on what two-thirds of a notional determinate sentence would be (instead of half as the provisions currently require).

Increasing the time those convicted of sexual offences serving a Sentence for Offenders of Particular Concern (SOPC) must spend in prison: Keep offenders given a SOPC in prison until they have served at least two-thirds of their custodial term.

Repeat offenders: Change the criteria for passing a sentence below the minimum term for repeat offences with the aim of raising the threshold for passing a sentence below the minimum term.

Victims of serious and dangerous offenders: Current government policy regarding support for victims of crime, and government aims to publish the revised Victims' Code later this year.

Introduction

44. The government is committed to improving public confidence in the criminal justice system and protecting the public from the most dangerous offenders, in order to reduce reoffending and make our streets and communities safer.
45. This chapter sets out our approach to serious and dangerous offenders. We will ensure that offenders who commit very serious crimes face consequences that reflect the severity of their actions and that those offenders who are dangerous to the public are assessed by the Parole Board before release and their risks are managed effectively.
46. We have reviewed the sentencing framework for this group of offenders and identified changes to make the system more robust and effective. In doing so, we have focussed on two key aims: the need to ensure that those found guilty of the most serious sexual and violent offences must serve a proportion of their sentence in prison that truly reflects the severity of their offence; and the need to ensure that the public is properly protected from dangerous criminals.
47. The government considers that this package of reforms, building on an already tough system of sentencing and release for the most serious and dangerous offenders, will further protect the public and ensure that we have a system in which people can have full confidence.

Custodial sentencing framework

48. Below is a summary of the different custodial sentences available to the court for serious and dangerous offenders as they currently stand. What sentence is imposed will depend on various factors, including the seriousness of the offence or how dangerous the court assesses the offender to be. Different custodial sentences have different release provisions, which means that how and when an offender is released from prison is dependent on the type of sentence they have received.

Standard Determinate Sentence (SDS)

49. Most custodial sentences are SDS. In 2019, of the 74,751 adults sentenced to immediate custody, 99% received an SDS.⁶ This means the offender is sentenced to a fixed amount of time in custody and, under the provisions of the Criminal Justice Act 2003, must be automatically released halfway through their sentence. Most offenders who receive an SDS do not have to be reviewed by the Parole Board

⁶ Ministry of Justice Court Proceedings Database.

before they are released. The second half of their sentence is spent on licence in the community.

50. If an offender has been convicted of a terrorism or terrorism-connected offence, then they cannot be released before the end of their custodial term without Parole Board approval, even if an SDS was imposed. The earliest they can be considered for release is after they have served two-thirds of their sentence in custody; but if the Parole Board chooses not to release them, they may serve their whole sentence in prison.
51. The government made a commitment to require offenders who commit some of the most serious types of sexual or violent offences (the types of offences which carry a life sentence as the maximum penalty in the most severe cases) but whom the courts do not deem to be a future danger to the public, to spend longer in prison, to protect the public and better reflect the seriousness of their crimes. Therefore, in April 2020, we legislated to require serious sexual and violent offenders sentenced to an SDS of 7 years or more to serve two-thirds of their sentence in prison. This means that those offenders sentenced after these changes came into force will no longer be released at the halfway point.

Sentences for Offenders of Particular Concern (SOPC)

52. This sentence is for offenders who have been convicted of specified offences (sex offences against children under 13 and certain terrorism offences) if the court decides not to impose either an Extended Determinate Sentence (EDS) or life sentence. It may be that the offence, whilst very serious, does not meet the threshold for a life sentence and the court may also find that the 'dangerousness' test for imposing an EDS is also not met (i.e. the offender is not considered to pose a future danger). In which case, for anyone convicted of one of those specified offences, the court cannot impose an SDS and must impose a SOPC. A SOPC is made up of an appropriate custodial term and a 12-month fixed licence period. Under this type of sentence there is no automatic release before the end of the custodial term; instead, offenders can only be released at the discretion of the Parole Board.

Extended Determinate Sentence (EDS)

53. Offenders who are assessed by the court to be 'dangerous' can be given an EDS. This applies in cases where the offender has committed a serious sexual, violent or terrorist offence (as listed in Schedule 15 of the Criminal Justice Act 2003) and where the sentencing court considers that the offender could pose a danger to the public through the commission of further such offences in the future (this is what is meant by 'dangerous' in this context).
54. An EDS is made up of a 'custodial term', which is the equivalent of the custodial sentence that the court would otherwise have imposed for that offence, plus an

‘extension period’, which is the additional period that must be served on licence and is imposed by the court to help manage the offender’s future risk for a longer period. Extension periods can be up to 8 years for sex offenders and terrorist offenders, and 5 years for violent offenders on top of the custodial term. Release for these offenders is at the discretion of the Parole Board between two-thirds and the end point of the custodial term.

Life

55. At the most serious end of the scale is a life sentence, which the offender will be subject to for the rest of their life. A life sentence is mandatory for those convicted of murder or can be given at the discretion of the judge for other serious offences. The court sets a minimum period in prison that must be served in full – this is the tariff. After the tariff has been served, the offender is eligible to be considered for parole and may be released by the Parole Board if it is satisfied that detention is no longer necessary for the protection of the public. For offenders given a life sentence, they may be held in prison indefinitely beyond the end of their tariff period – in some cases for the whole of the rest of their lives – if the Parole Board considers that it would not be safe for them to be released. If they are released from custody, a licence remains in force for the rest of the offender’s life.

Whole Life Order (WLO)

56. For the most serious cases of murder the courts can impose a WLO. This means that the offender will spend their whole life in prison, apart from in very exceptional cases of compassionate release.

Reforms to ensure terrorist offenders spend longer in prison

57. The Terrorist Offenders (Restriction of Early Release) Act 2020 (TORER) was introduced as emergency legislation in February 2020 following the terrorist attack in Streatham. It changed the release provisions for offenders serving a determinate sentence for a terrorist or terrorist-connected offence, to prevent any automatic early release and to require all such offenders to be assessed by the Parole Board to consider whether they would be safe to release before the end of their sentence. The earliest point of release by the Parole Board for all cases was set at two-thirds for terrorist offenders given an SDS or a SOPC. These changes also applied retrospectively to those already serving their sentence and yet to be released at the point the Act came into force.
58. The government has since introduced the Counter-Terrorism and Sentencing Bill to ensure that serious and dangerous terrorism offenders spend longer in custody, properly reflecting the seriousness of the offences they have committed. The Bill introduces a new type of sentence – the ‘Serious Terrorism Sentence’ – with a minimum 14-year custodial period, to be served in full, for the most serious and dangerous terrorist offenders who would have previously been expected to receive

an EDS. This includes much longer post-release supervision with a minimum licence period of 7 years up to a maximum of 25 years.

59. The Bill also requires certain serious terrorist offenders who receive an EDS to serve the whole of the custodial term in prison with no prospect of earlier release by the Parole Board, followed by longer extended licence periods of up to 10 years. It ensures too that, going forward, all bar the most minor terrorist offenders will no longer be eligible for an SDS but must be given a SOPC (if the court does not impose a life, Serious Terrorism, or EDS sentence). This will improve our ability to supervise and monitor terrorist offenders on release by ensuring a minimum 12-month supervision period.

Our Proposals

- Keep offenders who have committed very serious offences in prison until they have served two-thirds of their SDS
- Prevent automatic early release for SDS prisoners who become of significant public protection concern
- Make WLOs the default position for premeditated child murder and allow judges the discretion to impose WLOs on offenders aged 18 to 20 in very exceptional cases
- Make the starting calculation of discretionary life tariffs longer
- Keep sex offenders who receive a SOPC in prison for longer
- Change criteria for passing a sentence below the minimum term for repeat offences

Abolishing halfway release for certain serious offenders

60. We have already legislated to ensure that offenders who have committed a specified sexual or violent offence, for which the maximum penalty is life and who receive a sentence of 7 years or more, serve a greater proportion of their sentence in prison. In April 2020, the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 moved the automatic release point for those offenders from the halfway point of their sentence to two-thirds. This means that offenders to whom this applies, sentenced on or after 1 April 2020, will now spend longer in prison, with the remaining third of their sentence spent on licence and subject to recall.
61. However, we believe it is necessary to go further, to ensure that where certain types of serious offence attract sentences of between 4 and 7 years, a similar approach is adopted.

62. For offenders who have committed serious sexual or violent offences for which the maximum penalty is life, and who receive a sentence of at least 4 years but less than 7 years, we intend to legislate to move the automatic release point from halfway to two-thirds, bringing these offenders in line with those who receive a sentence of 7 years or more. The change will apply to the same cohort of sexual offenders who are required to serve two-thirds of the sentence in prison if given an SDS of 7 years or more, including, for example, those convicted of rape. In respect of violent offences, this change will apply to a narrower set of offenders (compared to the 7-year-plus cohort) who are given an SDS of 4 to 7 years, as it will target the most serious types of violent offence for which the maximum penalty is life: those being manslaughter, soliciting murder, attempted murder, wounding with intent, and grievous bodily harm with intent. We propose to enshrine in primary legislation these measures relating to SDS of 7 years or more, as well as making the changes for the 4 to 7-year group.
63. Prior to the 2003 Act, there was a clear distinction made between long- and short-term prisoners. Long-term prisoners were defined as those sentenced to 4 years or more and were automatically released at the two-thirds point of their sentence (with release possible at Parole Board discretion from the halfway point), while short-term prisoners were automatically released at the halfway point. This distinction was removed by the 2003 Act. The government wishes to target the most serious offenders, and so is partly restoring this distinction between short- and long-term sentences for those convicted of very serious offences.

A new power to prevent automatic early release for offenders who become of significant public protection concern

64. There are a small number of offenders who receive an SDS with automatic release before the end of the sentence who are assessed to present a terrorist threat but who are in prison serving a sentence for a non-terrorism-related offence. There may also be a small number of offenders who present a significant danger to the public for other reasons but whose offending behaviour and assessment of dangerousness at the point of sentencing did not meet the threshold for imposition of a sentence with Parole Board oversight, meaning that the court imposed an SDS. For these cases, we will introduce a new power to prevent their automatic release before the end of their sentence unless the Parole Board determine they are safe to release. Under this power, the Secretary of State for Justice will be able to refer the offender to the Parole Board to assess whether it would be safe to release them before they have served their full sentence in custody.

Whole Life Orders

65. In a very few cases of murder, the circumstances are so heinous that an indefinite period of detention, without possibility of release, is necessary to fully reflect the seriousness of the offending. In these cases, a Whole Life Order (WLO), sometimes called a whole life tariff, may be imposed by the sentencing judge to ensure that the offender in question will spend the rest of his or her life in prison.
66. When handing down a (mandatory) life sentence in cases of murder, it is for the sentencing judge to determine how long the offender must spend in prison having regard to the relevant guidance. Currently, the imposition of a WLO is the appropriate starting point, in sentencing terms, for the following:
- Murder of two or more persons involving a substantial degree of premeditation or planning, abduction of the victim or sexual or sadistic conduct;
 - Murder of a child involving the abduction of a child or sexual or sadistic motivation;
 - Murder of a police or prison officer in the course of his or her duty;
 - Murder done for purpose of advancing a political, religious, racial or ideological cause; or
 - Murder by an offender previously convicted of murder.
67. The government proposes to legislate to expand this list of circumstances so that a WLO will be the default sentencing position for offenders who commit the premeditated murder of a child. We believe that it is only right that such offenders who commit the most serious offence against those who are the most vulnerable in society should potentially receive the harshest possible punishment.
68. The proposal will, in several respects, follow much of the approach already taken in Schedule 21. First, it will operate within the existing Schedule 21 framework so that, although those committing the premeditated murder of a child will be expected to be given a WLO, judges will still have discretion to depart from this and impose a minimum tariff if they consider that to be the most appropriate and just sentence in all the particular circumstances of the case. In addition, as now, a child will be defined as a person under 18 years of age and the perpetrator must normally be aged 21 years or older when the murder is committed (see below on age limits for WLOs).
69. In setting out what is meant by premeditation, we again propose to follow the approach already taken in Schedule 21, which provides that a WLO is the starting point for the murder of two or more persons (irrespective of their age) that involves a 'substantial degree of premeditation or planning'. Given the potential severity of this punishment, we believe that it is appropriate to continue to impose a high threshold regarding the behaviour that would potentially attract the sentence. We therefore propose that the murder of one child that involves a substantial degree of

premeditation or planning would have a WLO as its starting point. As now, sentencing judges would interpret that wording in relation to the specific circumstances of the case before them.

70. We also propose to remove the current prohibition that prevents a WLO being given to offenders aged 18 to 20 (Schedule 21 provides that WLOs can only be given to offenders aged 21 or over when the offence is committed). In view of the nature of a WLO and to reflect the fact that it is reserved only for the most serious of cases, we do not envisage making a change that will simply apply the current WLO starting points to offenders aged 18 and over. Instead we propose a narrow and focused change that will give judges the option to impose a WLO for these offenders in extremely exceptional cases where this is thought to be warranted.

Longer tariffs for discretionary life sentences

71. Where a life sentence is imposed, the sentencing judge must set a tariff (a minimum period in prison that must be served), following which the offender will only be released if the Parole Board is satisfied that detention is no longer necessary for the protection of the public. If released, the offender will then be subject to a life licence.
72. Tariffs imposed for mandatory life sentences for murder have increased significantly since the introduction of the starting points in the 2003 Act and we do not propose to make any changes, at the current time, to the way in which these tariffs are determined.
73. A discretionary life sentence can be given for offences which carry a maximum penalty of life imprisonment, including offences such as robbery, rape and manslaughter. The court may impose a discretionary life sentence where it is justified by the seriousness of the offence and, in the court's opinion, the offender poses a significant risk to the public of serious harm by committing further specified offences. A discretionary life sentence can also be given where an offender has committed a second serious or violent offence (the so-called 'two strikes' provision).
74. Currently, when setting a discretionary life tariff, the sentencing judge will identify a notional determinate sentence that reflects the seriousness of the offence, time spent in custody on remand and early release provisions. This allows them to calculate the tariff.
75. Although judges have discretion in this area and can set a longer minimum term if they think a particular case warrants it, the standard approach to setting the tariff is for the sentencing judge to decide what the notional determinate sentence would be for the offence committed (accounting for any other adjustments as described above). The tariff is then calculated to be half of that notional determinate sentence,

taking into account the release provision which generally requires SDS prisoners to be released automatically at the halfway point in their sentence. For example, where an offender has been convicted of attempted murder, the judge may consider that if a determinate sentence were to be awarded it would be one of 20 years, with release after 10 years in prison, but the nature and seriousness of the offending is so severe that it merits a life sentence. In such a case, the starting point for calculating the minimum life tariff would be the 10-year halfway point of the equivalent determinate sentence.

76. However, this approach to tariff-setting in discretionary life sentence cases is no longer fit for purpose. We intend to legislate to bring this into line with the broader approach for dangerous offenders, so that the standard approach to the calculation of discretionary life tariffs should be based on two-thirds of a notional determinate sentence, as opposed to the current halfway approach. So, in the above example of a 20-year notional determinate sentence for an offence of attempted murder, that would mean a minimum tariff of 13 years and 4 months (instead of 10 years).

Increasing the time those convicted of sexual offences serving a SOPC must spend in prison

77. The Sentence for Offenders of Particular Concern (SOPC) was introduced in 2015 under the Criminal Justice and Courts Act 2015 as part of a number of measures designed to introduce a tougher approach to the release of serious and dangerous offenders. The SOPC applies to offenders convicted of offences in Schedule 18A of the Criminal Justice Act 2003, which includes rape of a child under the age of 13 and sexual assault by penetration of a child under 13 and certain terrorism offences.⁷
78. Under the original SOPC provisions in the 2015 Act, such offenders are released at Parole Board discretion between the halfway and end points of the custodial term. Due to the recent changes in legislation relating to terrorist offences, there is now a disparity between terrorist offenders who receive a SOPC and who can only be released, at the earliest, after having served two-thirds of their custodial term and offenders who receive a SOPC for the two child sex offences mentioned above and who continue to be eligible for release from the halfway point of the sentence.
79. We propose to legislate to change the SOPC to make it more coherent with other changes to the sentencing framework. We intend to amend the release point of the SOPC sentence to require that all SOPC offenders must serve two-thirds of their custodial term before they become eligible to be considered for release by the Parole

⁷ <https://www.legislation.gov.uk/ukpga/2003/44/schedule/18a>

Board. If not released by the Board, they will continue to serve the entirety of the custodial term as now, followed by a mandatory 12-month period on licence.

Repeat offenders

80. Significant public concern and harm to society is also caused by those who repeatedly offend, often despite numerous sentencing interventions. For repeat offenders who commit key offences of a serious nature, the law provides minimum custodial sentences.
81. These minimum sentences are not technically mandatory – they are a mandatory consideration that the court must make before passing a sentence. Generally, a court may not impose the minimum when it considers that there are particular circumstances pertaining to the offender and the offence which would make it unjust. It is also possible for the court to apply a reduction for an early guilty plea, although the reduction cannot take the sentence length to below 80% of the minimum.
82. Concerns have been raised that offenders are receiving sentences for repeat offences which carry a minimum custodial sentence that fail to provide an appropriate level of punishment and deterrence. Our evidence shows that there is still a large proportion of repeat offenders who do not receive the minimum custodial sentence. In 2018, of all offenders sentenced to immediate custody for third strike domestic burglary, 71% of offenders received a sentence below the minimum term of 3 years custodial sentence, including those who received a reduction for an early guilty plea.⁸ Furthermore, our statistics show that there is a significant number of repeat offenders who do not receive immediate custody at all.
83. This proposal specifically concerns: “third strike” importation of class A drug (7 years min.); “third strike” domestic burglary (3 years min.); “second strike” possession of a knife or offensive weapon (6 months min.); and threatening a person with a blade or offensive weapon in public (6 months min.).
84. The legislation governing the majority of repeat offences provides that a court shall impose an appropriate custodial sentence “...except where the court is of the opinion that there are particular circumstances which:
 - relate to any of the offences or to the offender; and
 - would make it unjust to do so in all the circumstances.”
85. In order to raise the threshold for passing a sentence below the minimum term for repeat offences, we will change these criteria. We will seek to reduce the occasions

⁸ *Criminal Justice System Statistics Quarterly: December 2018*, Ministry of Justice, May 2019.

in which the court would depart from the minimum custodial sentence, with the aim of reducing the prospect that the court would depart from the minimum term.

86. There is a separate youth justice system for under 18s which aims to effectively rehabilitate those who commit offences. The minimum sentences for repeat importation of a class A drug and domestic burglary do not apply to children. However, 16- and 17-year-olds can receive a minimum sentence for a “second strike” possession of a knife or an offensive weapon and for threatening a person with a blade or offensive weapon in a public place and our proposal will therefore apply to children for these offences. The minimum sentence for a “second strike” in the case of children is a 4-month detention and training order (DTO).
87. Whilst we are raising the bar for courts to depart from giving the minimum sentence for these serious crimes, they retain the ability to do so where the circumstances warrant it. The courts will continue to take the child’s welfare and needs into consideration when deciding on the most appropriate sentence.
88. There are some offenders that we consider to be ‘prolific’. These offenders commit a large number of generally low-level crimes, and often fail to respond to existing interventions by the court. For these prolific offenders we will continue to consider whether there are innovative ways in which we could tackle their persistent offending.

Victims of serious and dangerous offenders

89. The government is determined to ensure that the victims of crime – particularly those who have often suffered terribly at the hands of offenders who commit the most serious crimes – are given the support and information they need throughout the criminal justice process. One of the key objectives of the government’s sentencing reforms is to improve the confidence and experience of victims who need and deserve to be treated fairly and sensitively. This will often be for many years after the offence – and particularly, for example, where victims may wish to contribute to the parole process when offenders are being considered for release (by providing a Victim Personal Statement for the Parole Board) or where they may wish to ask for certain licence conditions to protect against unwanted contact when an offender is released.
90. The Code of Practice for Victims of Crime (the Victims’ Code) sets out minimum standards of information and support that should be offered to victims of crime in England and Wales. This includes being provided with an explanation about the meaning and effect of the sentence received by the offender.
91. Where the offender is convicted of a specified violent or sexual offence, and sentenced to 12 months or more in prison, the victim or a bereaved family member is

entitled to a referral to the statutory National Probation Service Victim Contact Scheme (VCS). The VCS can provide eligible victims with information and advice about the criminal justice process and includes being kept informed of key stages of the offender's sentence. As part of our reforms to probation, we will invest in enhancements to the current service that victims receive, and extend the service to wider cohorts of victims such as those in cases involving unrestricted patients. We will ensure that more victims of the most serious crimes are given a fresh chance again to receive services if they initially opted out and be involved in the Parole process if they wish to. We will ensure that we provide victims with better information about the scheme. This will include a wider choice as to the method and frequency of our communication with them. Where appropriate we will use more efficient digital communication methods (e-mail, texts), moving away from postal communication wherever possible.

92. The recent consultations on improving the Victims' Code further highlighted the importance for victims to be provided with timely and accurate information about their cases. The consultations also set out plans to update the Victims' Code to reflect the changes implemented as part of the Review of the Parole Board Rules and Reconsideration Mechanism: Delivering an effective and transparent system.⁹ These changes have increased the rights of victims during the parole process, including the presumption that at parole hearings, victims will be able to read, or have read, their victim personal statement (VPS).
93. The government aims to publish the revised Victims' Code later this year, in advance of the consultation on a Victims' Law, which seeks to guarantee victims' rights and the level of support they should receive and upon which we shall legislate as soon as possible.

Conclusion

94. Public protection lies at the heart of the criminal justice system. The legislative changes outlined above will further strengthen our response to serious, violent offending, better protecting the public, and giving greater confidence in the system. Many of these changes will also help to rationalise our approach to sentencing for offenders of this nature, addressing inconsistency and ambiguities. Combined, this should deliver a more robust approach that sees serious offenders spend longer in prison, and ensures dangerous offenders come before the Parole Board, as well as improving the transparency and administration of the sentencing framework. This will be good for victims and the wider public.

⁹ <https://www.gov.uk/government/publications/review-of-the-parole-board-rules-and-reconsideration-mechanism>

2. Supervising Offenders in the Community

Chapter Summary

Delivering public protection and confidence across the system is not just about better use of custody. In many cases, particularly for low-level offending, effective community supervision keeps the public safer. Often, a well-structured community order can have a greater impact than a very short term of custody. We can do this through early interventions to move offenders away from future offending, by ensuring we use the best technology available to monitor offenders and by providing support for those who want to turn their lives around. Building on the lessons of the past, in this chapter we will set out a new vision for community supervision that combines robust punishment and management of risk with a renewed focus on addressing rehabilitative needs to break the cycle of reoffending.

Community Sentence Treatment Requirements: We will significantly increase the availability and usage of Community Sentence Treatment Requirements, to deliver tailored interventions to help support rehabilitation of those with mental health, drug and alcohol needs.

Ensuring community requirements are robust and responsive: We will expand Alcohol Abstinence and Monitoring Requirements. We will increase the maximum period of electronically monitored curfew from 12 months to two years to deal with more serious offending, and also allow and support more flexible use of curfews. We will also ensure that Unpaid Work optimises rehabilitation as well as punishment. We will abolish little used Attendance Centre Requirements and Attendance Centre Orders.

House Detention Order: We propose to develop a pilot for a new, robust community-based package for offenders who have not responded to existing community sentences. This will be based on a lengthy and restrictive curfew, which would be accompanied by other measures to address rehabilitation and prevent further offending as needed.

Improving pre-sentence reports – addressing individual issues through tailored assessments: Following on from the evidence that a number of people are sent to prison for short periods of time without a pre-sentence report (PSR) being conducted, we will pilot new ways of delivering timely and high quality PSR.

Deferred sentencing: We will encourage courts to use existing legislation, and existing services such as liaison as well as diversion and community advice and support services, to deliver more effective routes for people into services and materially changing their justice pathway, especially vulnerable women.

Out of Court Disposals: We will legislate to simplify the Out of Court Disposals (OOCs) framework, so that there is consistency across police forces in the way low-level offenders are dealt with, making the system easier to understand.

Problem-solving courts: We intend to pilot enhanced problem-solving court models in up to five courts, targeted at repeat offenders who would otherwise have been sent to custody. This will enable us to evaluate the effectiveness of the approach and resources required in order to inform decisions on any potential wider roll-out.

Neurodivergence: We will launch a national ‘Call for Evidence’ to obtain a clearer picture of prevalence and the current national provision to support offenders with neuro-divergent conditions in the criminal justice system.

Introduction

95. If we are to achieve our objectives to reduce reoffending, rehabilitate offenders, reduce the number of victims and protect our communities, the case for robust and effective community sentences is clear.
96. Community sentences can and should be tailored to address the individual needs and problems that contribute to reoffending, as well as to punish offenders and provide reparation to the community. While short custodial sentences may punish those who receive them, they often fail to rehabilitate the offender or stop reoffending. Evidence suggests that community sentences, in certain circumstances, are more effective in reducing reoffending than short custodial sentences. A Ministry of Justice 2019 study found that sentencing offenders to short term custody with supervision on release was associated with higher proven reoffending than if they had instead received community orders and/or suspended sentence orders.¹⁰ So while short custodial sentences may be perceived as providing communities with temporary respite from offending behaviour, they are at best providing limited public protection, as most offenders continue to reoffend following release.
97. The evidence points to taking a different approach to this cohort, which helps to break the cycle of reoffending. If we can reduce reoffending, the benefits will be felt by society as a whole. Building on the lessons of the past, in this chapter we set out a new vision for community justice that combines robust punishment and management of risk with a greater focus on addressing rehabilitative needs. We will deliver this

¹⁰ *The impact of short custodial sentences, community orders and suspended sentence orders on re-offending*, Ministry of Justice, January 2015.

through a combination of legislative reforms and significant investment in improvements to the way probation supervises and rehabilitates offenders.

98. We are clear that we will not compromise our responsibility to victims of crime or the safety and protection of the wider public. We also understand the importance of providing victims with the support they need to cope and recover regardless of the sentence received by the offender. We will work carefully and closely with the judiciary to fully embed our new approach across the criminal justice system.

Our proposals

- Increase the availability and usage of Community Sentence Treatment Requirements
- Increase the length of available electronically monitored curfew and allow more flexibility
- Give probation the power to vary electronic monitoring requirements, within a prescribed limit
- Abolish the little-used Attendance Centre Requirement and Attendance Centre Order
- Create a new type of community-based order for the courts, based on a highly restrictive and lengthy home curfew
- Bring forward a pilot to identify offenders who need pre-sentence reports to support their sentencing determination earlier in the system, and introduce a statement of purpose
- Encourage courts to use their powers to defer sentences for vulnerable people to materially changing their justice pathway, especially vulnerable women
- Reduce the number of Out of Court Disposals from six to two in legislation to simplify the framework
- Piloting the problem-solving court model in up to five courts
- Launch a 'Call for Evidence' on neurodiversity in the criminal justice system

Community Sentence Treatment Requirements

99. Ensuring that individuals with vulnerabilities are identified early on in the criminal justice system is essential, and this is especially the case for individuals with mental health and/or substance misuse needs.
100. There are a range of initiatives underway to help ensure that the courts have the right information at the right time about the individual before them. For example, NHS Liaison and Diversion clinical staff are now firmly established at police stations and

magistrates' courts, providing key assessments and referrals to treatment and support, all of which should feed into pre-sentence reports prepared by probation.

101. The Probation Reform Programme is investing heavily to improve digital systems and data-flow between systems used by criminal justice agencies, which, together with the Common Platform, should mean practitioners can better identify individuals with vulnerabilities to help inform the sentencer's disposal decision.
102. We expect all those involved in an offender's progress through the system (Police, CPS, defence solicitors, prosecuting and defending counsel and Liaison & Diversion) to pro-actively identify and communicate to the CPS and probation service where they believe that the accused has a drug, alcohol or mental health issue, and this information to be taken into account when the court is deciding whether to request a pre-sentence report.
103. Where an offender's needs have been identified, we will enhance the options for managing them effectively. We know that offenders can experience health problems, including mental health and substance misuse, that are more complex than the general population.¹¹ These underlying health issues can contribute to offending behaviour, and impact how effectively an individual is able to engage with their rehabilitation.
104. In the past the use of the existing treatment options available under a community sentence has been low. We, in partnership with the NHS, are increasing the availability and usage of Community Sentence Treatment Requirements (CSTRs), to deliver tailored interventions and support rehabilitation of those with a range of treatment needs. The Carol Black Review¹² is focusing on the harm that drugs cause and looks at prevention, treatment, and recovery along with providing recommendations for those with drug and alcohol needs.
105. A study of adult offenders starting community orders in 2009/10 showed that of those who received a formal assessment, 32% were identified as having a drug misuse need and 38% an alcohol misuse need. The survey component of the study found that 35% of people reported having a formal diagnosis of a mental health condition.¹³ More recent management information of offender needs assessments, based on a snapshot of caseload data from 30 June 2018, highlights that for those with a Layer 3 (full) OASys (Offender Assessment System) assessment: 32% of offenders with a

¹¹ *Transforming Rehabilitation: a summary of evidence on reducing reoffending*, Ministry of Justice, September 2013.

¹² *Independent review of drugs by Professor Dame Carol Black*, Department of Health and Social Care and Home Office, February 2020.

¹³ *Results from the Offender Management Community Cohort Study (OMCCS): Assessment and sentence planning*, Ministry of Justice, June 2013.

community or suspended sentence orders had a drug need and 25% had an alcohol need.¹⁴

106. When vulnerabilities significantly contribute to the reason for offending, this needs to be effectively addressed. There are three types of treatment requirements available:
- Alcohol Treatment Requirements (ATRs)
 - Drug Rehabilitation Requirements (DRRs)
 - Mental Health Treatment Requirements (MHTRs)
107. However, despite many offenders experiencing mental health and substance misuse problems, the use of treatment requirements as part of a Community Order (CO) or Suspended Sentence Order (SSO) remains low. Whilst some treatments are carried out under the general terms of a Community Order or SSO, this is not made clear on the face of the order.
108. In 2019, out of all the requirements commenced under community orders or suspended sentence orders:¹⁵
- 0.4% (781) were Mental Health Treatment Requirements (MHTRs);
 - 4% (7,624) were Drug Rehabilitation Requirements (DRRs); and
 - 3% (5,553) were Alcohol Treatment Requirement (ATRs).
109. This is in the context of a decrease in the volume of people starting community orders and suspended sentence orders, which fell by 38% between 2009 and 2018.¹⁶
110. Great effort is therefore underway between health and justice partners to increase the use of Community Sentence Treatment Requirements (CSTRs) as an alternative to short custodial sentences, as well as to other community sentences, when an identified health need means this is appropriate. Improving our non-custodial options could help to relieve demand on prison places. Evidence on the impact of CSTRs on prison demand will be included within an evaluation.
111. According to an MoJ study published in 2018, reductions in reoffending were associated with the use of community sentences as compared to short-term custody. The relative effectiveness of community orders or suspended sentence orders (regardless of whether considered altogether or separately) in reducing reoffending compared to short-term custody was greater for those with identified mental health issues.¹⁷

¹⁴ *Identified needs of offenders in custody and the community from OASys*, Ministry of Justice, July 2019.

¹⁵ *Offender Management Statistics Quarterly: October to December 2019*, Ministry of Justice, April 2020.

¹⁶ *Ibid.*

¹⁷ *Do offender characteristics affect the impact of short custodial sentences and court orders on reoffending?*, Ministry of Justice, May 2018.

112. For those with identified mental health issues, mental health treatment requirements (MHTRs) attached to COs or SSOs were also associated with reductions in reoffending where they were used, compared with similar cases where they were not.
113. Over a one-year follow up period, there was a reduction of around 3.5 percentage points in the incidence of reoffending where such requirements were used as part of a community order, and of around 5 percentage points when used as part of a suspended sentence order.¹⁸

Community Sentence Treatment Requirement (CSTR) Programme

114. Through the Community Sentence Treatment Requirement (CSTR) Programme, health and justice partners are working together to ensure that greater use is made of mental health, alcohol and drug treatment requirements (MHTR/ATR/DRR) as part of community sentences. The Programme was launched in October 2017 by the MoJ, Department of Health and Social Care, NHS England and NHS Improvement, Her Majesty's Prison and Probation Service and Public Health England. It focuses on improving multi-agency working to ensure that the roles and responsibilities of all those involved in delivering CSTRs are clear, with the necessary treatment pathways in place.
115. After promising results from pilots in courts across five areas in England,¹⁹ wider roll-out of the CSTR Programme is underway to enable more areas to benefit from it. An initial process evaluation revealed that the Programme provides a clearer pathway for the use of mental health treatment requirements and has achieved significant increases in the number of offenders being diverted into mental health treatment programmes in the community. Over an 18-month period, the number of MHTRs across the four areas increased from 10 to 128. The Programme is currently operating in courts across thirteen areas in England, with further rollout planned with the money committed by NHSE/I in their 2019 Long Term Plan. We will achieve 50% coverage of mental health provision by 2023/24 and want to go further with drug and alcohol treatment too.
116. Within the CSTR Programme, exciting developments and improved mental health treatment pathways have meant that we have been able to promote the use of combined treatment requirements, where appropriate. Combined treatment requirements may be given by sentencers within one order– either MHTR/DRR or MHTR/ATR.
117. Many of our vulnerable offenders have complex, comorbid diagnoses (suffering from a combination of substance misuse and mental health problems) and so the ability to

¹⁸ Ibid.

¹⁹ *Community Sentence Treatment Requirements Protocol*, Process Evaluation Report, Department of Health and Social Care, June 2019.

offer combined treatment requirements in certain cases offers an invaluable opportunity to improve health and justice outcomes for this cohort in a way we haven't been able to do previously.

Additional funding for the CSTR Programme

118. In order to further support scale-up of the CSTR Programme, MoJ will commit new justice funding to the CSTR Programme for 2020/21, in addition to the significant funding already committed by NHSE/I in their 2019 Long Term Plan.
119. It is intended that new justice funding for 2020/21 will support programme management an analytical capacity across a number of key areas, including:
- A network of dedicated court-based assessors to assess for all three treatment requirements, helping to identify individuals who will benefit from treatment and will become the link between Liaison and Diversion and CSTR providers. They will identify individuals suitable for CSTRs and effectively communicate and work with wider probation staff and treatment providers. The intention is that they will be substance misuse practitioners with mental health experience.
 - Funding to pilot an increase in drug testing in an area where there is a lack of capacity for testing, which may be the cause of low number of Drug Rehabilitation Requirements ordered by sentencers. The pilot will help support a better overall understanding of the links between drug testing for DRRs and whether it affects reoffending rates, and other justice outcomes.
 - Additional staff to support the programme management of CSTRs to strengthen management, accountability, impact analysis and long-term scale up of the CSTR Programme. Neurodiversity expertise will be included in the Programme which sites can draw on to ensure they are able to meaningfully support individuals with neurodiversity needs.
120. We also recognise that there is a need to ensure sentencers are familiar with CSTRs – in terms of how they work, and the treatment provided as part of the order. CSTRs feature in the latest guidance published by the Sentencing Council for sentencing offenders with mental disorders, developmental disorders and neurological impairments.²⁰ The guidance explains that “community orders can fulfil all the purposes of sentencing and consideration should be given to all of the options for community orders, including Mental Health Treatment Requirements (MHTRs), Rehabilitation Activity Requirement (RAR), Alcohol Treatment Requirement (ATR), and Drug Rehabilitation Requirement (DRR) in light of what is available locally.” Furthermore, during the COVID-19 pandemic, officials have worked alongside NPS and the Judicial College to support updated training for sentencers on mental health. MoJ will therefore continue working closely with wider partners to help raise

²⁰ *Sentencing offenders with mental disorders, developmental disorders, or neurological impairments – Effective from 1 October 2020*, Sentencing Council, 2020.

awareness about CSTRs and how they can be most effectively deployed. We will consider whether sentencers could explain in their sentencing remarks why a CSTR has not been used in cases where a mental health, drug or alcohol issue has been flagged in a PSR.

121. One of the ways sentencers would be able to learn more about CSTRs is by improving their understanding of their impact and the progress being made by individuals undertaking them would be through regular court review hearings. Three of thirteen sites currently undertake reviews for all three CSTRs, and DRR reviews are regularly used in the Crown Court sites (where they are compulsory for DRRs of 12 months or more) but largely not in the magistrates' courts. Building on the evidence base on problem-solving courts, we outline below our intention to develop pilots in this area and it is possible that one of the pilots would be located at a CSTR site. Depending on the outcome of these pilots, we will then consider whether more cases should have follow-up appearances at court to ensure compliance with the CSTR and to monitor progress. Secondary legislation would be required to expand the use of court reviews beyond DRRs and Suspended Sentence Orders for which powers already exist.

Clinical oversight of Mental Health Treatment Orders

122. Currently “an offender must submit, during a period or periods specified in the order, to treatment by or under the direction of *a registered medical practitioner or a registered psychologist* (or both, for different periods) with a view to the improvement of the offender’s mental condition.” We are keen to explore whether a senior mental health professional registered with the HealthCare Professional Council (HCPC) or Nursing Midwifery Council (NMC) with experience of psychological therapy could be included in this definition and what legislative changes may need to be made to support this approach.

Ensuring community requirements are robust and responsive

123. Strong measures in the community not only give the public confidence that offenders are not let off lightly, but – importantly – used thoughtfully they can contribute to an offender’s rehabilitation, by instilling and enforcing new habits and skills. For example: electronic monitoring can discourage offending associates; curfews and exclusion zones can debar offenders from activities related to their offending; Unpaid Work teaches new skills for many offenders. More flexible sentences, or new combinations of sentences, can address offender behaviour in a more individualised way and can increase both punitive and rehabilitative effects.

Alcohol Abstinence and Monitoring Requirement

124. We have introduced legislation to roll out a new electronic monitoring option for courts; alcohol or 'sobriety' tags will assure compliance with the Alcohol Abstinence and Monitoring Requirement (AAMR), for use where offending is fuelled by alcohol. An AAMR imposes an alcohol ban for a specified period of up to 120 days as part of a Community Order or a Suspended Sentence Order. Roll out will begin later this year.
125. Evidence from two pilots of AAMR supported by the MoJ, conducted by the London Mayor's Office for Policing and Crime (2014 to 2018) and in Humberside, Lincolnshire and North Yorkshire (2017 to 2019), has revealed that the majority of offenders successfully complete the requirement, with a 94% compliance rate and 97–98% sober day rate across both pilots.^{21,22}
126. We will consider changes through affirmative secondary legislation to make it possible to impose AAMR for longer periods, as there is the potential for this requirement to support longer rehabilitation goals. In the longer term, we will also develop our use of the technology to enable courts to impose AAMR alongside a curfew order and assure compliance for both using a single tag.

Curfew

127. Curfew is one of a range of community requirements which can be imposed as part of a Community Order or a Suspended Sentence Order, requiring the offender to be in a particular place at certain times. If the court makes a Community Order or a Suspended Sentence Order that includes a curfew requirement, it must also impose an electronic monitoring (EM) requirement for monitoring purposes unless there are particular reasons for not doing so. This follows evidence that electronic monitoring can support a reduction in violations during the monitored period.²³ A curfew cannot specify periods which amount to less than 2 hours or more than 16 hours on any day and can be for a maximum period of 12 months (under a Community Order or Suspended Sentence Order).
128. We plan to enable curfew requirements to carry greater punitive and rehabilitative weight in more serious cases. We want to achieve this by increasing the maximum period of the curfew from 12 months to two years. This would increase the available punitive weight of the order, but also have potential to support rehabilitation as it

²¹ *Evaluation of the AAMR tagging pilot: Year 2 process evaluation findings*, Roberts, E., Turley, C., Piggott, H., Lynch-Huggins, S., Wishart, R. & Kerr, J., 2019.

²² *Alcohol Abstinence Monitoring Requirement: A review of process and performance from Year 2*, Hobson, Z., Harrison, A., & Duckworth, L., 2018.

²³ *A Systematic Literature Review Of Electronic Monitoring Of Offenders*, Danielsson, P. and Makipaa, L. 2012.

would provide a longer period during which some of the positive effects of curfew could be established, such as deterring criminal associates.

129. It is envisaged that courts would be able to use longer curfews in particularly serious cases, where a sentence served in the community may be more effective in preventing future re-offending, prior to consideration of a custodial sentence.
130. An electronically monitored curfew is often set by the courts for a standard 12-hour curfew pattern of 7pm to 7am at the home address, but a curfew can be set to allow for a different pattern. We would like to see a more creative approach to imposing curfews which may better reflect the punishment intended, better support rehabilitation, and better protect victims, meaning more robust and effective orders. For example, it is possible to set several curfew periods during a 24-hour period (subject to the daily maximum) to restrict behaviour and movements. This could allow an offender to fulfil caring responsibilities for dependents at specified times but be subject to a curfew at other times. We are keen to explore how victims' views can be gathered and included when setting restrictions that may contribute to keeping them and their families safe. We will work with NPS staff and sentencers to explore what is currently possible, and better understand the possible benefits of new approaches.
131. We also plan to give courts the ability to impose the weekly total of up to 112 curfew hours more flexibly and creatively; whilst not exceeding the weekly maximum, we propose that the court should be able to impose longer curfews, up to 20 hours a day (an increase from the daily maximum of 16 curfew hours). The intention is that the maximum of 20 hours would be used on 'leisure' days and fewer or no curfew hours could be set on 'working' days. This would increase the punitive nature of a curfew but may also enhance rehabilitative benefits such as cutting ties between offenders and criminal associates. This proposal increases the flexibility of the sanction and also creates the potential to direct it where the need to protect the public is greatest.
132. Currently, all variations to EM curfews imposed by the court as a requirement of a Community Order or Suspended Sentence Order may only be made by the court. This means that to make even minor adjustments to a curfew start or end time or an appropriate change of address, probation must take the request to the court in order for it to be varied by the court. Pressures on courts, which are particularly acute at the moment, are further exacerbated by these applications.
133. We want to give probation the power to vary EM requirements within a prescribed range of circumstances, where the change will in no way undermine the weight or purpose of the requirement as imposed by the court. Any proposal will be scrutinised and authorised by a senior member of probation staff before a change is made and the change will be auditable. When a variation has been authorised the court record will be updated, and probation will notify the police and the monitoring provider.

Variations will be limited to a shift in curfew timings but not a change in the number of hours, and changes to address where it is identified as necessary for risk management and/or rehabilitation and within the geographical range managed by the probation team responsible for the offender. The aim of this change is to improve efficiency across the courts and probation.

134. This measure would not be available to vary “single requirement orders” (where compliance with the curfew is managed by the Electronic Monitoring Service, rather than probation), would not apply to court bail cases which are managed by the police.
135. We are also considering whether, as with probation, Youth Offending Teams should be empowered to make variations to EM requirements in a limited range of circumstances (changes of address and changes in curfew timings but not the number of hours).

Unpaid Work

136. Unpaid Work is an integral part of our community offer. Currently, Unpaid Work can be imposed as a requirement of a Community Order or Suspended Sentence Order. The courts can impose between 40 and 300 hours of Unpaid Work and this must be completed within 12 months. Nominated local projects are popular with both sentencers and the public, and placements are challenging. Unpaid Work can support the rehabilitative aspects of a community-based order through developing work-ready skills, including good timekeeping and working cooperatively with others.
137. Reforms to the probation system which are bringing Unpaid Work delivery under the remit of the National Probation Service (NPS) present a significant opportunity to ensure that the work offenders do helps rehabilitate as well as punish. There is considerable potential within the Unpaid Work requirement for on-the-job training and skills development that can support future employment opportunities and the revised delivery model further increases opportunities to develop vocational skills. There will be increased opportunity for those eligible to benefit from up to 20% of their Unpaid Work hours being served in a work-related educational or training capacity. In addition, we want to ensure that Unpaid Work is started quickly, especially where it is stand alone and will work with the NPS to ensure that where courts order Unpaid Work, offenders are started on it as quickly as possible.
138. It is vital that community sentences and their requirements should benefit the local community in which they are served, and sentences being responsive to local needs is a key aspect of this. We want to make sure that there is strong community participation (both members of the public and key agencies) in Unpaid Work. This is why we will support the NPS's efforts to ensure an adaptive and responsive unpaid work offer by creating a statutory duty for probation to consult key local and regional stakeholders on the design and delivery of Unpaid Work.

139. Additionally, liaison arrangements with the Police and Crime Commissioner, Community Safety Partnerships and other community forums will ensure that community leaders and local officials fully understand the contribution that Unpaid Work can make to local initiatives. These links – cemented via a statutory duty – will help to develop new project work and ensure that all sections of the local community benefit from the work delivered through Unpaid Work.
140. Unpaid Work Supervisors will undertake, as a minimum, introductory training in health and safety, first aid, the core principles of Unpaid Work, safeguarding; PREVENT; risk awareness; dealing with challenging behaviour, pro-social modelling and diversity. They will also benefit from ongoing professional development in the core requirements of the role but may also include wider practice issues.
141. Her Majesty's Prison & Probation Service (HMPPS) is developing strategic partnerships with charities, such as the National Trust and the Canals and Rivers Trust who can provide a significant volume of quality Unpaid Work placements. An agreement setting out working arrangements that is endorsed at a national level will help local teams to be proactive when forming local partnerships. Unpaid Work Teams can supply considerable, regular and reliable working parties to complete a wide range of arduous tasks throughout the year. Larger charities can provide fulfilling work that can include on-the-job training, whilst benefiting the community. This can also include possibilities for service users to transition to volunteer or paid employment roles following completion of the Community Sentence.

Attendance Centre Requirements

142. An Attendance Centre Requirement is a little-used type of community requirement that can be imposed on young adults aged 18–24 as part of a Community Order or Suspended Sentence Order under section 214 of the Criminal Justice Act 2003. An Attendance Centre Requirement requires the individual to attend, for a specified number of hours, a designated building operated by the probation service, known as a Senior Attendance Centre. These are distinct from Junior Attendance Centres, which exist separately as part of the youth sentencing framework. Attendance at a Senior Attendance Centre can also be mandated as a standalone Attendance Centre Order for individuals aged 18–24 who are in default of payment of a sum of money, under section 60 of the Powers of Criminal Courts (Sentencing) Act 2000.
143. The primary purpose of an Attendance Centre Requirement is to support rehabilitative activities; it also has a punitive element through the restriction of liberty involved. The activities delivered through a Senior Attendance Centre typically include social, education and life skills training. The minimum number of hours is 12 and the maximum is 36, typically in 3-hour sessions.

144. Use of Attendance Centre Requirements has been declining since the introduction in 2014 of the Rehabilitation Activity Requirement (RAR), which provides a more flexible means for sentencers to ensure rehabilitative needs are addressed as part of a community sentence. Since 2017, approximately 80 offenders per month have been sentenced to an Attendance Centre Requirement, resulting in c.950 cases annually (less than 1% of all Community Order and Suspended Sentence Order starts).²⁴ Standalone Attendance Centre Orders are even less commonly used, with only 7 imposed across England and Wales in the year to March 2020. One reason for their low usage may be that Senior Attendance Centres are not available as an option in all regions due to their uneven distribution (there are 26 centres nationally, but none in Wales or the North East for example).
145. In light of their declining usage, we propose to remove the Attendance Centre Requirement from the menu of available community sentence requirements. We would also remove the Attendance Centre Order from the available sentencing options to deal with defaulters. This will streamline the community sentencing framework and promote simpler and more consistent sentencing, while freeing up probation service resources which could be used more effectively elsewhere.
146. We believe that the rehabilitative and punitive functions of Attendance Centre Requirements can be met equally well, if not more effectively, through other available requirements such as Unpaid Work, curfews and RARs. The RAR in particular provides greater flexibility for the probation service to tailor activities to the particular needs of the individual. Similarly, we believe that additional disposals for defaulters introduced by the Courts Act 2003, such as Unpaid Work, provide an effective alternative to the Attendance Centre Order.
147. Senior Attendance Centres are currently operated under contract by Community Rehabilitation Companies (CRCs). On transition to future probation arrangements in June 2021, responsibility for operating Senior Attendance Centres will transfer to the National Probation Service (NPS) along with other CRC functions. The NPS will continue to operate Senior Attendance Centres in line with current arrangements unless and until legislation is enacted to remove Attendance Centre Requirements and Attendance Centre Orders from the statute book. Senior Attendance Centres may continue to operate thereafter in areas where they are an effective way to meet demand for rehabilitative activities for young adults with a Rehabilitation Activity Requirement.

²⁴ *Offender Management Statistics Quarterly: October to December 2019*, Ministry of Justice, April 2020.

House Detention Orders

148. A persistent problem for lower level offending is the failure of non-custodial sentences to deliver better outcomes and so offenders typically end up being sentenced by courts to short spells of custody after they feel they have exhausted all other options. On average, those sentenced to short custody (6 months or less) have an average of 65 offences, with community sentences having been tried and having failed. We need to improve community-based orders to end the cycle of repeat low-level offenders that often leaves judges with no choice but to impose a custodial sentence. Our goal here is clear: a new and improved community orders that offers better rehabilitation opportunities, but which is principally about delivering robust punishment in the community. Such orders will be more effective at ensuring compliance and deterring crime and therefore preventing the conveyor belt that leads too many offenders on a path towards repeated short spells in prison.
149. We therefore intend to empower judges to place much more restrictive requirements on community orders and through enabling them to impose a tough new form of 'house detention' that severely restricts liberty. This would be a robust order, which would be served in the community and would be based on a highly restrictive and lengthy curfew, that would fully exploit GPS tagging technology. We envisage the order would provide a strong punitive response to crime in a way that current community sentences do not, while enabling those offenders in training, education or employment to maintain those obligations. We will consider piloting these orders in select areas for young adults under the age of 21, and where there is local support from Police & Crime Commissioners and evaluate their impact on offending and uptake by the judiciary before considering further expansion.
150. Courts should be able to add further requirements to house detention, such as Alcohol Abstinence Monitoring Requirements (so called 'sobriety orders'), internet restrictions and mandatory attendance at drug or alcohol treatment services as they see fit. The purpose of this new non-custodial option is to provide an additional tool for sentencers to apply in certain cases of lower-level offending where they judge that the offender can still be punished effectively in the community and where their likelihood to reoffend would be increased by resorting to another conventional community sentence. For these reasons, courts would not be able to use these sentences for people who would have otherwise received a custodial sentence and because they are geared at making community sentencing a more effective intervention, they could not be used for offenders who had already had a prison sentence in the past.

Improving pre-sentence reports – addressing individual issues through tailored assessments

151. The purpose of a pre-sentence report (PSR) is to facilitate the administration of justice, and to reduce an offender's likelihood of reoffending and to protect the public and/or victim(s) from further harm. A PSR does this by assisting the court to determine the most suitable method of sentencing an offender (Criminal Justice Act 2003, section 158). To achieve this, the National Probation Service provides an expert assessment of the nature and causes of the offender's behaviour, the risk the offender poses and to whom, as well as an independent recommendation of the option(s) available to the court when making a sentencing determination for the offender.
152. A PSR assists the court when the community or custodial threshold has been met, by providing:
- a summary of the facts of the case, incorporating any basis of plea if there has been an admission.
 - an expert risk and needs assessment about the individual circumstances of the offender and the offence(s) committed, highlighting the risk the offender poses and to whom, potential vulnerabilities and/or underlying drivers of the individual's offending behaviour. In addition, it must reflect the need to guard against disproportionate treatment.
 - an analysis of the sentencing options, with an independent sentence proposal, addressing any indications of the court, and when appropriate recommending alternative sentencing options to the court in line with the sentencing guidelines and purposes of sentencing (Criminal Justice Act 2003, section 142),
 - additional information not presented to the court in aggravating or mitigating submissions, or readily available to the court, such as information about the offender and their view of the offence(s), obtained by interviewing the offender or through the liaison with other criminal justice system, clinical and community-based agencies.
153. Following the determination of a suitable sentence by the court a PSR:
- is the foundation of the administration of an offender's sentence.
 - informs the production and implementation of a risk management and sentence plan by the offender supervisor in the community or custody, to reduce the offender's likelihood of reoffending and to protect the public and/or victim(s) from further harm.
 - is reviewed by the Parole Board when determining whether an offender can safely be released into the community.
 - is considered by an appellate court upon appeal or review of the sentencing decision of the original court.

154. We believe that the provision and quality of PSRs are key to supporting effective decision making in the criminal justice system, so the court knows when there are unresolved needs that are directly associated with offending and is aware of all individualised relevant risk factors. This then enables the appropriate risk management arrangements to be put in place to supervise the offender in the community and support their rehabilitation. There has been a significant decrease in the number of PSRs recorded in magistrates' court. Delivered PSRs have fallen from 156,659 in 2009 to 75,900 in 2019. This is a drop of 52% percent.²⁵ However, this government is committed to increasing the delivery of targeted, quality and timely PSRs to assist sentencing determinations. Similar findings have been acknowledged by HM's Inspectorate of Probation.²⁶
155. We are committed to ensuring that probation staff are supported to deliver a high standard of reports and to significantly increase the proportion of court disposals which benefit from a PSR. Through our reforms to probation, we will invest in additional staff at courts to support more, higher-quality PSRs for more cases.
156. To ensure that high quality PSRs are being prepared in appropriate cases, so that sentencers have the best information available to address rehabilitative needs, we are taking forward a broad programme of work to improve the quality and delivery of advice to courts. We are not proposing to alter the current judicial discretion to decide when a PSR is necessary to assist sentencing determinations. Instead, we are proposing that further work is undertaken to build the evidence base on the impact that a PSR has by evaluating their impact on offender outcomes, sentencing behaviour and the efficient administration of justice by way of a pilot to test new ways of delivering PSRs in magistrates' courts.
157. The PSR pilot will test new ways to identify offenders earlier in the criminal justice system who require a PSR to support their sentencing determination. For example, testing the impact of adopting a 'Pre-Plea' pre-sentence report protocol for certain offenders, so probation officers are permitted more time to prepare a quality PSR prior to sentencing hearings. This process, in addition to closer partnership working with other criminal justice agencies such as the police, Crown Prosecution Service, defence lawyers, and NHS Liaison and Diversion services, will maximise the opportunities to increase the identification and flagging of individuals earlier in the criminal justice process that would benefit from a PSR.
158. In addition, the pilot will work with local courts to target the delivery of fuller PSRs for cohorts of offenders identified with more complex needs, even if that would require a short adjournment (of 5 working days) so that the National Probation Service, can:

²⁵ *Offender management statistics quarterly: October to December 2019*, Ministry of Justice, 2020.

²⁶ *The quality of pre-sentence information and advice provided to courts*, HM Inspectorate of Probation, Research & Analysis Bulletin 2020/04, 2020.

interview the offender; make the necessary checks and liaisons with partner agencies; and prepare a report informed by their professional assessment and including an independent recommendation on the most suitable and deliverable sentencing options available for the court to consider. The following cohorts of offenders have been identified as the cohorts with complex needs that the PSR pilot will focus on female offenders, young adult offenders (ages 18–25), and offenders on the cusp of custody.

Deferred sentencing

159. There are clear instances where we are not doing a good enough job in ensuring that courts and probation (and other community services) work better together. For example, an evaluation of NHS Liaison and Diversion schemes in 2016 (which identify people who have a mental health need, learning disability, substance misuse problem, or other vulnerabilities, and refer them into services at police stations and court) was unable to detect whether they had been able to successfully divert cases away from remand or custodial sentences.²⁷
160. Where the court has the capacity, we want to encourage them to use existing legislation on deferred sentences, and existing services available to them such as Liaison and Diversion or community advice and support services, to divert vulnerable offenders into services and away from further involvement in the criminal justice system, especially vulnerable women who are likely to benefit from referral to a women's centre. The majority of women sentenced to custody receive sentences of less than 12 months, often for persistent low-level offences, and there is a higher prevalence of reported needs among women in custody, including around substance misuse, trauma and mental health. The greater use of deferred sentencing will also provide opportunities for restorative justice practices to be deployed.

Out of Court Disposals

161. At the very first step of the criminal justice process, we will do more to ensure that we provide effective, swift and evidence-led responses to the least serious offending, such as first-time offences of low-level cannabis possession or being drunk and disorderly. Out of Court Disposals (OOCs) are an important tool in addressing early stages of offending behaviour. They allow the police to deal promptly with low-level offending without recourse to the courts. They can maximise the use of officer time – achieving a satisfactory outcome for the public while allowing officers to spend more time on frontline duties tackling more serious crime. They are also an opportunity to

²⁷ *Evaluation of the Probationer Liaison and Diversion Trial Schemes*, Disley et al, RAND Corporation. 2016.

provide intervention and support to potential offenders at the early stages in criminal behaviour, diverting them into rehabilitative services to help reduce escalation of offending.

162. A joint government and police review of OOCs included a public consultation, which ran from November 2013 to January 2014.²⁸ This sought views from the public, as well as practitioners within the criminal justice system, including the police, the judiciary and the Sentencing Council. The consultation responses confirmed that the OOC framework was in need of reform. The joint government and police response to the consultation was published in November 2014.²⁹ It set out plans to reduce the number of disposals from six to two. To take this forward, in 2014–15 we piloted a ‘two-tier framework’ in three police forces.³⁰ The National Police Chiefs’ Council (NPCC) supported the move to a two-tier structure and published a strategy³¹ at the end of 2017 encouraging a voluntary move by forces to use only conditional cautions and community resolutions. All forces signed up to the strategy. Some have moved fully to the two-tier model, some are in transition and others retain the full six OOC options.
163. MoJ has continued to support this voluntary implementation of the two-tier model but the time is now right to move this to a legislative footing, ensuring that all forces are using a consistent OOC framework. The new framework will provide:
- An ‘upper-tier’ disposal (along the lines of the current statutory conditional caution) to enable police to set enforceable conditions to be met within 16 weeks (or in exceptional cases up to 20 weeks). Non-compliance could result in a prosecution for the original offence. Conditions could be rehabilitative (e.g. engagement with mental health or substance abuse services), reparative (e.g. financial compensation, restorative justice process, formal apology), restrictive (e.g. curfew) or punitive (e.g. fine). Receiving this would form part of a criminal record but would be regarded as ‘spent’ within three months and only disclosed on DBS checks for certain jobs.
 - A ‘lower-tier’ disposal (along the lines of the current informal community resolution) which is currently non-statutory, to be available for the lowest level of offences. Receiving this would not form part of a criminal record.
164. As such police would use only two statutory OOCs and not PNDs, simple cautions, cannabis or khat warnings. Fixed Penalty Notices are not within scope of this reform.

²⁸ *Consultation on out of court disposals*, HM Government and College of Policing, November 2013.

²⁹ *Out of Court Disposals Consultation Response*, HM Government and College of Policing, November 2014.

³⁰ *Adult out of court disposal pilot evaluation: final report*, Ministry of Justice, June 2018.

³¹ *Charging and Out of Court Disposals: A National Strategy*, National Police Chief’s Council, January 2018.

165. A number of forces operate local deferred prosecution schemes, within regulatory and operational guidelines, and we welcome evidence-based development of these initiatives. We continue to support the deferred prosecution model, recommended in the Lammy Review,³² and are working with a number of forces to pilot the ‘Chance to Change’ scheme for adults and young people.
166. Streamlining the OOCs options would bring national consistency, an opportunity for early intervention with vulnerable offenders and a greater focus on victims. Both these options allow police to attach some form of condition or action to the disposal. OOCs with conditions can support people where needed, helping to divert first time and low-level offenders away from further contact with the criminal justice system and into meaningful and rewarding life choices. They also provide an opportunity to refer those who have mental health issues or other health vulnerabilities into service interventions to support the underlying factors that are contributing to offending behaviour. Financial penalties, compensation, victim reparation and restorative justice outcomes will all be available to use where police consider these more appropriate and proportionate than rehabilitative interventions.
167. We know that operational change takes time and we will work carefully and closely with police forces and PCCs to ensure that these important changes are implemented in a sensible timeframe to support forces, over several years so the reforms do not impact on operational delivery.

Problem-solving courts

168. For those offenders whose offending is linked to substance misuse and other complex needs, we propose to pilot a new ‘problem-solving’ court approach, providing an intense but alternative sentence to custody through treatment interventions and links to wider support services, with judicial oversight through regular court reviews, more intense probation supervision, and a system of incentives and sanctions to encourage compliance.³³
169. The success of this approach can be seen in the Family Drug and Alcohol Court (FDAC) for parents in family court proceedings, which includes reviews with the same judge and testing for drugs and alcohol, plus engagement in treatment. FDAC’s

³² *An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, The Lammy Review, September 2017. (Recommendation 10.)

³³ *Problem-solving courts: An evidence review*, Bowen, P. & Whitehead, S., Centre for Justice Innovation, London, UK, 2016.

therapeutic approach can have a range of positive outcomes for participating families, in addition to being cost-effective.³⁴

170. There have also been some locally driven criminal problem-solving models producing positive results. For example, Greater Manchester, which runs a PSC-type approach for women, has a lower annual average reoffending rate for female offenders compared to similar urban areas, and England and Wales overall (15% compared to 23% for the April 2017 to March 2018 cohort).³⁵ The court is part of the local Whole System Approach to vulnerable women in the criminal justice system, which seeks to address their often complex needs, including experience of abuse and trauma, by bringing together statutory and third sector agencies to provide joined-up, holistic support. The key actors involved attribute the positive outcomes above to this approach.
171. However, while there have been trials of aspects of these approaches in England and Wales in the past, the full gamut of traditional problem-solving court components successfully used in other jurisdictions to improve offender behaviour and reduce use of custody and reoffending, particularly within treatment court models^{36,37} has never been fully established here. Where some elements have been integrated into previous initiatives, evaluations were either limited in scope or did not take place.
172. In 2016, a problem-solving court Working Group established by the then Lord Chancellor, Rt Hon Michael Gove MP, and the Lord Chief Justice, concluded that a new model that more closely resembles international best practice by incorporating a core set of elements should be tested here, including:
- entry via a guilty plea (with the exception of domestic abuse cases);
 - regular reviews of progress;
 - oversight throughout by a single judge; and
 - graduated sanctions and incentives, including the imposition of short custodial stays for non-compliance before continuing on the programme, and judicial power over breach decisions.
173. Where the model is dealing with drug- and alcohol-related crime, the Working Group felt that the court should have the ability to use frequent and random drug testing and

³⁴ *Changing lifestyles, keeping children safe: An evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings*, Harwin, J., Alrouh, B., Ryan, M. & Tunnard, J., London: Brunel University, 2014.

³⁵ *Proven reoffending statistics: January to March 2018*, Ministry of Justice, 2020.

³⁶ *Problem-solving courts: An evidence review*, Bowen, P. & Whitehead, S., Centre for Justice Innovation, London, UK, 2016.

³⁷ *Review of the effectiveness of specialist courts in other jurisdiction*, Plotnikoff, J., & Woolfson, R., London: Department for Constitutional Affairs, 2005.

testing for alcohol misuse. The Group set out that each court should have a court co-ordinator and accessible multi-disciplinary service provision.

174. We now intend to pilot enhanced problem-solving based on these recommendations in up to five courts. Substance misuse has been the traditional focus of problem-solving courts and is the area providing most of the international evidence base.^{38,39} It was also the proposed focus of a new approach to problem-solving courts by the 2016 Working Group and we would expect this to form a core part of the pilots.
175. The second intended area of focus for the pilots is female offenders, given the high proportion of female offenders in receipt of short prison sentences, the promising outcomes of the Manchester women's problem-solving court model, and our commitment to addressing the underlying needs of female offenders.
176. Third, we believe a more innovative and intense approach to addressing the underlying behaviour of domestic violence perpetrators through their inclusion in the pilots would reinforce our recent efforts to tackle this perennial and important issue through the Domestic Abuse Bill, development of an Integrated Domestic Abuse Court (IDAC) pilot, and additional funding. Certain adaptations to the model are likely to be required in cases of domestic violence.
177. These pilots should be evaluated using a broad set of outcomes, related for example to offender behaviour including drug usage; other health and wellbeing indicators; the use of prison; compliance of offenders; judicial confidence; and reoffending measures, to enable us to be confident about their impact and longer-term sustainability.
178. Some of the components will require primary legislation to test within pilot locations:
 - Use of an immediate short custodial stay as a sanction for non-compliance, after which the sentence would continue in the community.
 - Enabling judges to initiate breach decisions at review hearings instead of this being solely the responsibility of the Probation Service.
 - Expansion of drug testing beyond Drug Rehabilitation Requirements (DRRs), to incorporate offenders who may not be dependent or reach the threshold for a DRR, but whose drug misuse drives their offending behaviour.

³⁸ *Research on drug courts*, Belenko, S., A Critical Review. National Drug Court Institute Review, III (2), 2001.

³⁹ *A systematic review of drug court effects on recidivism*. Wilson, D. B., Mitchell, O., & MacKenzie, D. L., Journal of Experimental Criminology 2(4), 2006

179. We also intend to explore inclusion of voluntary alcohol testing. Secondary legislation will be required to expand the use of court reviews beyond DRRs and Suspended Sentence Orders for which powers already exist.
180. To ensure a coordinated approach among partners and accessible service provision to provide the greatest chance of success, MoJ will work closely with the judiciary and with core departments including the Department for Health and Social Care, the Ministry of Housing, Communities and Local Government, and the Home Office to drive this initiative forward.

Neurodivergence

181. Too often, the criminal justice system fails to recognise or understand neurodiversity, with resulting poor outcomes and more reoffending. In order to be effective, rehabilitative programmes need to match individuals to programmes based on their risks, needs and responsivity. Neurodivergent offenders are likely to need additional support to undertake Community Order or Suspended Sentence Order requirements and effectively engage with rehabilitation programmes formed to the needs of neurotypical offenders. This additional support should take into account the communication styles and abilities of neurodivergent individuals.
182. Neurodivergent offenders often have speech, language and communication needs. Consequently, this cohort can experience difficulties understanding and processing complex information, particularly in stressful circumstances, such as whilst serving a community sentence. They are required to understand the processes and their sentencing requirements, as well as be able to communicate proficiently with a wide range of individuals. There is a risk that this cohort face extra challenges when trying to comply with criminal justice processes and procedures. If these challenges are identified, and support is put in place to mitigate their effects, this could result in higher and more effective engagement with community sentence requirements, increased compliance within the criminal justice system, fewer breaches, and more effective rehabilitation outcomes, which could contribute to the reduction of reoffending. The aim of these proposals is, therefore, to place them on an equal footing with the general population in their ability to comply with requirements.
183. We will shortly be launching a national 'Call for Evidence' to obtain a clearer picture of prevalence and the current national provision to support offenders with neurodivergent conditions in the criminal justice system. As well as learning from existing local evaluations, a national call for evidence will provide an understanding of the availability of accredited programmes tailored for neurodivergent offenders and the impact these programmes have. It will also allow us to gain insight into how often

these existing tailored programmes are being implemented in the community, as this could highlight further training and provision needs.

184. We will be improving awareness, understanding and training on neurodiversity across the system. We will develop a national training toolkit to upskill frontline staff on neurodiversity which would include upskilling on Speech, Language and Communication Needs.

Offender Mental Health

185. The Independent Review of the Mental Health Act highlighted that there are still cases where sentencers appear to make decisions that prison is the safest option for some people who are mentally unwell, under current legislation in the Bail Act (1976) or the Mental Health Act (1983). This is either whilst they are waiting for an assessment as to whether they meet the threshold for detention under the MHA, or, after they are assessed as meeting this threshold, while they are waiting for a bed in a mental health inpatient setting. Prisons should be places where offenders are punished and rehabilitated, not a holding pen for people whose primary issue is related to mental health.
186. HMPPS is leading a project to better understand how these cases arise. It involves analysis of warrants of people arriving in reception to see who was being remanded 'for own safety', and those arriving under different warrants but who are clearly unwell and in need of transfer. This project should provide more data and detail about what stage in their journey through the criminal justice system this decision is made, to inform how we approach making change.
187. The overall aim of this piece of work is to ensure custody is not used inappropriately, and individuals who are unwell are treated in the right place and at the right time.

Conclusion

188. The government is committed to protecting the public and building their confidence in the criminal justice system, while also reducing reoffending and rehabilitating offenders. Community sentences play a key role in achieving these aims. In this chapter we have set out the vision for reforming and strengthening community sentences, ensuring there are robust community options for sentencers that will both protect the public and support offenders to turn their lives around.

3. Empowering Probation

Chapter Summary

The probation service has for too long operated in the shadows and with the work of its dedicated professionals not sufficiently valued or understood. We want this to change. Probation services deliver more than merely the supervision of offenders. With the support of skilled practitioners, a successful period of probation supervision will see offenders challenged and motivated to address the causes of their offending: supported to find stable accommodation and employment, and to make a sustained move away from relationships, associations or addictions that will lead to reoffending.

Effective supervision is at the heart of our plans to improve probation services. We want probation practitioners to have the time, support and tools to develop effective relationships with those they supervise, to deliver effective interventions directly, and to place offenders with other rehabilitative services. We will do this through investment and reforms to the way that probation services are delivered, alongside improvements to the powers available to probation practitioners.

Partnership working: We want to ensure that there is improved strategic delivery and local partnership working. A refreshed joint policing and probation strategy for IOM will be published by the end of 2020.

Improving the service to victims and the wider community: Community sentences should also be seen to be served in the community and should be actively benefiting the community within which they are being served. We want to make sure that, in particular, there is a greater community voice in determining how Unpaid Work schemes should be focussed to bring about the most benefit.

Increasing the powers of probation practitioners: We plan to consider the strong arguments for varying the responsibilities and powers available to probation practitioners to enable them to act swiftly and responsively on their professional judgement, to make sure we have a strong and responsive probation service that is delivering reductions in reoffending.

Introduction

189. Strengthening the way that offenders are supervised in the community requires a stronger, world-class probation service – one that keeps the public safe through the effective supervision of offenders in the community, by delivering programmes and other interventions to address criminogenic needs, and by bringing together a wide

range of statutory agencies and private and voluntary organisations to provide rehabilitation and support.

190. In strengthening probation we want to ensure that services are effective and give confidence to judges, magistrates and the public, and that are structured in a way that supports local partnership working and is responsive to the needs of local areas.

Unifying probation supervision

191. In May 2019, we announced that when Community Rehabilitation Company (CRC) contracts came to an end, all sentence management responsibilities for low-, medium-, and high-risk offenders would be held by the National Probation Service (NPS). This means that from June 2021, the NPS will be responsible for the effective delivery of community sentences, licences and other forms of post-sentence management by ensuring offenders are properly supervised, requirements are coordinated and delivered, risks are managed and enforcement action taken after any breach, including recall to custody. This will sit alongside and complement the existing NPS responsibility for providing advice to courts ahead of sentencing on the most suitable type of sentence for the offender. NPS Wales unified their offender management services in December 2019, and the learning from that process is helping to shape the future design for England. In March 2020 we published a detailed vision for the probation structures in the Draft Target Operating Model for the Future of Probation Services.
192. In June 2020 we announced changes in this model in response to the experience of COVID-19. Under our revised approach to probation reform, Unpaid Work, Accredited Programmes and Structured Interventions will no longer be contracted out but will instead be delivered by the NPS directly. We consider that bringing these services into the NPS in addition to sentence management will put us in the best possible position to respond to any further disruption caused by COVID-19 and enable a smoother recovery out of exceptional delivery arrangements we have had to put in place. Advice to court will continue to be a core duty of the NPS with increased focus on quality of assessment and pre-sentence reports. The NPS will build on the existing enhanced through the gate services with a new resettlement model which improves links with prisons, enhances pre-release planning by probation practitioners and provides increased focus on short term sentences.
193. The revised model puts us in the best place to be able to deliver these ambitions. It will facilitate more strategic and integrated probation supervision through fostering close collaboration with strategic partners including local courts and Police and Crime Commissioners.

194. Our approach for all services for Day 1 of the new model will be to move existing CRC staff and delivery models into the NPS with minimal disruption with ongoing work thereafter to embed and improve service delivery. The transition to a level of service as envisaged by the Draft Target Operating Model for probation is likely to take time given the backlogs to Unpaid Work and Accredited Programmes created by exceptional delivery arrangements as well as a likely spike in court orders once jury trials resume. This would be the case regardless of which organisation delivery sat with, but we consider that bringing this work in-house gives us greater flexibility to deal with this.

Structural and organisational changes to probation

The National Probation Service (NPS) will be responsible for managing all offenders on a community order or licence following their release from prison in England and Wales.

The NPS will continue to deliver those services reserved to the public sector such as advice to court. From June 2021, the NPS will also deliver offenders' Unpaid Work and behavioural change programmes in England and Wales.

The voluntary and private sectors will play an enhanced role in the probation system, running services such as education, employment, and accommodation commissioned through the Probation Services Dynamic Framework.

There will be 12 probation areas across England and Wales, introducing 11 new probation areas in England, with existing arrangements remaining unchanged in Wales.

In England, each area will be overseen by a new dedicated regional director who will provide strategic leadership and be responsible for the overall delivery and commissioning of probation services.

The regional directors, along with the NPS Director in Wales, will work closely to ensure an effective, unified approach from the pre-sentence stage in court through to supervision in the community.

We will take action to strengthen the standing of the probation workforce and also make changes that support continuous professional development.

Benefits of the future model for probation

195. In developing the future model for probation, we want to ensure that services are effective and provided in a way that judges, magistrates and the public have confidence in, and are structured in a way that supports local partnership working and is responsive to the needs of local areas.
196. Unifying sentence management under the NPS should have a positive impact on the judiciary's faith in probation's ability to deliver, as we know sentencers have expressed greater confidence in the NPS, with whom they have a more direct

relationship than CRCs. There will be a single organisation responsible for providing advice to court and delivering the sentence, and we anticipate that this will result in benefits in the preparation of pre-sentence reports (PSRs).

197. Additionally, it will mean greater central control over the quality of services and enable greater clarity around minimum standards. It will also mean that there will be one probation voice in local partnership arrangements.
198. The creation of a Dynamic Framework for resettlement and rehabilitative interventions will enable more local commissioning and support the direct participation of smaller voluntary sector and specialist organisations in the delivery of these interventions, something that has not been consistently achieved under the current model. This will help services to be more locally responsive and provide more ready access to services that better address individual needs, particularly vulnerable offenders and those with complex needs.

Partnership working

199. Across the system, we want to ensure that there is improved strategic delivery and local partnership working. In creating 11 new probation regions across England, alongside the existing area in Wales, we have sought to achieve the right balance between the potential for efficiencies across the probation system and arrangements that are closer to other criminal justice system structures and which can facilitate partnership working.
200. In England, each of the NPS divisions will be overseen by a Regional Probation Director who will provide strategic leadership and be responsible for the overall delivery and commissioning of probation services. In Wales, the Executive Director for HMPPS already has responsibility for all probation services and prisons, and this will remain unchanged. These leaders will have clear responsibility for strengthening engagement in local and regional partnerships.
201. This will ensure there is greater transparency around probation performance, that services are responsive to local priorities, and opportunities are taken to co-commission those services that are key to reducing reoffending with partners such as Police and Crime Commissioners (PCCs), local authorities and health commissioners.
202. We want to support probation providers to work with local partners to develop innovative services that respond to offenders' needs. There are already schemes in some areas, and in future we would like to see arrangements develop in other areas. The plans set out in our response to the probation consultation for Regional Directors to have funding reserved for innovative, cross-cutting approaches, will support this.

203. We also want to re-focus how law enforcement partners work together to supervise offenders in the community, through strategic arrangements such as Integrated Offender Management (IOM). IOM enables the police and probation to jointly provide an enhanced supervision of priority offenders identified in local areas in line with the government's crime reduction and reducing reoffending plans. We will publish a refreshed joint policing and probation strategy for IOM by the end of 2020.
204. Community sentences should also be seen to be served in the community and should be actively benefiting the community within which they are being served. We want to make sure that, in particular, there is a greater community voice in determining how Unpaid Work schemes should be focussed to bring about the most benefit. This is why we are introducing a statutory duty for probation to consult a range of voices when designing and delivering Unpaid Work placements and schemes. Further detail on the design of Unpaid Work under the new model for probation is available in the 'Supervising Offenders in the Community' chapter of this paper.

Probation Workforce Programme

205. In January 2020, the Probation Workforce Programme was launched to ensure the wider changes happening in probation go hand-in-hand with positive changes for our workforce. Our staff are integral to the successful operation of the NPS model, and we need to ensure we have a motivated and professional workforce that can deliver for the probation service.
206. The Workforce Programme will seek to address the significant shortfall of trained probation officers in the system by focusing on four key workstreams: capacity and efficiency, capability, pay rewards and policies, and infrastructure. This will ultimately ensure that we have the right number of people with the right capabilities and appropriate support to deliver a strong and effective service both now and in the future. The workforce strategy was launched in July 2020 and we have already started recruiting new probation staff. This strategy set out our commitment to increase recruitment of probation staff this year and have a minimum of 1000 new probation practitioners in training by January 2021. Our ambition is to make sure probation officers have manageable and varied caseloads and are encouraged specialisms. As part of this work, we will explore options to improve the professionalisation of the probation officer and probation support officer role.

Trusting probation staff to take action

207. We want to make sure that probation practitioners have the necessary powers to be able to properly supervise offenders in the community, in particular, that they are able

to act quickly and responsively to behaviour that needs to be addressed without necessarily needing to return to the courts.

208. A core function of the probation service is to supervise offenders in the community. That is, to require an offender to attend an appointment so the probation practitioner responsible for their sentence can identify existing or emerging needs and risks, and either provide interventions directly or refer them to other organisations. For offenders released from custody, this kind of supervision is built into the duration of their licence.
209. In contrast, not all Community Orders or Suspended Sentence Orders provide for this general supervision power for the length of the order. Unless an Order contains a Rehabilitation Activity Requirement (RAR), legislation as currently framed explicitly provides for supervision only in connection with the requirements imposed by the order. While offenders are under a general duty to keep in touch with their Responsible Officer in accordance with such instructions they may be given from time to time, the legislation does not clarify what 'keeping in touch' means and if it includes attending probation supervision appointments.
210. In practice, this means that a probation practitioner who may wish to supervise offenders who have completed all of their requirements (but whose Order has not expired), do not currently have legislative cover to do so unless the Order contains a RAR. Also, practitioners who may wish to supervise offenders for reasons unconnected to the requirements of the Order do not currently have legislative cover to do so.
211. We believe there is an important role for the Court in setting out the requirement(s) an offender should undertake as part of their community order at the point of sentencing. And the priority of the probation service must always be to support the purpose of the Order and the administration of justice. However, we also believe there is merit in probation staff having sufficient flexibility within their prescribed duties and responsibilities to respond to the unique journey of each offender as they progress through their sentence. Supervision unconnected to requirements, carried out after the completion of requirements, may be warranted for two reasons. First, the Responsible Officer may feel that supervision is necessary to address issues that either arise post-sentencing and are not strictly related to the original requirements, or after requirements are complete and remain outstanding. Second, the Responsible Officer may also feel supervision is necessary if there is reason to believe that the offender's level of risk to the public has increased.
212. We will therefore legislate to give probation practitioners greater flexibility to take appropriate action where they have concerns about an offender's rehabilitative needs or risk to the public. In practice, this would empower Responsible Officers to compel

offenders to attend supervision appointments and, where appropriate, participate in rehabilitative activities for the length of a Community Order or Suspended Sentence (either through supervision sessions or onwards referral to other organisations).

213. Alongside this change, we plan to consider the arguments for varying the responsibilities and powers available to probation practitioners to enable them to act swiftly and responsively on their professional judgement. We want to take the opportunity provided by the Probation Reform programme to bring about greater change.
214. It is currently possible for courts to bring community sentences to a conclusion before the original end date if the individual has sufficiently fulfilled the order's requirements. Where offenders breach their order, there is a process where Responsible Officers can give warnings before taking enforcement proposals to court.
215. We recognise that swift breach action where individuals fail to comply with a requirement of the court's order is central in securing public confidence in community sentences, as well as having the potential to further influence and change offender behaviour. Effective use of community sentences relies on the relationship between the probation practitioner and the offender; we therefore need to ensure that probation has the right mechanisms, tools and powers to support and enhance this relationship.
216. Other jurisdictions will mark progress made by offenders with events recognising the positive changes they have made. In England and Wales, we have seen examples of offender achievements being recognised with letters or certificates. For individuals who have experienced difficult relationships with the state, for example through the education system or the care system, it may be the first time anyone in authority has ever acknowledged progress.
217. In view of this, as well as the potential to harness the improvements to the probation service brought about by reform, we will further explore the options and their implications. There is a spectrum through which we could consider giving probation practitioners a range of more immediate options before taking an order back to court:
 - 'Administrative' variation of existing requirements to respond to an offender's changes in circumstances. We are pursuing this policy via the powers to vary timings of curfews, outlined in this paper.
 - Flexible enforcement of court-imposed requirements, that would allow the Responsible Officer to adjust and vary these requirements to encourage and influence changes in offender behaviour. Under this model, we would consider whether the sentencer (at sentencing) should specify the minimum and maximum number of hours to be completed at the discretion of the offender manager.
 - Imposition of new requirements for non-compliance/breach.

218. Options under this spectrum could mark a distinct change in the way in which probation supervise offenders in the community. We believe that enhanced powers could afford probation staff greater flexibility to respond to offenders' needs in a way that reflects their professionalism and expertise.
219. However, within this policy, it is vital that the flexibility afforded to probation is consistent with the court's original sentence. Due to the importance of the relationship between the courts and probation, we will explore these options with relevant key stakeholders to decide on the most appropriate and effective powers to potentially introduce.

Conclusion

220. In order for community supervision to work effectively, it needs to be accompanied by a robust probation service, to fulfil the key aims of protecting the public while also providing support for offenders who wish to turn their lives around.
221. This chapter has reiterated plans for the National Probation Service. By strengthening probation in this way, we want to ensure that services are effective for those who require them and give the public confidence in the system.

4. Reducing Reoffending

Chapter Summary

We acknowledge the nature and scale of this challenge. The criminal justice system alone will not achieve a reduction in reoffending. All of government and the wider public sector need to work together, with society as a whole, to address reoffending.

Reoffending rates in the UK have remained persistently high for over a decade, with a proven adult reoffending rate of around 29% in the most recent data.⁴⁰ Crucial to addressing reoffending is improving how individuals are supervised and supported following release from prison, and in the community. We want to ensure that individuals have strong foundations in place to turn their backs on crime: a job, a home, and substance misuse treatment.

Electronic Monitoring: we will strengthen our supervision of offenders who have the highest reoffending rates, using GPS tagging on acquisitive criminals during their licence period to better protect the public.

Cross-Government Reducing Reoffending Strategy: every part of government has an important role in reducing reoffending and we set out our ambition for wider work in this area over the coming year, focusing on accommodation, employment, and substance misuse.

Criminal records reform: we will change the rehabilitation periods that govern the length of time before a conviction becomes “spent” in order to increase the number of offenders who are able to find work after their sentence, and so reduce reoffending.

Introduction

222. Reoffending is one of the most significant issues facing our criminal justice system. In 2018/19, around 80% of those who were convicted or cautioned had already received at least one previous conviction or caution.⁴¹ Not only is reoffending a drain on time and money in the criminal justice system, it costs society £18bn each year and also weakens public confidence in the system.⁴² It is something that this

⁴⁰ *Proven Reoffending Statistics: January to March 2018*, Ministry of Justice, January 2020.

⁴¹ *Criminal Justice System Statistics Quarterly: March 2019*, Ministry of Justice, August 2019.

⁴² *Economic and Social Costs of Reoffending*, Ministry of Justice, July 2019.

government is committed to making clear progress in addressing. This chapter sets out our approach to reducing reoffending.

Strengthening monitoring of those who reoffend

223. Robust and effective supervision throughout a custodial sentence served in the community is essential in reducing reoffending. Relationships with probation practitioners and the structure provided by rehabilitative interventions can help to give offenders the tools to turn their lives around. Effective supervision – and a clear understanding of the consequences of not complying with licence conditions – can support desistance from future offending.
224. Improving supervision starts in custody under the Offender Management in Custody model. In this model, supervision by Prison Offender Managers is used to deliver aspects of the sentence plan which might include:
- Teaching and practicing problem-solving techniques.
 - Recognising the specific roles of thought, emotion and behaviour.
 - Targeted work to address harmful behaviour such as domestic abuse and sexual offending.
 - Targeted work addressing issues identified through the Offender Personality Disorder (OPD) pathway.
 - Targeted work to support graduates from Accredited Programmes.
 - Reviewing feedback from interventions and consolidation of the skills learnt.
225. Handovers are and always will be a critical phase and can include circumstances when individuals are moving from one prison to another; from the youth estate to the adult estate or from prison back into the community. As such, under the model, emphasis has been placed on each handover. The focus will be recognising both achievements and challenges by looking back over the sentence, along with looking forward, to prepare the individual for release. For cases that are not eligible for a handover meeting, they will have a pre-release handover report that will be shared with their Responsible Officer in the community.
226. There are, however, some individuals who continue to show a propensity to reoffend once released from custody. Acquisitive offenders have the highest levels of reoffending across all offence types. In 2017/18, 32% of those convicted of robbery and 52% of those convicted of theft went on to reoffend within a year of release; on average individuals convicted of theft who reoffend will do so five times over their lifetime.⁴³ These are often also the offenders who prove the hardest to apprehend; in

⁴³ Proven Reoffending Statistics: January to March 2018, Ministry of Justice, January 2020.

2019/20, 58% of robbery cases and 76% of theft resulted in no suspect being identified by the police.⁴⁴

227. For these individuals, a new intervention is required to bring a stop to this cycle of reoffending, which is a threat and a menace to victims and communities. Therefore, next year we will begin using GPS electronic monitoring on these offenders for the first time. We will be testing new approaches, working jointly with police to ensure that the full benefits of the location monitoring data are shared between probation and policing, and that we can work together to deter future offending and act quickly when this, or violations of licence requirements, do occur. We will lay secondary legislation in order to bring this into effect.

Cross-Government Reducing Reoffending Strategy

Summary

228. The government has already taken action to break the cycle of reoffending by announcing bold reforms to probation, and with its vision for robust and reparative community justice. HMPPS Wales have also established a “Framework to support positive changes for those at risk of offending”.⁴⁵

229. In addition to this already ambitious agenda, we have also initiated a programme of work across a wide range of different government departments, representing a renewed cross-government effort to tackle the drivers of reoffending across both custody and community sentences. We recognise that the drivers of reoffending are complex and varied, but also that we need to drive meaningful progress and get the basics right. Evidence shows that if individuals have a job, a home, and access to treatment if they need it are less likely to reoffend. This needs to be a cross-government effort, and we also need to draw on the expertise of the private and voluntary sector.

230. The COVID-19 pandemic emphasised that collaboration between Departments is key. The Ministry of Justice, HMPPS, Cabinet Office, Ministry for Housing, Communities and Local Government (MHCLG), Welsh Government, and Department for Work and Pensions (DWP), all worked at pace to secure accommodation and access to benefits for those leaving prison during this period. We continue to work closely with the Department for Health and Social Care, NHS England, Public Health England and Public Health Wales on the provision and continuity of healthcare for

⁴⁴ Crime Outcomes in England and Wales 2019 to 2020, Home Office, July 2020.

⁴⁵ *A Framework to support positive change for those at risk of offending in Wales*, HM Prison & Probation Service in Wales, April 2017.

those in prison, and following their release into the community. We are seeking to build on this momentum and other positive work to date.

231. We have identified three key areas of focus for our wider work to reduce reoffending: employment, accommodation and substance misuse. These are government priorities because they have a significant impact on reoffending.

Employment

232. We want to increase the employment rate for those leaving prison so that gain independence and contribute to wider society and the economy. There is evidence that having a job can also have a positive effect on reoffending outcomes: offenders who found P45 employment in the twelve months after release from prison had one-year reoffending rates that were 6–9 percentage points lower than similar offenders who did not find employment.⁴⁶
233. 62% of those in custody with an Offender Assessment System (OASys) assessment (used in prison and probation to measure the risks and needs of offenders) completed before 30 June 2018 needed some form of help to get a job.⁴⁷ Of offenders released from custody in 2019/20 who were available for work and where employment circumstance was known, 12% were employed six weeks following their release while 88% were unemployed.⁴⁸
234. We will build on the work with DWP to increase employment opportunities for people leaving prison. The foundation for this is the National Partnership Agreement for employment and welfare support in custody and the community 2019–2022⁴⁹ which is supported by an ongoing joint programme of work between the MoJ, HMPPS and DWP. This joint work will build on the role of DWP Prison Work Coaches in supporting those in custody to access Universal Credit and other benefits, as well as find employment on release. It will also take advantage of the New Futures Network (NFN), who now have employment brokers in place in every prison group across England and Wales working with a wide range of employers to bring employment opportunities into our prisons.
235. It is also important that government leads by example. Going Forward into Employment is the Civil Service’s way of doing so by recruiting ex-offenders into the

⁴⁶ *Analysis of the impact of employment on re-offending following release from custody, using Propensity Score Matching*, Ministry of Justice, March 2013.

⁴⁷ *Identified needs of offenders in custody and the community from OASys*, Ministry of Justice, July 2019.

⁴⁸ *Community Performance Quarterly: update to March 2020*, Ministry of Justice, July 2020.

⁴⁹ *National Partnership Agreement for employment and welfare support in custody and the community*, Department for Work and Pensions, Ministry of Justice, and Her Majesty’s Prison and Probation Service, July 2019.

Civil Service. The pilot was launched in January 2018 with the first ex-offender recruited to the MoJ in August 2018 and is now being rolled out nationally.

236. In Wales the Taking Wales Forward 2016–2021⁵⁰ framework which supports positive changes for those at risk of offending in Wales and recognises that reducing reoffending through skills and employment is one of the most effective means of combating crime.
237. Building on our existing work to strengthen education provision in prisons, we will deliver on the manifesto commitment to develop a Prisoner Education Service, focused on work-based training and skills. We are developing ambitious plans to deliver this, building on the recent prison education reforms that have already enabled Governors to commission education provision that meets the needs of their prison populations and local economies. The ability to improve prisoners' functional, vocational and life-skills is also key to support wider rehabilitation and reduce reoffending on release.
238. We know that a criminal record – of any kind – can discourage many employers from hiring an individual. Therefore, we have set out our plans for criminal record reform below beginning at paragraph 250.

Accommodation

239. We want to ensure that those leaving prison have suitable accommodation on release and are given the support they need to access settled accommodation. We know this is crucial because access to accommodation is foundational to addressing other needs on release that can influence reoffending, such as health and employment. There is evidence that this will have a positive effect on reoffending outcomes: 66% of offenders that were homeless or in temporary accommodation shortly after release from prison went on to reoffend, compared to 51% in settled accommodation.⁵¹
240. Levels of accommodation need are often high amongst those that come into contact with the criminal justice system: 56% of offenders in custody with an OASys assessment taken on or before 30 June 2018 had an accommodation need.⁵² 39% of adult prisoners supervised by probation services were released in 2019/20 to unsettled accommodation, rough sleeping, homeless, or their accommodation status was unknown on their first night of release.⁵³

⁵⁰ *Taking Wales Forward*, Welsh Government, September 2016.

⁵¹ *The factors associated with proven re-offending following release from prison: findings from Waves 1 to 3 of SPCR*, Ministry of Justice, November 2013.

⁵² *Identified needs of offenders in custody and the community from OASys*, Ministry of Justice, July 2019.

⁵³ *Community Performance Quarterly: update to March 2020*, Ministry of Justice, July 2020.

241. It is particularly important that we work closely with MHCLG and the Welsh government to ensure people leaving prison can access accommodation. The government's response to COVID-19, including collaboration between the MoJ, MHCLG and the Welsh Government, has been key to securing accommodation through this time. We are seeking to build on this through the incorporation of the Homelessness Prevention Taskforces (HPTs) into the future probation structure. HMPPS set up seven Regional Taskforces in response to COVID-19 to ensure no offender was released without accommodation in place.
242. The establishment of the Probation Service Dynamic Framework, which has a specific category for accommodation services, will help probation practitioners to meet offenders' accommodation needs. We are also looking to develop innovative solutions to accommodation, such as the Offender Accommodation pilots set up through the Rough Sleeping strategy, which are intended to test the benefits of providing settled accommodation for prisoners on release, combined with wraparound support for up to two-years, to help address any underlying criminogenic needs.

Substance Misuse

243. We want to improve the continuity of care for substance misuse treatment provision and the access to services for people whilst they are in custody and in the community on release. In October 2017, experimental statistics from a Ministry of Justice – Public Health England data share showed that among those who committed an offence in the two years prior to engaging with drug or alcohol treatment, 44% did not go on to reoffend in the two years following treatment.⁵⁴ The study compared offending behaviour before and after the treatment but did not use a control group and therefore the reductions in reoffending could have been driven by several factors, treatment being one of them.
244. 45% of those in custody with an OASys assessment taken on or before 30 June 2018 had a drug misuse need, and 17% had an alcohol misuse need.⁵⁵ However, only 34% of people in drug or alcohol treatment in prison were engaged in community treatment 3 weeks after release between April 2018 and March 2019.⁵⁶
245. We want to build on the positive work in Wales where criminal justice substance misuse services are co-commissioned across the whole pathway by HMPPS in Wales and the PCCs. The 2019–20 annual report for South Wales shows that 85% of clinically treated service users engaged with post-release treatment over that year.⁵⁷

⁵⁴ *The impact of community-based drug and alcohol treatment on re-offending*, Ministry of Justice and Public Health England, October 2017.

⁵⁵ *Identified needs of offenders in custody and the community from OASys*, Ministry of Justice, July 2019.

⁵⁶ *Substance Misuse Treatment in Secure Settings: 2018 to 2019*, Public Health England, January 2020.

⁵⁷ *Annual and Quarter 4 Report 2019 – 2020*, Police and Crime Commissioner for South Wales, 2020.

Much of this success can be attributed to the co-commissioning of the service because it is integrated from police custody through the criminal justice system (inside and outside of prison).

246. Our approach going forward will build on work already underway in this space. For example, NHSE/I have developed RECONNECT, a 'care after custody service' that begins to work with people before they leave prison to facilitate their engagement with community health and care services. Our Drug Recovery Prison (DRP) pilot at HMP Holme House creates an environment where prisoners have access to the full range of health services that meet their individual needs, and are also given support to lead a drug free life following their release into the community. An economic and impact evaluation of this approach is due to report in 2023.

Drug Recovery Prison pilot

We are piloting a £9 million joint MoJ/HMPPS and DHSC/NHSE Drug Recovery Prison (DRP) pilot at HMP Holme House. The DRP pilot began in April 2017 and is currently funded until March 2021.

The DRP pilot creates a whole prison approach to tackle the supply of drugs into prison, together with creating an environment where prisoners have access to the full range of health services that meet individual needs. They are given support to lead a drug free life while they are in custody and also following their release into the community.

The pilot will be subject to process, impact and economic evaluations to help to identify successful initiatives that will be shared with the rest of the prison estate.

MoJ/HMPPS fund the restricting supply and reducing demand elements of the pilot, including scanners, a dedicated search and intelligence team and dedicated dog support. NHS England fund the treatment and recovery elements including enhanced substance misuse and mental health services, psychologist, speech and language therapist, and a connecting community team to help ease the transition back into the community on release.

247. We also have a number of programmes aimed at supporting offenders into treatment in the community, which are referenced earlier in this paper. This includes the Community Sentence Treatment Requirement (CSTR) Programme which seeks greater use of mental health, alcohol and drug treatment requirements as part of community sentences; supporting efforts to reduce reoffending. Out of Court Disposals (OOCs) can provide a mechanism for early rehabilitative interventions including health related services, which can help support people away from substance misuse and reduce reoffending. We are also keen to explore problem-solving court pilots, based on specialist 'drug and alcohol courts', which will help

drug- and alcohol-misusing offenders to access treatment whilst their progress is regularly monitored by the court.

The Community Sentence Treatment Requirement (CSTR) Programme

The CSTR Programme was launched in October 2017 by the Ministry of Justice, Department of Health and Social Care, NHS England and NHS Improvement, Her Majesty's Prison and Probation Service and Public Health England to ensure that greater use is made of treatment requirements as part of community sentences; supporting efforts to reduce reoffending.

The three types of treatment requirement available are Alcohol Treatment Requirements (ATRs), Drug Rehabilitation Requirements (DRRs) and Mental Health Treatment Requirements (MHTRs).

The Programme focuses on improving multi-agency working to ensure that the roles and responsibilities of all those involved in delivering CSTRs are clear, with the necessary treatment pathways in place to help support offenders with mental health, drug and alcohol needs to engage with their rehabilitation and turn their lives around.

248. In general, people who come into contact with the criminal justice system also tend to experience poorer physical and mental health than the general population, so it is crucial that we take a holistic approach that considers all of these issues.
249. Information on whether a person in substance misuse treatment has a mental health need was introduced for the first time in 2017/18 (NDTMS Report, 2020). The proportion of people starting treatment who had a mental health need in addition to a substance misuse need was 35%, and 39% of adults who had a reported mental health need also needed treatment for opiate use.⁵⁸

Criminal records reform

Summary

250. This government recognises the importance of proportionate criminal records disclosure in contributing to reducing reoffending.
251. There are two strands of the criminal records disclosure regime. In July, following careful consideration of a Supreme Court judgment, the government announced its intention to make changes to the strand of the disclosure regime that relates to

⁵⁸ *Substance Misuse Treatment in Secure Settings: 2018 to 2019*, Public Health England, January 2020.

disclosure for most sensitive roles, to ensure that the right balance is struck between rehabilitating those who offended in the past and protecting the public.

252. We have laid secondary legislation to amend the filtering rules that govern both what a person is required to disclose and what is automatically disclosed through standard and enhanced criminal records certificates issued by the Disclosure and Barring Service (DBS). DBS certificates provide information to employers about an individual's criminal record to help them consider a person's suitability for certain roles; principally those working closely with children and vulnerable adults or roles requiring a high degree of public trust.
253. The new legislation will, in most cases, remove the requirement for automatic disclosure and self-disclosure of youth cautions, reprimands and warnings as well as removing the 'multiple conviction' rule, which requires the disclosure of all convictions where a person has more than one conviction, regardless of the nature of their offence or sentence. We consider this to strike the balance between the needs of protecting people, especially the most vulnerable and children, while ensuring those who have reformed after committing offences are not disproportionately hindered by previous wrongdoing. This change will particularly benefit those with childhood cautions and those with convictions for minor offences who have moved away from their past.
254. We want to go further on criminal records disclosure to support those who offended in the past to move on with their lives and in particular to improve access to employment for those with criminal records.

The Rationale Behind the Rehabilitation of Offenders Act (ROA) 1974

255. The other strand of the criminal records disclosure regime relates to general disclosure. When the ROA was introduced over 40 years ago, its intention was to help those with past offences re-enter the workforce whilst ensuring that some disclosure of convictions remains where appropriate. It enables most convictions to become "spent", or disregarded, after a set rehabilitation period has been completed. The rehabilitation period is automatically determined by the disposal received. Once an individual's conviction is spent, they are considered, for most purposes, as fully rehabilitated, and treated as if they have never been cautioned or convicted of a crime.
256. We believe that the rationale for the ROA and criminal records disclosure system includes:
- Enabling individuals who have desisted from crime to move on with their lives, work and fully participate in society whilst acknowledging that it is reasonable for employers and some other organisations to know about certain types of convictions (particularly those that are serious or recent).

- Removing barriers to employment. Employment is a significant factor in encouraging rehabilitation, and it is in everyone's interest that we successfully rehabilitate offenders. This means that after a certain period of time most convictions should become spent and no longer need to be disclosed.
- We are committed to supporting children in turning their lives around, and we recognise that having a criminal record can have a significant impact on children or adults who offended as a child.

Reducing the rehabilitation periods

257. A key element in reducing reoffending is access to employment and having unspent convictions on a criminal record can act as a barrier to employment. In order to support these aims, we are proposing a change in the law to reduce the number of people who have previously offended and are required to disclose their convictions as part of basic checks for employment. We therefore propose changing the rehabilitation periods that govern the length of time before a conviction becomes "spent". At present, rehabilitation periods are generally halved if the offender was under 18 at the time of conviction. This distinction recognises that children who offend are often highly vulnerable and are still maturing.
258. Significantly, we are proposing the removal of the rule that convictions resulting in a custodial sentence of over 4 years can never become spent. This would mean that those who have served their time and stopped committing crime are not unfairly discriminated against in the job market.
259. We are, however, mindful of safeguarding concerns and the need to ensure that any changes are proportionate and take into account the level of harm caused by the individual's offence, and the possibility of further harm should they offend again. For this reason, and for consistency with the wider sentencing reform package, we propose that serious sexual, violent and terrorist offences are excluded from this change.
260. These are not opposing aims – employment for people with convictions can support public protection, because there are few better tools for reducing reoffending than a regular pay cheque.
261. Whilst this change will apply to children we are aware that only a small number of people who were convicted as a child will be affected, since custody is a last resort for children and children rarely receive a sentence of over 4 years for an offence that is not a serious sexual, violent or terrorist offence.
262. These new measures, including our secondary legislation addressing the Supreme Court judgment, represent wide-ranging reform to criminal records, and will make a significant change to the system advocated for by many. Longer-term we will

continue to work with the Home Office to ensure the effective operation of the reformed system.

Reducing the rehabilitation periods in the Rehabilitation of Offenders Act: What are we proposing?

263. The current rehabilitation periods are:

Existing regime England & Wales

Sentence	Adults	Under 18s
(Adult) Community Order	1 year beginning with the last day on which the order has effect	N/A
Youth Rehabilitation Order	N/A	6 months beginning with the last day on which the order has effect
Custody of 6 months or less	2 years	18 months
Custody of more than 6 months and up to 30 months	4 years	2 years
Custody of more than 30 months and up to 4 years	7 years	3.5 years
Custody of more than 4 years	Conviction is never spent	Conviction is never spent

264. We are proposing the following changes:

Proposal for New Rehabilitation Periods

Sentence	Adults	Under 18s
(Adult) Community Order	The last day on which the order has effect	N/A
Youth Rehabilitation Order	N/A	The last day on which the order has effect
Custody of 1 year or less	1 year	6 months
Custody of more than 1 year and up to 4 years	4 years	2 years
Custody of more than 4 years*	7 years	3.5 years

* excluding serious sexual, violent or terrorist offences, that continue to never be spent

265. It is important to reiterate that any changes to the rehabilitation periods would apply to **basic** checks only. We have laid secondary legislation to change the disclosure regime for sensitive roles as set out above. This provides assurance that such changes would retain the necessary balance between safeguarding concerns and enabling those who have previously offended to move on with their lives.
266. In making these changes, we have continued the principle that children's rehabilitation periods should be half those of adults. We also intend to ensure that guidance on the use of criminal records for both potential employers and employees is both clear and accessible.

Conclusion

267. Reoffending costs society around £18 billion per year⁵⁹ and perpetuates a cycle of crime which creates further victims and blights lives. Tackling it is a priority for the government, and we recognise that this complex issue requires a whole system approach that considers interventions across sentencing, custody, and supervision and support in the community.
268. In doing so, we recognise that many individuals have multiple and complex needs and so these cannot be delivered in silos. Rather, we need to take a 'user-centred' approach which recognises specific experiences, including those of black and minority ethnic people who come into contact with the criminal justice system, so that our approach to reducing reoffending contributes to addressing inequalities and racial disparities.
269. Part of our approach will also be to influence the wider conversation on reoffending in this country, which can have a significant impact on an individual's sense of identity, attitude, and motivation to change. Wider attitudes towards people who have offended can often present barriers for individuals. For example, if an employer or landlord doesn't recognise the potential for someone that has offended in the past to be a good employee or tenant, then this makes finding accommodation and employment more difficult. We also know that maintaining positive ties with family and peer networks, and a sense of belonging in the community, are important in supporting desistance from crime.
270. In taking this 'whole system' approach, this government also recognises that both a central cross-government response, and effective local leadership and partnerships, are crucial in tackling the persistent issue of reoffending. Supporting local leadership and identifying innovative new ways to tackle reoffending is the aim of the Prison Leaver Project which the government announced in July. This confirmed that

⁵⁹ Economic and Social Costs of Reoffending, Ministry of Justice, July 2019.

£20 million of funding would be made available to support our efforts to embed this systems-led approach across the public-sector and improve outcomes for people leaving prison.

271. This funding will be used to both establish a collective central government response to address reoffending, and also enable locally-led partnerships to respond to the needs of their communities. It will improve our understanding of how effectively systems, local partners and the private sector can work together in innovative new ways, which can be scaled up if shown to be successful.
272. Setting out our proposals on the reform of criminal records and identifying our priority areas are this government's first steps to tackle the underlying drivers of reoffending; particularly those related to accommodation, employment and substance misuse. This government is ambitious and determined to address these issues. We will publish more detail on our plans before the end of 2020.

5. Youth Sentencing

The approach to sentencing for under 18s is distinct. In addition to wider local and national work to improve youth justice outcomes, such as secure schools, we are proposing legislative change in two key areas:

Serious offences: Sets out how we plan to ensure custodial sentences are appropriate for the small number of children for whom they are necessary by reforming the Detention and Training Order and by reforming existing provisions for murder and serious violent and sexual offences.

Tougher community sentences and reforms to remand tests: Sets out proposals for stronger high-end community sentences and reforms to the legal tests for custodial remand, to avoid unnecessary use of custody for children.

Introduction

273. The approach to youth sentencing is distinct from that for adults and focuses on the statutory aim of preventing offending by children and on the welfare of the child. We want a youth justice system that recognises the unique needs of children, tackles the underlying reasons why children offend, and intervenes early to provide support and to divert them where possible.
274. The youth sentencing framework emphasises restoration and rehabilitation but provides that those committing the most serious offences go to custody. Custody is only to be used as a last resort for children and the system includes high intensity community orders, as well as restrictions on the use of custody for younger children.
275. The youth justice system has seen considerable successes over the past decade. The number of first-time entrants fell by 85% between 2008/09 and 2018/19,⁶⁰ with an 18% fall from 2017/18 to 2018/19 alone. Likewise, the number of sentencing occasions has fallen by 78% over the same period and fell by 16% between 2017/18 and 2018/19.⁶¹ The number of children sentenced to custody has fallen by 76%

⁶⁰ *First time entrants to the criminal justice are classified as offenders, resident in England and Wales, who received their first reprimand, warning, caution or conviction, based on data recorded by the police on the PNC.* From Ministry of Justice, Youth Justice Statistics Glossary.

⁶¹ *Youth justice statistics: 2018 to 2019*, Ministry of Justice and Youth Justice Board for England and Wales, January 2020.

within the same ten-year period, resulting in a monthly average of fewer than 900 children in custody in 2018/19, and fewer than 800 in 2019/20.⁶²

276. However, challenges remain, which we seek to address in this paper and subsequent legislation:

- For the minority of cases where a custodial sentence is necessary, we must ensure that courts also have the tools they need to pass appropriate sentences which properly reflect the seriousness of their offending. We want to reform the most common youth custodial sentence (the Detention and Training Order) to be simpler and fairer, and ensure that the provisions on minimum terms, minimum term reviews and release points for those children committing the most serious offences are appropriate.
- The reoffending rate for children is the highest in the criminal justice system, particularly for those children sentenced to short periods in custody.⁶³ We recognise that community sentences can be more effective than custody at reducing reoffending and we intend to give the courts the tools they need to ensure that children can be diverted from custody to more effective community sentences, while keeping the public safe.
- We also believe that there are too many children in custody awaiting sentence or trial.⁶⁴ While there are cases where remand to custody is necessary and proportionate, we believe that, where possible, children should be supervised in the community. The proposals set out in this paper form one part of a more significant piece of work to review the current use of remand for children.

277. This chapter focuses on the measures we propose to take through primary legislation around the sentencing framework to support change. We recognise that ensuring the best outcomes for children in the youth justice system, to reduce reoffending and to rehabilitate children, relies on work far beyond legislation. The youth justice system and support for children in England and Wales is the responsibility of a wide range of partners. The Ministry of Justice therefore seeks to reduce reoffending by improving support for children within areas of the youth justice system that it has direct control over, and by creating a policy environment which drives innovation and improves support across public agencies.

⁶² *Youth custody report: June 2020*, HM Prison and Probation Service, August 2020.

⁶³ *Youth Justice Statistics: 2018 to 2019*, Ministry of Justice and Youth Justice Board for England and Wales, January 2020; *Proven Reoffending Statistics: January to March 2018*, Ministry of Justice, January 2020. Proven reoffending rates for children are significantly higher than for adults with 38% of under 18s going on to reoffend compared to 29% of adults (2017/2018 cohort). For children leaving custody, the rate is even higher at 69% proven reoffending.

⁶⁴ *Youth Justice Statistics: 2018 to 2019*, Ministry of Justice and Youth Justice Board for England and Wales, January 2020. (Across 2018/19, a monthly average of 250 children were held in youth custody on remand increased, accounting for 28% of all children in youth custody.)

Wider agenda on youth

278. It is important to set our youth sentencing reforms in the context of a wider ambition and agenda for youth justice. The proposed new sentencing measures are intended to support this agenda; to ensure the best outcomes for children in the youth justice system while keeping the public safe.

279. More broadly, we want to:

- Have a youth justice system that tackles the reasons why children offend and intervenes early to provide support and divert children away from the system where appropriate.
- See fewer children entering the youth justice system, and greater numbers of children who have offended desisting from further offending and going on to lead crime-free lives.
- Reform the experience of custody for the small minority of children who do require detention and to improve outcomes.
- Minimise the harm caused to victims and communities from offending by children.

280. It is important to recognise that the proposals set out here apply to a youth justice system in which BAME children are over-represented at every stage, which remains a real concern. We recognise the need to improve the situation at all stages of the pathway and will continue to prioritise the understanding and tackling of disproportionality.⁶⁵ In respect of these measures, we have carefully considered the equality impacts of each of these proposals and will continue to monitor them as we move forward.

Prevention, early intervention and diversion

281. We recognise the critical importance of prevention (seeking to avoid children at risk of entering the justice system from doing so by providing early support) and early intervention (stopping minor offences leading to repeat and severe reoffending).⁶⁶ We know that those children who do end up in the youth justice system often have unmet needs and face multiple disadvantages early on in life.⁶⁷

282. The government will support these children in a range of ways including through better access to and quality of education, enhancing support for parents and families in need, and improved access to mental health services for those who need it. We also recognise the need for specialist support for those children who are involved in serious violence. In March 2020 the government announced it would be providing a

⁶⁵ *Tackling racial disparity in the criminal justice system: 2020*, Ministry of Justice and Race Disparity Unit, February 2020.

⁶⁶ *What works in managing young people who offend? Summary of the international evidence*, Ministry of Justice, 2016.

⁶⁷ *Assessing the needs of sentenced children in the Youth Justice System 2018/19*, Ministry of Justice, May 2020.

one-off additional £5 million payment to the Youth Endowment Fund (YEF) to expedite the development of a national Centre of Expertise (CofE).⁶⁸ The CofE will build a robust evidence base on what works in diverting children away from violence. Where possible we will utilise a wider range of support services, designed with the views of children in mind, to ensure that they are diverted away from the youth justice system and better supported in their communities. We also know that, in order to be effective, the justice system must recognise children's developmental status, their dependence on adults, and their unique needs. This is particularly important in the case of neurodivergent children, who are likely to need additional support.

283. There are however circumstances in which a community or custodial sentence is the only option and, in these cases, it is critical that agencies work collaboratively to ensure that the sentence accounts for the child's unique vulnerabilities and needs. We discuss community sentences in more detail later in this chapter.

Secure Schools

284. For youth custody, we have committed to opening a secure school in Medway in 2022, fulfilling a key Manifesto commitment. We recognise that the principles of secure schools – an education-focused regime, smaller more 'homely' units, wrap-around health services and greater proximity to the communities from which children in custody come – are central to protecting the vulnerable, changing lives and reducing the high risk of reoffending which children in custody represent. Those principles will guide our transformation of youth custody in the short and medium term.⁶⁹

285. Secure schools will be schools with security rather than prisons with education. They will have education, healthcare and physical activity at their heart and will be run by child-focused providers who will create a therapeutic environment in a secure setting. Evidence suggests that reoffending can be better reduced through well-implemented therapeutic interventions than punitive or surveillance-based programmes.⁷⁰ Work is being done to improve the therapeutic interventions delivered in the current secure estate, but we recognise it was not designed with such therapeutic approaches in mind. Secure Children's Homes (SCH) come closest to delivering the principles of best practice in youth custody, being smaller than Young Offender Institutions (typically holding 8–34 children) and designed to provide a therapeutic environment. We want to establish secure schools using both SCH and 16–19 academy legislation to combine the best ethos and practice from the SCH and academy sectors.

⁶⁸ *Budget 2020*, HM Treasury, March 2020. (Section 1.37.)

⁶⁹ *Review of the Youth Justice System in England and Wales*, Ministry of Justice, December 2016.

⁷⁰ *What works in managing young people who offend?*, Ministry of Justice, February 2016.

286. In secure schools we want to engage visionary, not-for-profit, child-focused providers and trust them to deliver the best outcomes for children including on reoffending, education and health. A high proportion of the organisations that are not-for-profit and meet the criteria we are looking for in secure school providers are charities. We are proposing legislative change to clarify that operating a secure school could be a charitable activity.

Rehabilitation

287. Effective resettlement from custody is critical to achieving reduced reoffending. The MoJ, Youth Justice Board (YJB) and Youth Custody Service (YCS) are working to improve casework in custody so that it has a greater focus on resettlement from the start of a child's sentence. We also know that suitable and stable accommodation is an important part of the foundation for reducing reoffending. We recognise that, despite best efforts, accommodation for children leaving custody is sometimes not ideal in terms of location and level of support, as well as often being secured too late for wraparound support to be in place upon release. These issues are primarily driven by demand outstripping supply of children's accommodation placements, particularly for children with complex needs. The MoJ is assessing options for specific youth resettlement and remand accommodation, as well as working with the Department for Education to ensure that the needs of children in the youth justice system are considered as a specific cohort within broader plans to improve the availability of accommodation in the children's home sector.

288. Finally, having a criminal record can severely hamper the efforts of adults (or children) who offended in the past to gain employment, which in turn can drive reoffending. Reduced disclosure can support children by promoting opportunities for employment and reintegration into society. Changes are already underway to remove automatic disclosure of youth cautions and multiple convictions.⁷¹ In addition, as set out in the 'Reducing Reoffending' chapter, we plan to make changes to the Rehabilitation of Offenders Act to reduce the number of adults and children who will have to disclose their criminal records.

Serious offences

289. Although custody should always be a last resort for children, there are some cases where it is necessary, and we believe that the court is best placed to make the decision on the appropriate sentence. Those who commit the most serious offences, and who pose a risk to the public, should serve an amount of time in custody which

⁷¹ *Government plan new changes to criminal records disclosure regime*, Home Office, Ministry of Justice, and Victoria Atkins MP, July 2020.

reflects the seriousness of their offending. It is key that the public feel protected by our criminal justice system, even where the offender is a child.

290. In order to ensure that the courts are able to make the most appropriate decision in the best interests of the child and of the public, sentencers need access to options that are fair and straightforward. We therefore intend to reform the most common youth sentence (the Detention and Training Order) to be simpler and fairer, and ensure that the provisions on minimum terms, minimum term reviews and release points for those children committing the most serious offences are appropriate.
291. These changes also build upon specific reforms that have already been carried out in relation to terrorism. Following the attacks in London Bridge and Streatham, the government took swift action to put an end to the automatic early release of terrorist offenders.⁷² The Counter-Terrorism and Sentencing (CTS) Bill currently before Parliament introduces a new 'special sentence of detention for terrorist offenders of particular concern' for offenders aged under 18, which bridges the gap in sentencing options for young offenders who commit a terrorism offence but do not meet the criteria for a life sentence, extended determinate sentence or a sentence under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (grave crime), and where a Detention and Training Order (DTO) of two years would be insufficient. We recognise that there is a great difference between a 17-year-old and a 10-year-old. Courts are already required to take into account the age and maturity of a child when sentencing and sentencing guidelines provide the court with guidance on setting custodial sentence lengths for children of different ages. However, in some cases, such as murder, the court is restricted in its ability to give a sentence which properly reflects the age of the offender. We are therefore addressing this through legislative changes that will make longer sentences available for offenders closer to the age of 18.
292. It is important to remember that in parallel with these changes, there is an ongoing programme to transform the youth custodial estate to improve how it supports children, including through the introduction of secure schools. Further reforms in this programme include: the rollout of the Custody Support Plan to provide each child with a personal officer to work with on a weekly basis, in order to build trust and consistency; a new conflict resolution strategy, which applies Restorative Justice principles to resolve conflict between children; establishing Enhanced Support Units for children with the most complex needs; implementation of an integrated care framework jointly led by NHS England and NHS Improvement and the YCS; and the introduction of a Youth Justice Specialist role and funding for every Prison Officer in the YCS to undertake a youth justice qualification.

⁷² Terrorist Offenders (Restriction of Early Release) Act 2020

Legislative measures proposed:

- Change the Detention and Training Order to allow the courts to pass any length of Detention and Training between 4 and 24 months in order to pass the right sentence in the interests of the child and the interests of justice and create a more flexible structure no longer requiring exactly half the order to be spent in custody and half in the community, and better taking account of time spent on remand
- Move the automatic release point to two-thirds (from halfway) only for those who receive a standard determinate sentence of 7 years or more for the most serious violent offences relating to homicide and for all serious sexual offences (with a maximum penalty of life) to ensure that time spent in custody reflects the seriousness of the offence committed
- Change how discretionary life sentence minimum terms are calculated to ensure that the minimum term served in custody reflects the seriousness of the offence
- Change the minimum term starting points for murder committed as a child to ensure that the seriousness of the offence is taken into account and there is less of a gap between older children and young adults
- Reduce the opportunities for over 18s who committed murder as a child, to have their minimum term reviewed, to protect the families of victims while maintaining a clear distinction between adults and children

Detention and Training Order (DTO) reform: Introduction

293. The DTO is the most common custodial sentence for children and there were 980 given in 2019.⁷³ It is a sentence in which a child spends half of the time in custody and half in the community under the supervision of the Youth Offending Team (YOT). This structure was intended to provide children with a sentence that delivered training, education and support while in custody which then continued once they were back in the community. However, 20 years on from its introduction, with a more mature youth justice system and experienced judiciary and practitioners, we believe that some elements of the DTO are unnecessary and in fact hamper the ability of courts and professionals to do what is best for the child. Other elements also mean that there are unnecessary inconsistencies between the DTO and other youth sentences.

294. Currently a DTO can only be given for a fixed length (4, 6, 8, 10, 12, 18, or 24 months). This restricts the court deciding on the most appropriate length and can impact on how time spent on remand or on bail (only where it is subject to a

⁷³ *Youth justice statistics: 2018 to 2019*, Ministry of Justice and Youth Justice Board for England and Wales, January 2020.

qualifying curfew condition and an electronic monitoring condition), and reductions made for guilty pleas, are taken into account. This is because there is not always a DTO length that directly fits once remand, electronically monitored bail and/or guilty pleas have been considered and instead the court must sentence to one of the fixed lengths.

295. When taking into account time that a child has spent on remand or electronically monitored bail, the court should first consider what the appropriate DTO length would be and then make the appropriate reduction. The reduction for remand or electronically monitored bail is subtracted from the whole DTO sentence and therefore reduces the time spent in custody and in the community. To ensure that the custodial part is reduced by the equivalent amount of time spent on remand or electronically monitored bail, the time on remand or electronically monitored bail is doubled before being subtracted from the whole sentence.
296. If this results in a length that falls between two available fixed lengths, the court should impose the nearest. This is different to a standard determinate sentence (known as a section 91 sentence for children and is given to those who commit the most serious offences) or an extended determinate sentence (given to those who are deemed to be dangerous) where the sentence length is decided and then the amount of time spent on remand or electronically monitored bail is subtracted from the custodial part.
297. According to sentencing guidelines, when taking into account a guilty plea, the appropriate DTO length is decided first and then a reduction is made. The level of reduction depends on what stage the guilty plea was made (the maximum reduction is one third). This is the same for a DTO, standard determinate sentence and an extended determinate sentence. However, for a DTO, if the reduction for a guilty plea results in a length that falls between two available fixed lengths, the court must impose the lesser of those two. This may result in a reduction of greater than a third.

DTO reform: Making the DTO more flexible

298. We propose to remove the fixed lengths of the DTO to give the courts greater flexibility in deciding on sentence length. This also ensures that a sentence length can be given which accurately reflects the level of reduction for remand, electronically monitored bail or a guilty plea, rather than the nearest permissible length. In addition, this removes the inconsistency between the DTO and other youth sentences.
299. We are retaining the 4-month minimum length to maintain custodial sentences being given as a last resort and where neither a fine nor a community sentence is appropriate. This also avoids very short and potentially counter-productive terms of

custody. If an offence does not warrant a DTO of at least 4 months, then the child must receive a non-custodial sentence.⁷⁴

300. To provide further flexibility with a DTO we are changing the structure so that it works in the same way as other youth sentences. The current structure of the DTO (half of the order to be spent in custody and half in the community under the supervision of a YOT) is fixed in legislation. Although this structure is different to other youth sentences, it does not make a difference to a child's sentence plan or regime in custody which are based on their needs rather than their type of sentence.
301. Changing the structure also means that time spent on remand or electronically monitored bail can be subtracted solely from the custodial time. This makes it consistent with other youth sentences and means that children are under supervision in the community for the time deemed appropriate by the sentence.
302. When a child is serving the community part of the DTO they are under the supervision of a YOT and must comply with certain requirements. If a child breaches any of those requirements, the YOT can initiate action for the case to go to court. The court then decides whether to impose a further period in custody, a further period of supervision, a fine, or take no action. We are maintaining this approach to breaches because it provides the opportunity for each child's situation to be taken into consideration and the flexibility to respond appropriately. It also means that the court continues to decide if a child should be returned to custody.
303. We are also maintaining the current age restrictions for a DTO. Children aged 10 or 11 years old cannot be given a DTO and those aged 12 to 14 can only be given a DTO if they are deemed by the court to be a persistent offender. This means that 10 to 11-year-olds and most 12 to 14-year-olds can only be sent to custody where they have committed a grave crime (including committing murder) or are deemed to be dangerous. We want to ensure that custodial sentences are only imposed as a last resort and for the most serious crimes, preserving one of the core principles of the youth justice system.
304. These changes to the DTO make it a more flexible sentence, more consistent with other youth sentences and simplify how remand is considered.

Moving the release point for the most serious violent and sexual offences

305. We recognise that children's cognitive skills are still maturing and so these are more likely to develop over a shorter timeframe than for an adult. Therefore, in the minority of cases where a child is sentenced to custody, the term of a custodial sentence must be the shortest commensurate with the seriousness of the offence.⁷⁵ This also

⁷⁴ *Sentencing Young People and Children Definitive Guideline*, Sentencing Council, March 2017.

⁷⁵ *Ibid.*

reflects the fact that any length of custodial sentence is likely to be felt more heavily by a child in comparison to an adult due to their young age.

306. However, we also recognise that some children do commit very serious offences and the youth justice system should protect the public from harm, ensure justice for victims, and instil public confidence. Courts must therefore be able to give appropriate sentences which reflect the seriousness of the offences committed.
307. For children who commit very serious violent and sexual offences, we are therefore proposing to move the point at which they can be released from custody. This will apply to those who are serving a standard determinate sentence. Currently the release point is at the halfway point of the sentence (the remaining sentence is served on licence in the community). Our proposal is to move the release point to two-thirds of the sentence for children who receive a sentence of 7 years or more for serious sexual offences (with a maximum penalty of life) or the most serious violent offences (attempted murder, soliciting murder and manslaughter).
308. Although changes have been and are being made to release points for adults who commit serious violent and sexual offences, we are not directly replicating these. We are restricting the list of violent offences to only the most serious. It is right that we take a different approach than for adults, but for this limited selection of crimes which have the gravest impact on victims, we believe that an altered release point is proportionate. Spending longer in custody also means that those who commit these offences will have more time to focus on rehabilitative interventions and education, as well as longer to prepare for life in the community.

Discretionary life sentence tariff calculation

309. A discretionary life sentence should be given when the criteria for an extended determinate sentence (a sentence for those who are deemed by the court to be dangerous, but the offence does not warrant a life sentence) is not met. It has a tariff which sets out the minimum amount of time that must be spent in custody. Once the tariff has been served, the Parole Board considers if it would be safe for release on licence in the community. Between 2015 and 2019 there were 7 discretionary life sentences given to children.⁷⁶
310. Currently, the way in which the tariff is calculated is the same for adults and children. This calculation has led to an anomaly between the discretionary life sentence and an extended determinate sentence (EDS) in terms of the earliest point in the sentence at which the Parole Board can consider release from custody.
311. When setting the tariff for a discretionary life sentence, the court first considers what an equivalent determinate sentence length would be, taking into consideration the

⁷⁶ *Criminal justice system statistics quarterly: December 2019*, Ministry of Justice, May 2020.

age of the child and any guilty plea. This length is then halved to calculate the tariff, reflecting the release from custody at the halfway point for a standard determinate sentence. Then credit is given for any time served in custody on remand or bail. Once the tariff has been served, the Parole Board can consider release from custody.

312. This is different to the release point in an EDS where the Parole Board can consider release from custody at the two-thirds point of the custodial term. This means that it is currently possible for the Parole Board to consider release earlier for a discretionary life sentence than for an equivalent EDS.
313. Because of this anomaly, the tariff calculation for adult discretionary life sentences is changing. Instead of setting a tariff that is half of the notional determinate sentence length, it will be based on the two-thirds point. This aligns the minimum amount of time served in custody on a discretionary life sentence with the minimum amount of time served in custody on an EDS.
314. In step with this, we are proposing changes to the way discretionary life sentence tariffs for children are calculated. It means that those serving a discretionary life sentence will not be eligible for Parole Board consideration earlier than those serving an equivalent EDS.
315. The new approach for adults also includes the option for the court to set a tariff using a calculation of half of the determinate sentence where appropriate. We will retain this option of using the former calculation so that the court has the flexibility to use this for children, particularly younger children. Ultimately, it is a matter for the court to decide on the appropriate length of tariff, taking into account all the circumstances of the particular case before the court.

Tariff starting points for murder

316. Murder is the most serious crime a person can commit, and, as such, carries a mandatory life sentence. For children, this sentence is Detention at Her Majesty's Pleasure (DHMP), a life sentence under section 90 of the Powers of Criminal Courts (Sentencing) Act 2000. With all life sentences, both for adults and for children, the court must set a minimum term, or tariff, to be served in custody before the offender can be considered for release by the Parole Board. Starting points for determining these tariffs are set out in the Criminal Justice Act 2003; depending on the details of the crime, courts can raise or lower the final tariff from the starting point.
317. These starting points, as they currently stand, create a significant gap between the way older teenagers and younger adults are sentenced. While it is right that children are treated differently from adults because they have the capacity to develop and mature in a way adults do not, the way starting points are currently set means that a 17-year-old who commits murder can receive a much shorter tariff than someone

who has just turned 18 – even if the crime is more serious. We do not believe that this is fair to the families of victims, who can often feel as though the person responsible for the loss of their loved one has missed being eligible for an appropriate minimum term on account of a matter of weeks or months of difference in age.

318. Tariff starting points for adult life sentences offer more nuance. While the starting point for DHMP sentences is a fixed 12 years in all cases, starting points for adults vary depending on the seriousness of the crime, as well as on the age of the offender. These are set out below:

Minimum term starting points for adult mandatory life sentences

Type of offence	Minimum term starting point (ages 18–20)	Minimum term starting point (ages 21+)
Exceptionally high seriousness offences, such as the murder of a child involving abduction or sexual or sadistic motivation, the murder of a police or prison officer in the course of his or her duty, or where the offender has been previously convicted of murder.	30 years	Whole Life Order
Particularly high seriousness offences, such as murders involving firearms or explosives, murders involving sexual or sadistic conduct, or murders committed for gain.	30 years	30 years
Offences where the murderer took a knife or other weapon to the scene intending to commit any offence or have it available as a weapon, and used it to commit the murder.	25 years	25 years
All other offences, where none of the above apply.	15 years	15 years

319. Unlike the adult system, the fixed 12-year starting point for children does not account for the seriousness of the crime, nor does it reflect the different stages of development children go through between the ages of 10 and 17. There is currently some capacity for flexibility, as courts can set a tariff higher or lower than the starting point based on aggravating or mitigating factors, such as: maturity; behaviour toward the victim; or the presence of learning disabilities or other health concerns. Despite this, the limitations of the current system mean that offenders very close to the age of 18 can receive a significantly shorter sentence than offenders only a few months older would.

320. To create a fairer system, we intend to amend the tariff starting points for murder committed under the age of 18. More serious offences, and those committed when the offender is closer to the age of 18, will have higher starting points, while younger children will have lower starting points to reflect their reduced maturity and development. This change will provide a more nuanced framework to use in determining the appropriate tariff, but will still allow courts full discretion in setting a tariff higher or lower than the starting point to account for any aggravating or mitigating factors.
321. The new starting points will be based on the adult system set out in the table *Minimum term starting points for adult life sentences*, with four different levels of seriousness. Within this framework starting points will vary depending on age group, with the oldest child offenders receiving higher starting points than younger offenders who commit crimes of an equivalent level of seriousness.
322. When determining the new starting points, we consulted the guidelines produced by the Sentencing Council, which state that for custodial sentences (outside mandatory life sentences) courts “may feel it appropriate to apply a sentence broadly within the region of half to two-thirds of the adult sentence for those aged 15–17 and allow a greater reduction for those aged under 15.” The guidelines also note that for children ages 14 and under custodial sentences “should be for a shorter length of time than that which a young person aged 15–17 would receive if found guilty of the same offence.”
323. Based on these guidelines, we will replace the current starting point of 12 years with a starting point of two-thirds the equivalent adult starting point for children aged 15–17 and half the equivalent adult starting point for children aged 10–14. These age groupings will allow a gradual increase in tariff lengths as offenders become closer to the age of 18, bringing the process in line with how other custodial sentences are calculated for children.
324. The proposed new starting points are set out below:

Proposed minimum term starting points for DHMP sentences

Type of offence	Minimum term starting point (ages 10–14)	Minimum term starting point (ages 15–17)
Exceptionally high seriousness offences, such as the murder of a child involving abduction or sexual or sadistic motivation, the murder of a police or prison officer in the course of his or her duty, or where the offender has been previously convicted of murder.	15 years	20 years

Type of offence	Minimum term starting point (ages 10–14)	Minimum term starting point (ages 15–17)
Particularly high seriousness offences, such as murders involving firearms or explosives, murders involving sexual or sadistic conduct, or murders committed for gain.	15 years	20 years
Offences where the murderer took a knife or other weapon to the scene intending to commit any offence or have it available as a weapon, and used it to commit the murder.	13 years	17 years
All other offences, where none of the above apply.	8 years	10 years

(For comparison: Current starting point is 12 years in all cases above)

325. The new framework will mean that, while more serious murders would have higher starting points than is currently the case, the lowest starting points – for children who commit a murder for which the adult starting point is 15 years – would be below the current 12 years. Overall, however, this option is likely to increase the average starting point. Murder by children is comparatively rare, with 224 cases in the period from 2011 to 2019, but the majority of cases are likely to have been committed by children between the ages of 15 and 17: of those 224 instances, 10 offenders were aged 10–14 at the time of sentencing, 130 were aged 15–17, and 84 were over 18.⁷⁷

326. By amending the tariff starting points, we will introduce a more gradual shift to adult sentences, reducing the gap that currently exists while still giving courts the discretion to set a tariff higher or lower than the starting point should the circumstances of the case warrant it. This change will give the sentencing system greater flexibility to factor in the seriousness of the crime while still reflecting the relative immaturity and developmental stages of children, and will create a fairer system that will ensure the families of victims can feel that justice has been done.

Tariff reviews for murder

327. Offenders sentenced to DHMP may apply to the High Court for a review of the length of their tariff at the halfway point. The purpose of this review is to determine whether the tariff should be reduced, and for a review to be successful, the child must show exceptional progress in custody. If the application is unsuccessful, the child can continue to apply every subsequent two years until the tariff expiry date.

⁷⁷ *Criminal justice system statistics quarterly: December 2019*, Ministry of Justice, May 2020.

328. The existence of reviews is an important part of ensuring that the tariff remains appropriate, as children change and develop as they mature. It is also clear, however, that the existence of the review procedure – particularly the opportunity for continuing reviews after the halfway point – can be extremely distressing for the families of victims. Families are contacted every time an offender applies for a review and are given the opportunity to provide a new Victim Personal Statement, a process which in many cases causes them to relive the circumstances of the crime and feel as though they have to advocate again for justice for their loved one. This difficult process is also unlikely to lead to any benefit for the offender, as subsequent reviews are rarely successful and very few offenders take advantage of the opportunity to apply again.
329. This is why we propose to reduce the number of reviews an offender is entitled to after they turn 18. Offenders who are given life sentences for murders committed over the age of 18, or those who commit murders as children but who are not sentenced until they are over 18, are not entitled to reviews, reflecting the fact that adults do not go through the same accelerated development and maturation that children do. Our new system will be based on this principle.
330. We propose a new, fairer system that recognises that offenders who were sentenced to DHMP as children but have since turned 18 in custody are now adults and have passed the age where significant development occurs, while still accounting for the fact that they were children and still maturing when the crime was committed and they were sentenced. Under the new system all offenders sentenced when under 18 would receive the opportunity to apply for one tariff review at the halfway point of their sentence. This will allow the High Court to take into account any development or maturation since the crime was committed. However, the offender will only be eligible for subsequent reviews covering the period until they turn 18. This change will make the tariff review policy equitable for all offenders who are given life sentences for crimes they committed as children, regardless of their age when they are sentenced, while also reflecting the fact that adult offenders are not eligible for any reviews.
331. Removing eligibility for continuing reviews past the age of 18 will provide more clarity for victims' families and keep them from having to continually revisit the events that led to the loss of their loved one. Continuing reviews provide very little practical benefit for offenders, and this change will ensure that all offenders who have reached adulthood are treated equally while still offering the opportunity for rehabilitation and making allowances for the process of development and maturation in children.

Tougher community sentences and reforms to remand tests

332. We believe that, where appropriate, children should be supervised in the community and there are specific tests for both bail and sentencing decisions to ensure that custody is not used as a default for children. While we are taking steps to transform youth custody, it remains true that any time in custody can be highly disruptive to a child's life, impacting their family connections and education. While custody will always be necessary in some cases, we want to ensure it is a last resort. The measures summarised below strengthen high-end community sentences and also include changes to the legal tests for custodial remands.

Legislative measures proposed – Community sentences:

- Increase the flexibility of curfews attached to Youth Rehabilitation Orders by increasing the maximum number of hours per day to ensure that curfews can be better tailored to individual circumstances
- Give the option to add a location monitoring requirement to Youth Rehabilitation Orders to: reduce the likelihood of breach; provide information to support services; and provide an additional protective factor
- Make sure that Youth Offending Team or probation staff (as appropriate) are the Responsible Officers for Youth Rehabilitation Orders rather than the Electronic Monitoring Provider, to ensure that youth justice professionals are the decision-makers in relation to breach action
- Pilot extending the maximum length of high intensity community sentences to give courts an effective non-custodial option and ensure custody is used as a last resort
- Pilot adding a mandatory location monitoring requirement to the high intensity community order, giving courts further confidence to ensure custody is used as a last resort
- Abolish Reparation Orders which are seldom used, while inviting views on how reparation and restorative justice can be improved

Legislative measures proposed – Remand:

- Amend the real prospect of custody test, to raise the threshold when custodial remand is suitable and require courts to record their rationale
- Amend the history conditions, so only recent and significant history of breach or offending while on bail or remand can result in a custodial remand

- Amend section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) to include cases of arrests, warrants or adjournments for previously imposed orders to eliminate circumstances in which courts are left without the full range of remand options

Tougher community sentences

333. The Criminal Justice Act 2003 sets out that custody should only be imposed where the court considers the offence or combination of offences to be so serious that neither a community sentence nor a fine alone can be justified.
334. MoJ analysis indicates that robust community sentences (i.e. matched referral orders or youth rehabilitation orders) can be more effective at reducing reoffending by children than custodial sentences,⁷⁸ particularly short custodial sentences, which can also be highly disruptive to a child's life and can have an ongoing, criminogenic effect. Robust community sentences can achieve benefits to the welfare of children by imposing tough measures to prevent offending while also ensuring closer proximity to their family and reduced disruption to education or training.
335. While courts must have all sentencing options open to them to ensure public protection in cases of children who persistently offend or who have committed serious offences, whenever possible children should be supervised in the community as this is more beneficial for their rehabilitation.
336. This is why we are proposing changes to strengthen community sentences and give courts more confidence in their ability to act as a robust sentencing option, as well as creating a more streamlined system by abolishing orders that are no longer useful. We plan to pilot some changes to understand their impacts before wider application.
337. YOTs in local authorities are key in delivery of community sentences as they are responsible for advising the courts on appropriate interventions and supervising children serving a community sentence. It is important to recognise that their actions, and the services which they can draw in to support children, are also key to the success of a community sentence, in addition to changes to the legal sentencing framework.
338. The YJB has a role in developing and disseminating evidence about best practice across the youth justice system, including in relation to community sentences, and works with MoJ and partners to advocate for improved availability of support services

⁷⁸ *Proven Reoffending Statistics April to June 2017, Annex A: Impact of sentencing on proven reoffending for young offenders in England and Wales, 2012 to 2014*, Ministry of Justice, April 2019.

for children. This includes, for example, working to improve the availability of local health services. HMI Probation inspects YOTs on their delivery of community sentences which helps ensure scrutiny and attention to standards. This wider work will continue and will contribute to building the confidence of courts in community sentences.

339. Problem-solving approaches work well within the current youth justice system, and we recognise that effective multi-agency working can have a positive impact on a child's rehabilitation. In addition to keeping sight of innovative pilots taking place which use problem-solving approaches to engage the local community, to improve inter-agency communication and to improve overall support to children, we will monitor the implementation and progress of the pilot for problem-solving courts for adults as proposed in this paper. We will explore problem-solving approaches in the youth justice system, including building the evidence base for the use of panels beyond their use for referral orders.

Tougher community sentences: Youth Rehabilitation Orders

340. The Youth Rehabilitation Order (YRO), introduced in 2009 as part of the Criminal Justice and Immigration Act 2008, can be imposed in any case where the mandatory referral order conditions do not apply. It provides the court with a menu of 18 requirements to choose from (including curfews, activity, health, exclusion, electronic monitoring and education) and orders can be imposed for up to three years.

Tougher community sentences: Flexible Curfews

341. We recognise that children's cognitive skills are still developing and so they are more impulsive and more inclined to make mistakes.⁷⁹ Children who offend are more likely to lead chaotic lifestyles and find it challenging to comply with a routine. We also know that children can become involved in gang activity, be unduly affected by negative influences, or be subject to criminal exploitation.

342. A curfew can be attached as a requirement to any YRO and can last for up to 12 months. A curfew can not only help to protect the public and prevent further offending but also help to support children as an additional protective factor against potential coercion or exploitation.

343. At present, curfews can be imposed for up to 16 hours each day and sentencers can vary the length of the curfew from one day to the other, imposing shorter curfews on some days and longer curfews on others, depending on the child's needs and circumstances, but only within that daily maximum.

⁷⁹ *What works in managing young people who offend? Summary of the international evidence*, Ministry of Justice, February 2016.

344. We know, however, that there will be times when a child is more at risk of committing further offences. For example, at weekends when they may have more free time and may find it more challenging to stay away from undesirable influences.
345. We believe that it is right that courts have the powers they need to help ensure that children are not committing further offences and that, in some cases, a 16-hour curfew may not be sufficient on a particular day. That is why we propose increasing the flexibility of the courts' powers by allowing them to impose a maximum daily curfew of up to 20 hours.
346. However, we are clear that this policy aims at greater flexibility rather than greater restriction on liberty. That is why the maximum number of curfew hours which can be imposed in any one week will remain at the current total of 112 hours. This means that if the court imposes a curfew of over 16 hours on one day, they would have to impose a curfew of less than 16 hours on other day/s to compensate.

Tougher community sentences: Electronic Monitoring

347. In March this year we completed the rollout of GPS tags across England and Wales, which can be used to monitor compliance with any other condition of a YRO.
348. This technology allows us to go further in protecting the public and young people as well as improving confidence in tougher community sentences. Standalone location monitoring requirements already exist as an option for adult offenders and, for children, can already be used as part of the supervision period of a Detention and Training Order (the most common youth custodial sentence).
349. We now propose adding the option of a standalone location monitoring requirement to the YRO. Used appropriately, we believe that this technology will help to reduce the likelihood of a child breaching the requirements of their Order, to ensure that YOTs and courts have the right information to intervene when support or correction is needed or, when appropriate, to take swift and confident action in the event of a breach. This technology might also provide an additional protective factor for a child who may otherwise face a more disruptive custodial intervention whilst also providing enhanced protection to the public.
350. Current legislation sets out that, in cases in which electronic monitoring is imposed alongside a curfew or exclusion zone, but no other requirements, the "Responsible Officer" is the person responsible for monitoring the Electronic Monitoring requirement (i.e. the Electronic Monitoring provider). This differs from YROs with other requirements, for which the qualified YOT worker/manager is the Responsible Officer as they are aware of the child's individual circumstances and are therefore in the best position to make an informed decision in the case of a breach.

351. We will therefore legislate to make YOT/probation staff the Responsible Officers for cases in which EM is imposed rather than the EM Provider as it is under current legislation. This will mean that EM Services will remain responsible for the fitting of equipment and monitoring, but that justice professionals will become responsible for determining the required response to a violation and instigating breach action if appropriate.
352. We are also exploring whether, as with probation, YOTs should be empowered to do more; for example to make variations to EM requirements in a limited range of circumstances (changes of address and changes in curfew timings but not the number of hours).
353. We believe EM is a valuable tool and the changes set out here will make a significant contribution to strengthening community options and diverting children away from custody. In future we are keen to consider further ways this technology could be used to support the rehabilitation of children while keeping the public safe.

Tougher community sentences: Intensive Supervision and Surveillance

354. Even when a case crosses the custody threshold and the court believes that custody is merited, the Criminal Justice and Immigration Act 2008 created two statutory alternatives to custody for children; the Youth Rehabilitation Order (YRO) with Intensive Supervision and Surveillance and the YRO with Intensive Fostering. Before imposing a custodial sentence, the court must consider whether either of these requirements can be used.
355. Intensive Supervision and Surveillance (ISS) is the main statutory alternative to custody which can be attached to a YRO. ISS includes an extended activity requirement, a supervision requirement and an electronically monitored curfew. It can also include any other requirement which may be imposed as part of a YRO. The extended activity requirement can only be imposed for a maximum of 6 months regardless of the length of the YRO and can be given to children under 15 years only if they are deemed to be a “persistent offender”. The legislation does not prescribe the number of hours or what type of activity should be imposed as part of ISS. However, the YJB case management guidance recommends 25 hours of high-intensity activity, of which 15 hours should be focused on education, training and employment and the remainder on activities such as restorative justice and family engagement. As with all YROs, we believe it is right that the exact interventions are determined by the local YOT.
356. The limitation on the length of the extended activity requirement to only 6 months limits its ability to act as a tough community sentence and an effective alternative to custody. We propose giving the court additional flexibility to keep children out of custody where appropriate, by doubling the maximum possible length of the

extended activity requirement element of the ISS from 6 months to 12 months. We believe that this will allow the court to use ISS in place of longer custodial sentences, ensuring that the public is protected, while affording the child the benefits of being in the community through access to education and training opportunities and engagement with their family. As always, the court will be required to consider the seriousness of the offence and the overall package of measures in the sentence and not impose greater restrictions on liberty than are warranted in the circumstances of the case.

357. We also propose adding a location monitoring requirement as a mandatory element of the ISS requirement. For the reasons set out previously, we believe that such an approach ensures that ISS is a tough community sentence for children who offend, giving courts the confidence that children can be effectively supervised in the community.

358. While we believe that the current restrictions on breach proceedings and the use of professional judgment in areas of discretion will ensure that children are supported during longer intensive orders, we recognise the risk of increased breaches defeats the object of keeping more children out of custody.

359. That is why we propose piloting these measures following legislation. This will allow us to ensure that the process is robust and effective before considering a national rollout, and allow services to put the right measures in place to ensure such orders are not only effective as an alternative to custody, but also to rehabilitate children who have committed serious offences.

Tougher community sentences: Intensive fostering

360. The other statutory alternative to custody which can be included in an YRO is Intensive Fostering (IF), in which a multi-disciplinary team works with a child and their family during a placement of no longer than 12 months with specially trained foster carers.

361. A review of the international evidence on preventing youth offending, undertaken by MoJ in 2016, concluded that there is evidence that intensive foster care may have better outcomes for some groups of children, compared to custody.⁸⁰ We also have promising indications from learnings around Intensive Fostering from earlier pilots.^{81,82}

⁸⁰ *What works in managing young people who offend? Summary of the international evidence*, Ministry of Justice, February 2016.

⁸¹ *A Report of the Intensive Fostering Pilot Programme*, Youth Justice Board, 2010.

⁸² *Written evidence from Action for Children*, Justice Select Committee, October 2012.

362. Intensive Fostering is already on the statute books; however, it has been very rarely used in recent years. We intend to give closer consideration to this sentence in the medium term, and if more can be done to enable its use.

Tougher community sentences: Reparation Orders

363. We believe restorative justice is an important part of the justice system and has significant benefits both for the victim and for the rehabilitation of offenders. In order to deliver this, the Reparation Order, a non-custodial sentence which aims to help children understand the effect of their crime on the victims, was introduced in the Powers of Criminal Courts (Sentencing) Act 2000. The Order requires offenders to make practical amends to those harmed by the offence – either a victim or another affected party, so long as they have consented, or to the community. While it is right that courts have clear ways to include reparation requirements in sentencing, it has become clear that the Reparation Order itself has been made redundant by the evolution of the youth disposals framework. With this in mind, we propose abolishing the Reparation Order and redirecting cases to other, more effective disposals.
364. Use of the Reparation Order has dropped significantly over the past decade. Only 84 orders were given in 2018/19, down from 4,003 in 2008/09 – a faster rate of decrease than any other disposal. Reparation Orders are now the least-used disposal, used even less frequently than fines, and have a higher rate of reoffending than Referral Orders, cautions and fines.⁸³
365. It is likely that the use of Reparation Orders has declined because they have been replaced with other, more widely-used sentencing options. The current sentencing framework offers other avenues for reparation, including Referral Orders and YROs. These both provide a fuller package with more flexibility than the Reparation Order, which cannot be given in conjunction with a Referral Order or a YRO, thereby significantly restricting the situations in which it can be used. Another factor contributing to the decline of Reparation Orders is changes to the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012, that removed restrictions on the use of cautions and conditional cautions. Following this change, it is likely that some of the less serious cases for which a Reparation Order would have been used are now being dealt with outside of court.
366. While we believe in the importance of restorative justice and its benefits both to victims and to offenders, other, more effective avenues exist to implement reparation and the Reparation Order itself is now an unused and redundant Order. Abolishing the Reparation Order will simplify the options available to sentencers, and will redirect cases to more flexible sentences that can offer a wider range of options to

⁸³ *Youth justice statistics: 2018 to 2019*, Ministry of Justice and Youth Justice Board for England and Wales, January 2020.

contribute to the offender's rehabilitation and help victims feel that justice has been done.

367. Reparation across youth sentences is a far wider question than simply Reparation Orders. In addition to making this change, we are interested in exploring how reparation and restorative justice could be used more effectively as part of a youth caution or sentence, while ensuring that restorative justice continues to be victim-led.

Remand: Introduction

368. There is a general presumption to bail for all defendants in criminal proceedings under the Bail Act 1976. However, bail can be refused under Schedule 1 of that Act where the court is satisfied that there are substantial grounds for believing that the defendant will: fail to surrender to custody; commit a further offence while on bail, or interfere with witnesses or obstruct the course of justice; or substantial grounds to believe the commission of a further offence likely to cause injury.
369. While custodial remand can be justifiable in some cases, unnecessary exposure to custody on remand has detrimental impacts on children; it interrupts their access to education and removes them from their existing support network at home and in the community.
370. If the court determines an exception under Schedule 1 applies, the defendant must be remanded under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 to either Local Authority Accommodation (LAA)⁸⁴ or to Youth Detention Accommodation (YDA) if some specific conditions are satisfied.⁸⁵ In both situations, the child will be treated as 'looked after' by the designated local authority.
371. Following the commencement of the LASPO Act, the average monthly custodial remand population for under 18s decreased by 62% between 2011/12 and 2016/17.⁸⁶ However, between 2016/17 and 2018/19 there was a 33% increase in the average monthly custodial remand population, in sharp contrast with the trend for the sentenced youth custodial population, which decreased by 10% over the same period. A contributing factor to this change is the recent rise in children remanded in custody for violence against the person offences, increasing from an average population of 83 (45% of the custodial remand population) in 2016/17 to 153 (63% of the custodial remand population) in 2018/2019.⁸⁷

⁸⁴ LAA is broad and may cover remand to: the family home, with relatives, foster care, a non-secure children's home or specialist remand accommodation.

⁸⁵ YDA consists of: Secure Children's Homes, Secure Training Centres, and Young Offenders Institutions.

⁸⁶ *Youth justice statistics: 2018 to 2019*, Ministry of Justice and Youth Justice Board for England and Wales, January 2020.

⁸⁷ *Ibid.*

372. Despite this, between 2013/14 and 2018/19, around two-thirds of remanded children did not go on to receive a custodial sentence.⁸⁸ This suggests that more can be done to ensure children are remanded to custody as a last resort.
373. In addition, in 2018/19, children from a BAME background made up an average of 57% of the custodial remand population, compared to 38% in 2008/09 (33% were Black, 15% were Mixed Race, 9% were Asian and Other), suggesting they are disproportionately represented in the remand population.⁸⁹
374. Remand decisions are complex and involve a range of factors which can influence the decision, making it difficult to pinpoint one single cause or justification for the apparent overuse of custodial remand. The YJB has commissioned research into disproportionality in remand and sentencing, which should help us to better understand the reasons why disproportionality occurs in these areas.
375. In response to these trends and the Independent Inquiry into Child Sexual Abuse's report on the Sexual Abuse of Children in Custodial Institutions: 2009–2017⁹⁰, the government publicly committed to undertake further work to review the use of remand for children and develop options to reduce numbers of those remanded to custody, where appropriate.
376. Our review covers four key workstreams:
- 'Pre-custody', which explores court process and legal tests for remand; the role of practitioners and other key professionals in remand decision-making; and the use and availability of alternatives to youth detention accommodation.
 - 'Custody', which explores the length of custodial remand episodes.
 - 'Funding', to look at the current funding structure and arrangements for local authorities covering the costs of remands.
 - 'Data', to assess the effectiveness of data collection regarding the use of remand for children.
377. This paper covers the legislative element of the review. The main aim of the proposed changes to the law are to tighten where possible the tests used in remand decision-making to ensure custodial remand is imposed as a last resort, while retaining judicial discretion in assessing the risk a child might pose.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ *Sexual Abuse of Children in Custodial Institutions: 2009-2017 Investigation Report*, Independent Inquiry Child Sexual Abuse, February 2019.

Remand: Existing legislative framework

378. Decisions to remand a child to youth detention accommodation (YDA) are governed by an already stringent set of cumulative conditions based on considerations around age, offence, necessity and legal representation.
379. Under the first set of conditions in section 98 of LASPO, the child must be at least 12 years old, charged with a serious offence,⁹¹ and the court must be satisfied that a remand to YDA would be necessary to protect the public from death or serious personal injury, or to prevent the commission of an imprisonable offence (the 'necessity condition'). In addition, for a child to be remanded in custody, the child must have been legally represented, or some specific conditions must be fulfilled if not (e.g. presentation was withdrawn or refused because it appeared the child's financial resources meant s/he was not eligible; or the child refused or failed to apply).
380. Under the second set of conditions in section 99 of LASPO, the offence condition is limited to 'imprisonable offences'. In addition to the age, necessity and representation conditions outlined above, the following must also be satisfied to remand a child to YDA:
- Sentencing condition: it appears to the court that there is a real prospect that the child will be sentenced to a custodial sentence for the offence(s).
 - First 'history condition': the child has a recent history of absconding while subject to a custodial remand, and the offence is alleged to be or has been found to have been committed while the child was remanded to LAA or YDA; or
 - Second 'history condition': the offence amounts to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.
381. Under section 98, remand decisions are primarily based on the seriousness of the offence where it is necessary to protect the public, whereas remand decisions under section 99 are based on the prospect of a custodial sentence and history of absconding/offending. The child may only be remanded into YDA if the full set of conditions under either section are satisfied. However, the high proportion of seemingly unwarranted custodial remands suggest that these conditions are not prescriptive enough to ensure custody is truly the last resort. We therefore need to determine whether and how these legal tests could be amended to ensure custodial remand is used only where absolutely necessary, whilst ensuring the public are protected.

⁹¹ A violent, sexual or terrorism offence listed under Schedule 15 of the Criminal Justice Act (CJA) 2003, or an offence punishable in the case of an adult with imprisonment for a term of 14 years or more.

Remand: Strengthening the ‘real prospect test’ reform

382. The effectiveness of the current test is questionable, given two-thirds of children who are remanded do not go on to receive a custodial sentence. The word “real prospect” is open to too wide an interpretation. We believe the current wording could be strengthened to make the threshold for remand higher while maintaining room for judicial discretion.
383. We also believe that requiring the courts to provide a justification for their assessment that there is a high likelihood that the child would receive a custodial sentence could make judges more accountable for their decision to remand a child to custody. There are examples throughout the criminal justice legislative framework, including in the Bail Act 1976, which provide reasons to be given to justify a certain decision.
384. For consistency, we also propose to include the amended real prospect test within the section 98 conditions. Though this set of conditions requires that a child must have committed a violent or sexual offence, the individual circumstances of a case may mean the seriousness of the actual offending does not meet the threshold for a custodial sentence to be imposed.

Remand: History conditions reform

385. The current wording of both tests may be interpreted broadly, resulting in bail refusal based on a single previous incident. We have considered whether removing the second history condition altogether could achieve our aims, but felt that this would be too radical. The section 99 test provides courts with the ability to remand a youth to custody for offences outside the scope of section 98 (violent and sexual offences) but where remand is nonetheless deemed necessary because of a history of offending or breaching bail. If we remove the history condition completely, only children who have committed serious offences can be remanded while other children, who can still pose a risk, could be granted bail or remand to local authority accommodation only.
386. We propose reforming the history condition to ensure that only a recent and significant history of breach or serious offending while on bail can result in custodial remand. This would have the effect of ensuring that custodial remand is a last resort to protect the public and / or prevent further offending behaviour, where no other form of bail / remand would be appropriate for that child. This would signal to the court that this should not simply mean a single previous or minor breach, but we do not propose to be too prescriptive in order to safeguard judicial discretion.

Remand: Previous orders reform

387. Section 91 of LASPO sets out the cases to which the remand provisions apply, namely where a) a court deals with a child charged with or convicted of one or more offences by remanding the child, and b) the child is not released on bail. However,

section 91 does not apply to cases where a child is brought in front of the court on an arrest warrant or on an adjournment in connection with a previously imposed order.

388. The Law Commission has recommended that we amend section 91 so that the remand provisions apply to these types of cases.⁹² We agree with this recommendation and therefore propose to amend section 91 to include cases of arrests, warrants or adjournments for previously imposed orders to eliminate the circumstance in which courts are left without the necessary powers.

Conclusion

389. Taken together, these measures build on existing work to strengthen the youth justice system.

390. Where custody is required for public protection, we think there are necessary reforms to improve the coherence of current sentences. This includes modernising the Detention and Training Order and moving the release point for those who receive a sentence of 7 years or more for the most serious violent offences and for serious sexual offences. For the small number of very serious youth offenders, ensuring age and seriousness of crime is better factored into starting points for murder, reducing the number of tariff reviews for murder, and changing how we calculate tariff in discretionary life sentences.

391. However, to help ensure custody is always the last resort for youth we will reform the legal tests for custodial remand to discourage its use, and we will provide courts with tools to deliver tougher high-end community sentences to effectively supervise behaviour in the community. This includes greater provision for location monitoring, flexibility around curfews, and piloting an extended duration of the most intensive current community sentence. Beyond these legislative measures, we will reinforce the importance of prevention and the successes we have seen in this area.

⁹² *The Sentencing Code Volume 1: Report*, Law Com No 382, Law Commission, November 2018. (Recommendation 4.)

Annex A – Race Disparity in the Criminal Justice System

392. To be effective, people must have confidence that the justice system is fair, open and accessible to all – one where no individual faces any degree of bias based on their background, faith or their ethnicity. But we know that there remains an over-representation of ethnic minorities in the criminal justice system, and disparities in outcomes for these groups.
393. Since the Criminal Justice Act 1991 the government has been required to publish data on all aspects of race in the criminal justice system. The original intent was that by exposing racial bias, people would be supported in their duty to remedy imbalances where they occurred. While the Act's intent was sound, the transparency that it brought to the statistics did not deliver sufficient impact.
394. Building on this, the Equality Act 2010 has created a clear, active duty for the public sector to address discrimination and disparities where they cannot be justified. However, the 2017 review of the treatment and outcomes for Black, Asian and other minority ethnic individuals (the Lammy Review) demonstrated that despite changes in legislation, the outcomes, experiences, and perceptions of BAME individuals are still different, and frequently worse, than their White counterparts.⁹³
395. Yet, at its core, parts of the system, such as the decision making of juries, delivered equitable results and could command confidence. We have further examined what these key ingredients for greater confidence are. We know that they include being open to external scrutiny, making the workforce more representative of the communities they serve, and demystifying systems and procedures so individuals understand their legal rights and the options available to them at each stage. These and other similar measures are essential to building trust.
396. Through the Criminal Justice Race and Ethnicity Board (set up in 2018) a greater emphasis has been placed on bringing a co-ordinated and strategic response to race disparity, building on pre-existing initiatives. These range from focusing on diversity in recruitment of front-line staff, to direct changes in day-to-day practice, or revised practice guidance especially assessment or decision-making stages of processes, such as in prosecution or reports containing sentencing proposals.

⁹³ *An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, Lammy Review, September 2017.

397. The independent Commission on Race and Ethnic Disparities was announced by the Prime Minister in June 2020 and will submit its report to the Prime Minister by the end of the year. Its work includes an explicit focus on criminal justice and the Chair of the Youth Justice Board for England and Wales sits on the commission. It will make evidence-based recommendations on criminal justice as well as on employment, health and education.
398. The Youth Justice Board is now using the “exploring racial disparity” data project to scrutinise all the stages where disparity is recorded, before and during a child’s entry into the justice system.⁹⁴ This imperative to act, and to invite external challenge, significantly bolsters publication of figures and obliges criminal justice organisations and agencies to examine the increasing number of datasets where ethnicity is recorded.

⁹⁴ *The journey of the child*, Youth Justice Board for England and Wales, July 2019.

Annex B – Female Offenders

399. Female offenders can be amongst the most vulnerable of all offenders, in both the prevalence and complexity of their needs. Many experience chaotic lifestyles involving substance misuse, mental health problems, homelessness, and offending behaviour – these are often the product of a life of abuse and trauma. Although the proportion of women in the criminal justice system is small – approximately 5% of the prison population and 15% of offenders in the community⁹⁵ – the positive impact of addressing their needs is significant.
400. The Female Offender Strategy, published in 2019, set out our vision to see fewer women offending and reoffending; fewer women serving short custodial sentences, with more managed effectively in the community; and improved conditions that support rehabilitation for those women in custody. The strategy set out a framework for taking this forward through effective partnerships, at national and local level, and launched an ambitious programme of work to improve outcomes for female offenders and make society safer by tackling the underlying causes of offending and reoffending. This will take several years to deliver.
401. On average, women commit less serious offences than men, and over three quarters of women sentenced to custody receive sentences of fewer than 12 months.⁹⁶ Importantly, we know that custody can be particularly damaging for women, and outcomes are poorer for women than men. Rates of self-harm for women in custody are nearly five times higher than those of men. Almost 60% of assessed female offenders have experienced domestic abuse, with coercion a factor in some women's offending. Women in custody are also twice as likely as men to report suffering from anxiety and depression, and more likely to report symptoms indicative of psychosis. Custody also results in significant disruptions to family life, with women more likely than men to be primary carers for dependent children, and this leads to an increased risk of intergenerational offending.
402. A bespoke offender management approach for women in prison has been developed which incorporates both complexity of need and risk of harm. It recognises the different challenges and opportunities in the female estate, where self-harm and the complex needs of some women are of significant concern.
403. The Offender Management in Custody (OMiC) model for women is an integrated one which incorporates both key work and case management. Both key work and case

⁹⁵ *Offender Management Statistics Quarterly: January to March 2020*, Ministry of Justice, July 2020.

⁹⁶ *Female Offender Strategy*, Ministry of Justice, June 2018.

management time will be allocated to women based on their level of need in addition to their risk of harm. Women assessed as having the highest level of need will receive an enhanced offender management service, with additional engagement time between Prison Offender Manager (POM) and prisoner. Unsentenced women and those assessed as having a lower level of need will receive key work.

404. There is consistency between the male and female models for case allocation and tiering and the timings of the handovers; which means there is consistency in the management of all individual's in the community within the same structure.
405. One of the strategy's key commitments was to pilot residential women's centres (RWCs) in at least five sites. These will offer sentencers a robust community option to divert women on the cusp of custody, who would otherwise receive a short custodial sentence. Attendance at an RWC will be subject to a risk assessment and the consent of the woman concerned, and will form part of a court order together with, if appropriate, a curfew or electronic monitoring. The RWC will provide safe accommodation for a defined period, combined with intensive wraparound support to address the complex needs underlying a woman's offending behaviour (e.g. mental health, substance misuse, domestic and sexual abuse, accommodation needs, finance/debt, and employment). At the end of this period a woman will be supported into move on accommodation, whilst continuing to access the holistic support and interventions for the remainder of the court order. On the 5 May 2020 the Minister for State announced funding for the development of residential women's centres, the first of which to be built in Wales.
406. Our strategy also set out our intent to explore family ties for female offenders across both custody and the community as part of our commitment to improve outcomes for women and improve conditions in custody. As such, we commissioned Lord Farmer to undertake a report into the importance of family and other relational ties through the lens of women in the criminal justice system. This review built upon Lord Farmer's first review (2017) on family and other relational ties in preventing reoffending and reducing intergenerational crime in the male estate.
407. The review report was published on 18th June 2019.⁹⁷ The review recognises the key differences in relationships for women and men: that female offenders are more likely than male offenders to be primary carers; and whereas children of male prisoners will often remain at home with their mother, a survey carried out in 1994 found that only 5% of children remain in the family home when mothers go into custody. It similarly recognises that women entering the criminal justice system are more likely than men to be in relationships that are either abusive (almost 60% report

⁹⁷ *The Importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime by Lord Farmer*, Ministry of Justice, June 2019.

experience of domestic abuse) and/or criminogenic. Lord Farmer made 33 recommendations for government, aimed at strengthening family ties and improving outcomes for women in the justice system.

408. We have made good progress with implementing Lord Farmer's recommendations, with six already complete. Other recommendations are inevitably going to take more time to implement but work is ongoing. Some of the recommendations are the responsibility of other government departments and external bodies and we are working with them closely to see how we can give best effect to the recommendations.

CCS0920194198

978-1-5286-2140-3