

Title: Government response to <i>Punishment and Reform: Effective Community Sentences</i> consultation. IA No: MoJ 174 Lead department or agency: Ministry of Justice Other departments or agencies: National Offender Management Service, HM Courts & Tribunals Service, Department for Work and Pensions, HM Revenue & Customs	Impact Assessment (IA)		
	Date: 22 October 2012		
	Stage: Implementation		
	Source of intervention: Domestic		
	Type of measure: Other		
Contact for enquiries: Effective Sentencing, Ministry of Justice effectivecommunitysentences@justice.gsi.gov.uk			

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
Not quantified	N/A	N/A	No NA

What is the problem under consideration? Why is Government intervention necessary?

Community sentences can be effective at tackling the causes of re-offending. For similar offenders, re-offending rates in 2008 for those serving community orders were 8.3 percentage points lower than those serving short-term custodial sentences. While re-offending rates for community orders are lower than those for similar offenders who are sentenced to short-term custody, they remain stubbornly high. There is good evidence that the public are open to considering community sentences as an effective disposal for offenders in the right circumstances. However, at present community orders do not always inspire public confidence, and too many do not include an element which the public and offenders would recognise as a punishment.

The Government is committed to ensuring that the sentencing framework allows for both robust punishment and effective rehabilitation of offenders. We consulted on proposals aimed at strengthening the non-custodial sentencing framework, in order to ensure it is effective at punishing and reforming offenders, and to increase the public's confidence that it deals appropriately with offenders.

What are the policy objectives and the intended effects?

Our main policy objective is to better punish and rehabilitate offenders in order to protect the public. We want to improve the effectiveness and credibility of community sentences, ensuring that they include a punitive element whilst still improving the ways in which we can tackle the causes of offending, indicating to offenders that there are consequences to their offending behaviour.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The policy options which have been considered in this Impact Assessment relate to community sentences only –

- Option 0: Do nothing
- Option 1: Community sentences - proposals to:
 1. include a punitive element in every community order;
 2. give courts the power to impose location monitoring as part of an electronic monitoring requirement;
 3. take into account offenders' assets when fixing the value of financial penalties;
 4. explore improvements in operational procedures for dealing with breach;
 5. allow for data sharing for the purpose of fixing and enforcing financial penalties.
 6. provide for courts to defer sentence to allow for a restorative justice intervention;
 7. remove the current £5,000 limit on compensation orders imposed in magistrates' courts; and
 8. tackle alcohol related crime through a compulsory sobriety scheme.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/Q		Non-traded: N/Q	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 22 October 2012

Summary: Analysis & Evidence

Policy Option 1

Description: Community Sentence proposals

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/Q	High: N/Q	Best Estimate: N/Q

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		£35 m	
High		£60 m	
Best Estimate	£10 m		Not quantified

Description and scale of key monetised costs by 'main affected groups'

The total costs of this package will be between £35m and £60m per year.

This consists of ongoing financial costs associated with including a punitive element in every Community Order of around £15m - £40m per year; legislating to provide pre-sentence restorative justice ("RJ") of around £20m per year. There will be one-off set-up costs of providing funds for restorative justice of around £10m.

Other key non-monetised costs by 'main affected groups'

There will be increased costs from the use of location monitoring technology to track offenders. Estimates of these costs are sensitive to the final design details of the policy, and may be commercially sensitive. There may also be financial burdens on the Ministry of Justice and its agencies in terms of additional enforcement costs for financial penalties, a higher volume or value of unpaid financial penalties and potential increased costs for dealing with breach. There may also be costs to employers and DWP if the volumes of Attachment of Earnings Orders and Deduction from Benefits Orders are increased.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	Not quantified	Not quantified	Not quantified

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

There may be some intangible benefits arising from a greater level of victim and public confidence in the criminal justice system. There may also be some financial benefits to the Ministry of Justice through greater use of financial penalties and to victims from a higher value, and a greater volume of enforced compensation orders. There may be long term, dynamic changes to the re-offending rate, which would have positive social impacts through lower crime and potential for lower future criminal justice system costs.

Key assumptions/sensitivities/risks

Discount rate (%)

N/A

The Ministry of Justice has undertaken analysis to determine the relative effectiveness of community order requirements at reducing re-offending, for similar offenders. Findings from this research suggest that punitive (e.g. unpaid work and/or curfew) requirements can, in some circumstances, reduce re-offending behaviour but that this depends on the combinations of other requirements with which punitive requirements are used. However, the research does not tell us the impact of substituting other requirements with unpaid work or a curfew. Where sentencers replace another requirement, there is a risk that re-offending rates may change.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Evidence Base

BACKGROUND:

1. The Criminal Justice Act 2003 created a single community order, which replaced all previous adult community sentences. Community orders are designed to deliver the purposes of sentencing, including restricting an offender's liberty while providing punishment in the community, rehabilitation for the offender and ensuring the offender engages in reparative activities. Community orders consist of one or more of 12 possible requirements, each aimed at achieving one or more specific outcomes. The duration of the order may be for up to three years although there are statutory minimums below that for some requirements included in an order. If a community order is breached, the court can amend it by making it more onerous, or it can revoke and re-sentence the offender, which may mean custody.
2. The 12 requirements currently available for community orders are:
 - Unpaid work (Community Payback) (40-300 hours)
 - Supervision (up to 36 months)
 - Accredited programme (length to be expressed as a specified number of days)
 - Drug rehabilitation (6-36 months – provisions in the Legal Aid, Sentencing and Punishment of Offenders ("LASPO") Act 2012 will remove the statutory minimum length; offender's consent is required)
 - Alcohol treatment (6-36 months – provisions in the LASPO Act will remove the statutory minimum length; offender's consent is required)
 - Mental health treatment (up to 36 months; offender's consent is required).
 - Residence (up to 36 months)
 - Activity (up to 60 days)
 - Prohibited activity (up to 36 months)
 - Exclusion (up to 24 months)
 - Curfew (up to 6 months and for up to 12 hours in any one day – provisions in the LASPO Act will increase this to a maximum duration of 12 months and for up to 16 hours in any one day).
 - Attendance centre (12-36 hours with a maximum of 3 hours per attendance)
3. Once relevant provisions in the LASPO Act are commenced, courts will also be able to impose a foreign travel prohibition requirement and an alcohol abstinence and monitoring requirement as part of a community order.
4. Offenders commencing community orders are assessed and "tiered" according to their likelihood of re-offending and their risk of serious harm, and the requirements of their sentence. Higher tier offenders receive higher levels of resource. Tiers 1 and 2 are usually supervised by Probation service Officers ("PSOs") and tiers 3 and 4 by qualified Probation Officers ("POs").

INTRODUCTION:

5. The Government is determined to cut re-offending in order to reduce crime and make society a safer place. In our 2010 Green Paper *Breaking the Cycle*, the Government set out plans for overhauling the way sentences served in the community are used, to increase the public's confidence in them and to tackle the continuing problem of reoffending. While acknowledging that custody will always be the right sentence for serious and dangerous adult offenders, for many offenders, serving a sentence in the community is the most appropriate punishment. It also encourages rehabilitation by allowing the offender to maintain important links to employment, housing and family that will assist in their ability to reform for good.
6. However, this needs to be balanced with the importance of ensuring that non-custodial sentences provide a recognisable punishment in which victims and communities can have confidence. There is some evidence that the public tend to see sentences in the community as less effective than custody.¹ However, there is also evidence that the public are open to considering these

¹ 'Engaging Communities in Fighting Crime - Casey, 2008; 'Understanding public attitudes to Criminal Justice' - Hough and Roberts, 2005

sentences as a sensible option in the right circumstances, and agree that they should be used as a way of making offenders pay back to the community.² A community order which both addresses the causes of offending and provides robust punishment can be a demanding and effective sentence for many offenders.

7. Significant improvements to community orders and how they are delivered and enforced are already underway, through provisions in the LASPO Act 2012 and changes to operational delivery. The Government aims to do this in a way that delivers value for money and is consistent with the spending review obligations of the Ministry of Justice. Our proposals in *Punishment and Reform: Effective Community Sentences* seek to build on these reforms, balancing improvements to the rehabilitation of offenders in the community with the need to ensure that community sentences provide an effective sanction.
8. This impact assessment accompanies the Government response to the *Effective Community Sentences* consultation. Details of our final proposals, which we have refined in the light of consultation responses, are outlined below together with associated impacts and projected costs.

Organisations in scope of these proposals:

9. The main groups affected by these proposals are:
 - Ministry of Justice (“MoJ”) including:
 - National Offender Management Service (“NOMS”); and
 - HM Courts & Tribunals Service (“HMCTS”); and
 - Legal Services Commission (“LSC”).
10. Other affected organisations and groups include:
 - Home Office;
 - Department for Work & Pensions (“DWP”);
 - Her Majesty’s Revenue & Customs (“HMRC”);
 - the judiciary including the magistracy;
 - Probation trusts;
 - Private and voluntary sector providers of probation services;
 - Restorative Justice Council;
 - Offenders;
 - Victims; and
 - Members of the public

Research into the relative effectiveness of community order requirements

11. We have undertaken further work to examine the effects of key parts of these proposals on re-offending.³ Findings from our research suggest that:

² 'Fitting the Crime. Reforming community sentences: Mending the weak link in the sentencing chain' - London Policy Exchange, 2010

³ The effectiveness of different community order requirements for offenders who received an OASys assessment - Helen Bewley 2012

- Offenders who receive supervision plus certain punitive requirements (unpaid work or curfew) committed fewer re-offences within a 2 year period of the community order, compared to those who only receive supervision;
- Offenders who receive supervision plus a curfew committed fewer re-offences within a 2-year period of the community order, compared to those who receive only supervision;
- Offenders who receive supervision, punitive requirement (unpaid work or curfew) and a programme requirement were less likely to re-offend and committed fewer re-offences within a 2 year period of the community order, compared to those who receive supervision and a punitive requirement;
- There was no impact on re-offending of adding a punitive requirement to certain other specified combinations of requirements; and
- Adding supervision to a standalone punitive requirement reduces re-offending.

12. These findings suggest that certain punitive requirements can, in some circumstances, reduce re-offending behaviour but that this depends on the combinations of other requirements with which punitive requirements are used. However, the research does not tell us the impact of substituting a requirement with unpaid work or a curfew.

Rationale for intervention:

13. The Government wants to ensure that sentencers have the tools available to give community sentences that make a real impact on reducing re-offending, punishing the offender and are as demanding as a short custodial sentence. The Government considers that community orders are currently not sufficiently demanding for offenders, and are not always used as flexibly or creatively as they might be.
14. There is some evidence to suggest that community sentences do not command the confidence of the public – in 2007/08 more than three-quarters of respondents to the British Crime Survey (77%) felt that sentences given by the courts were too lenient. Research undertaken by the Sentencing Advisory Panel showed that when asked to think freely about the principal aims of sentencing, punishment was brought up most often by members of the public.⁴
15. In some cases, community sentences fail to command the respect of offenders. The Offender Management Community Cohort Study (“OMCCS”) found that 82% of offenders on community sentences thought that prison sentence would be harsher (although this view was less common amongst the eleven per cent of offenders who claimed to have spent most of their adult life in and out of prison). Offenders' experience with the requirements of community orders also suggests that some offenders perceive community sentences to be soft; of those offenders who undertook unpaid work, half felt it was very/quite a demanding requirement while half found it not very/not at all demanding.⁵ There is some evidence that sentencers think that community sentences were seen by offenders as a soft option.⁶
16. We want to address low public and sentencer confidence in community sentences as a disposal. We consider that there are two principal reasons why community sentences fail to garner sufficient support.
17. First, community orders are insufficiently demanding and punitive for those offenders subject to them. Many community orders do not contain any visibly punitive or demanding element – for example, in 2011 around 10% of community orders supervised by the Probation service contained just a supervision requirement. The average length of a community order supervised by the Probation service has fallen by around 10% since 2006 while the average length of unpaid work requirements has also fluctuated. The percentage of successfully completed orders is still

⁴ Sentencing Advisory Panel (2009) – Public attitudes to the principles of sentencing

⁵ The OMCCS is a multi-methods study which tracks a cohort of adult offenders who commenced a community order between October 2009 and December 2010. The data presented is based on an interim dataset; the figures may change when the data is finalised. The statistics presented in paragraph 15 are based on the OMCCS longitudinal survey. The survey results have been weighted to be nationally representative for offenders at tier 2 and above. The survey results presented here have not undergone significance testing.

⁶ Mair G, Cross N, Taylor S (2008). The community order and the suspended sentence order: the views and attitudes of sentencers. *Community Sentences Series*. London: Centre for Crime and Justice.

too low and there is also evidence that there is public scepticism around the enforcement of certain requirements, including unpaid work and curfew.

Figure 1: Average length of Community Order (months) supervised by the Probation service, 2006-2011

	2006	2007	2008	2009	2010	2011
Average length of Community Order (months)	13.8	13.3	13.1	12.8	12.7	12.3

Figure 2: Average length of unpaid work (hours) for community orders, 2006-2011

	2006	2007	2008	2009	2010	2011
Average length (hours)	104.9	102.3	103.6	104.3	104.4	102.5

Figure 3: Percentage of Community Orders completed or terminated by the Probation service, 2006-2011

	2006	2007	2008	2009	2010	2011
Completed or terminated for positive reasons*	52%	56%	60%	64%	65%	66%
Terminated for negative reasons **	38%	34%	30%	26%	25%	24%
Terminated for other reasons	10%	10%	10%	10%	10%	10%

* Includes community orders that ran their full course and those terminated early for good progress

** includes community orders that were terminated early for failure to comply with requirements or for the conviction of an offence

18. Second, the existing flexibility in the community sentence framework is often not used to its full advantage. We want to encourage sentencers to be creative in their mix of requirements and disposals. Similarly, sentencers make little use of existing powers to impose financial penalties on offenders subject to community orders and we want to encourage sentencers to make use of financial penalties alongside community orders.

Figure 4: number of offenders given financial penalties as a secondary disposal alongside community sentences, 2011, all offenders

Secondary Disposal	Number of Offenders
Fine	473
Compensation Order	52,539
Confiscation order	247
Forfeiture Order	3,038
Restitution Order	54
Total	56,351

19. Government intervention is required to make changes to the community sentences framework to ensure that all offenders face the consequences of their offending behaviour through a visibly punitive and demanding community order.

Policy objectives:

20. The Government is already engaged in an ambitious programme of work to address the difficult question of rehabilitating offenders and reducing re-offending. This is being done by tackling mental health and substance misuse problems, encouraging offenders into a working routine (e.g. working prisons and day one mandation) or through innovative payment-by-results schemes to help re-integrate prisoners back into the community and reduce the likelihood of re-offending in the process.
21. In taking forward these further changes to community sentences, the Government's overarching aim is to increase the confidence of sentencers and the public in the effectiveness of community sentences. To achieve this, the Government has considered the following objectives:

- Ensure community sentences are effective at punishing offenders
- Improve the ability of community sentences in deterring offenders from crime and tackling the root causes of their offending behaviour
- Increase the use of restorative and reparative elements in community sentences
- Give courts greater flexibility to use community sentences and financial penalties more innovatively and creatively
- Ensure community sentences and financial penalties are effectively enforced

Option 0 – do-nothing – no change to the current community sentencing framework

22. In 2011, approx 113,000 offenders commenced Probation service monitored community orders⁷. Around half of offenders had only one requirement; 35% two; 12% three and 3% four or more requirements.

Figure 5 – offenders who commenced community orders supervised by the Probation service (excludes standalone curfews), by number of requirements, 2011

Number of requirements	Percentage of offenders
1	50%
2	35%
3	12%
4	2%
5	1%
6	<1%
7	<1%

23. In 2011, 50% of those offenders who commenced community orders with the Probation service received unpaid work (but not curfew) as a requirement; 9% had curfew (but not unpaid work) as a requirement; and 4% had both unpaid work and curfew as requirements⁸.

Figure 6 – volume of Probation service supervised offenders given requirements (or combinations of requirements), 2011

Requirements	Volume of offenders
Unpaid work but no curfew	56,763
Curfew but no unpaid work	9,915
Unpaid work and curfew	4,019

24. Under the do-nothing option, we assume that the volume of community orders as well as the composition of requirements would remain broadly flat. We assume that the volume of community orders issued in conjunction with fines stays at broadly similar levels to recent years but there may be some variation in fine values, when the provisions removing the upper limit on fines at the magistrates’ courts in the LASPO Act 2012 are commenced next year. We also assume the volume of Compensation Orders and use of restorative justice remains at generally similar levels to its recent trend.
25. We also consider a reduction in the unit costs of probation requirements, in line with the Ministry of Justice’s commitments over the Spending Review period.

⁷ The number of offenders who commence an order with the Probation service in a year is different to the number of orders commenced with the Probation service in that year as offenders may receive multiple community orders. There are also a number of standalone curfew orders which are not included as they are monitored by contractors rather than the Probation service.

⁸ This does not include contractor monitored curfews

Option 1 – Alternatives for reforms

26. Following the feedback received to the consultation paper, be it through formal responses or consultation events, the Government has refined its plans for reform. We propose to take forward the following measures through legislative changes:

- Placing a duty on courts to impose an element – either a community order requirement or a fine – that fulfils the purpose of punishment in or alongside every community order.
- Giving courts the power to impose tracking as part of a community order. This will allow courts to make use of new technology such as GPS, once available, to track offenders as part of their sentence, for the purposes of deterring crime, public protection, and crime detection.
- Providing for courts to defer sentencing to allow for a restorative justice intervention, in cases where both victim and offender are willing to participate.
- Making it clear that courts can, where appropriate, take account of an offender's assets when fixing the value of a financial penalty.
- Removing the current £5,000 limit on compensation orders for offenders aged over 18 imposed in the magistrates' courts;
- Allowing for DWP and HMRC to share data with HMCTS for the purposes of fixing and enforcing financial penalties.

27. We also propose to take forward the following measures operationally:

- Working with the courts, sentencers and probation trusts to explore improvements in operational procedures for dealing with breach of community orders;
- Encouraging more creative use of curfew requirements under the existing community order framework;
- Encouraging more flexible use of fines alongside community orders.

28. The following section provides detail on each proposal. It follows the order of the consultation document *Punishment and Reform: Effective Community Sentences* published in March 2012.

29. All costs outlined in Option 1 are based on unit costs of probation requirements, which are reduced in line with the Ministry of Justice's commitments over the Spending Review period. No account has been taken of any efficiency savings which may arise as a result of the probation review. All costs are based on the number of orders started in 2010 with the Probation service.

A punitive element in every community order

Aims and outcomes for the policy:

30. Too many community orders do not include a clear punitive element alongside other requirements aimed at rehabilitation and reparation, and so they do not effectively signal to society that wrongdoing will not be tolerated. The consultation paper proposed that every community order should include a clear punitive element alongside any other requirements aimed at rehabilitation or reparation. It suggested that the punitive element should consist of community payback, a financial penalty, or a significant restriction of the offender's liberty. However, it also suggested that there might be some offenders for whom an explicitly punitive requirement might not be suitable.

31. The Government remains of the view that it is vital, if community sentences are to have the confidence of victims and the public, that they should wherever possible include a demonstrably punitive element. However, we are mindful of the significant feedback we have received that that what is punitive for one offender in one set of circumstances will not necessarily be punitive for another offender in a different set of circumstances. We have borne in mind respondents' views that there will be rare occasions when a punitive requirement within a community order will not necessarily be appropriate.

32. We are therefore introducing amendments to the Crime and Courts Bill to create a duty on courts to include at least one requirement in a community order – or alternatively, a fine alongside the community order – that fulfils the purpose of punishment in the offender’s case. While we will not specify what requirements courts should impose, on the basis that what is punitive for one offender may not be punitive for another, our expectation is that these would generally be restrictions of liberty that represent to the public a recognisable sanction (such as curfews, exclusion, or community payback). The duty will provide for an exemption in exceptional circumstances where it would be unjust to impose a punitive element.
33. In 2010, around 65% of community orders⁹ contained a punitive element (such as curfew, community payback or exclusion). As a result of this proposal, we estimate that the percentage of orders that contain a punitive element will increase to around 95% of all community orders.

Costs:

34. We have estimated the costs of this proposal based on two scenarios. In both these scenarios, punitive elements are not included where the offender has physical or mental health problems that prevent them from undertaking these activities:
- Scenario A – sentencers add a punitive requirement to every community order that does not currently have one. This scenario costs £40m p.a.
 - Scenario B – sentencers add a punitive requirement to every community order that does not currently have one but in 50% of these cases, they substitute an existing non-punitive requirement for a punitive one. This scenario costs £15m p.a.
35. In some cases, sentencers may decide to make use of a financial penalty or foreign travel prohibition as a punitive requirement. This may reduce the cost of this proposal.
36. This cost does not include any longer term, dynamic changes to the re-offending rate. The Ministry of Justice has undertaken analysis to determine the relative effectiveness of different community order requirements in reducing re-offending, for offenders with similar characteristics. This research indicates that in some cases, adding a punitive requirement to a community order does not increase re-offending, and in some circumstances may reduce it. This impact depends on the combination of other requirements with which punitive requirements are used.
37. Given the need for community orders to remain proportionate to the offence committed, delivering a clear punitive element to every community order may, in some cases, cause certain requirements to be substituted by punitive ones. The research that we have undertaken does not tell us about the impact on re-offending of replacing requirements with more punitive ones.
38. Ensuring that there is a punitive requirement in every community order may change the likelihood that offenders do not comply with their orders. Interim information from the Offender Management Community Cohort study indicates that the breach rate for offenders subject to different requirements varies widely, however where an offender has multiple requirements, we do not know which requirement was breached.

⁹ This includes only Probation service monitored community orders. There are a number of standalone curfew orders which are not included as they are monitored by contractors rather than the Probation service.

Figure 7 – percentage of offenders that do not comply with their community order, broken down by requirement.

Requirement	Percentage of offenders that breach
Mental Health Treatment	12%
Prohibited activity	16%
Exclusion	18%
Alcohol Treatment	20%
Curfew	21%
Supervision	24%
Accredited programme	24%
Unpaid work	26%
Residential	28%
Drug Rehabilitation	39%
Specified activity	43%

Source: Offender Management Community Cohort Study interim findings, undertaken over the period October 2009 – December 2010

39. However, these differences may not completely reflect how onerous each requirement is and may instead reflect the different characteristics of offenders subject to each requirement, which influence their likelihood to breach their order. For an accurate comparison, we would need to compare the proportion of revoked sentences for offenders receiving each requirement with a well-matched group of offenders subject to a different requirement. Due to these reasons, we have not quantified the impact of adding a punitive requirement to every order, on breach rates.

Benefits:

40. There may be long-term changes to the re-offending rate from ensuring a robust punitive element is included in every community order. There is some evidence to suggest that adding punitive requirements to community orders can, in some circumstances, reduce re-offending behaviour for offenders with similar characteristics.³ This depends on the combinations of other requirements with which punitive requirements are used:

- Adding a punitive requirement (unpaid work or curfew) to supervision was found to reduce the frequency of re-offending by 8.1 percent in the first year of the community order and 7.5 percent within the second year. It appeared that this effect was largely driven by the impact of curfew requirements, rather than unpaid work.
- Adding a curfew requirement to a supervision requirement reduced the frequency of re-offending by 12.1 percent within the first year of the community order and 8.5 percent within the second year
- Among the other combinations of requirements that were examined, there were no statistically significant changes in re-offending from adding a punitive requirement to existing packages of requirements

41. This suggests that where sentencers add a punitive requirement (in particular, a curfew) to offenders who would otherwise receive standalone supervision, we may expect a lower future level of crime. There may be reduced social and exchequer costs associated with re-offending behaviour as crime imposes costs on society, notably the physical, emotional and financial impact on victims and the costs to taxpayers involved in dealing with the consequences of crime. We have not quantified this long term benefit.

42. Ensuring that there is a punitive element to every community order is designed to give the public a greater level of confidence in community orders and demonstrate that all offending has consequences. Offenders too need to realise that their offending will result in sanctions.

43. There may be some intangible benefits arising from a greater level of public confidence in the criminal justice system, and from justice being seen to be done through offenders undertaking visible and punitive requirements on community orders.

Creative use of electronic monitoring

Aims and outcomes for the policy:

44. The consultation paper sought views on how to make more creative use of existing electronic monitoring technology in enforcing community order requirements. It also proposed to make use of new technologies, both to monitor existing requirements and to allow location monitoring to deter future offending.
45. We will encourage courts to make use of changes to the length and duration of curfews under the LASPO Act 2012, and to make more flexible and creative use of curfews within these powers. We will also legislate to give courts the power to impose location monitoring as part of a community order by extending the current electronic monitoring requirement. This will allow courts to make use of new technology to track offenders as part of their sentence (rather than just monitoring compliance with other requirements), for the purposes of deterring crime, public protection and crime detection.
46. We are clear that implementation of this new provision will be subject to the relevant technology being affordable and fit for purpose, and to appropriate safeguards for its use being in place. We envisage that guidance to probation pre-sentence report writers will provide advice to courts on assessing the appropriate duration of location monitoring, and on offenders for whom it might be appropriate to use it. As we do not know for which group of offenders this requirement might be most effective, we intend to assess carefully how courts make use of it and its effectiveness. We also propose to publish a code of practice setting out the appropriate tests and safeguards for the use, retention and sharing of any collected data. We intend to consult further on safeguards before full implementation of this provision.

Costs:

47. It is not possible at this stage to assess the potential cost of tracking. Electronic monitoring is contracted to private providers but the cost is paid for by NOMS. We are currently re-competing the EM contracts with the aim of driving down unit costs and introducing new technology over the current spending review period (until 2014/15) – the unit costs are subject to the outcome of this competition. Given that we expect the use of EM to continue to rise, the total cost of EM is likely to increase rather than decrease. Tracking will be an additional cost and pressure especially given the possible intensive use of tracking data for the purposes of assisting with crime investigation. There is also considerable uncertainty involved in assessing the likely number of offenders who may be subject to location monitoring. We will therefore provide estimates of these costs once the competitive process has closed.

Benefits:

48. Greater use of electronic monitoring of compliance with other requirements in a community order could deter the offender from breaching the requirements of their community order if they face being sanctioned. Equally, it could increase the number of detected breaches of community orders. If greater use of electronic monitoring were to deter offenders from breaching their community orders, there may be social benefits in terms of reduced re-offending and reduced cross-criminal justice system costs (NOMS, HMCTS and the LSC).
49. Use of tracking may discourage offenders from committing further offences, because of the offender's perception that the tracking data may link the offender to the offence. If this were the case, there may be social benefits in terms of reduced social costs of crime. The social costs of crime include the costs to victims (physical, emotional and financial costs) as well as the financial costs to the criminal justice system.
50. Tracking may also assist the police in detecting a greater number of crimes.
51. There may be improvements in public protection achieved through enabling the investigation of crime. There may also be increased public confidence in the criminal justice system if the public have greater reassurance that offenders are subject to location monitoring.

Offenders' assets

Aims and outcomes for the policy:

52. The consultation paper sought views on how to create a new sentencing power that would allow courts to confiscate offenders' property as a punishment in its own right. Given the obstacles to creating a new sentencing power to seize assets that many respondents identified, we do not propose to take forward this proposal in the form set out in the consultation paper. However, we have noted that many respondents argued for making more effective use of existing powers to seize property to enforce unpaid financial penalties.
53. Instead we will legislate to make clear that courts can take account of an offender's assets when fixing the value of a financial penalty. This will allow courts to impose proportionate and equitable fines and compensation orders in cases where offenders may be cash-poor but have property of significant value. We will also review whether existing court powers to seize property in lieu of unpaid financial penalties – for example, powers to issue distress warrants or to clamp the cars of fine defaulters – give the courts the tools they need.

Costs:

54. In addition to the current means test on offenders that courts currently undertake, courts will also be able to take into account offenders' assets when setting financial penalties. We do not propose to add assets to the means information form that defendants are required to complete; instead, we would envisage courts seeking information on assets only in cases where they consider it appropriate. It is possible that extra judicial time will be required to do this.

Benefits:

55. As courts will be required to take into account offenders' assets when setting financial penalties, the value of financial penalties may rise in some circumstances.
56. There may be social benefits from an increased level of public confidence in the Criminal justice system.

Promoting greater compliance with community orders

Aims and outcomes for the policy:

57. The consultation paper sought views on how we could ensure that offenders face swift and immediate sanctions for breach of a community order, and suggested that a fixed penalty-type scheme might be one means of doing so. It also sought views on whether such a scheme could be appropriate for administration by offender managers, rather than by courts.
58. The Government recognises the concerns that respondents have raised about a fixed penalty for certain breaches of community orders, and about giving offender managers the power to impose this. As a result, we do not propose to take forward this option. Instead, we have considered alternative means of making the breach process swifter and more immediate for offenders. For example, a significant cause of adjournment of breach hearings is that the defendant is not present. We propose to work with the courts, judiciary and Probation service to explore improvements in operational procedures for dealing with breaches, with the aim of ensuring that offenders are aware of the consequences of breach and that if they do breach, this is dealt with as swiftly as possible.

Costs:

59. There may be additional short-term pressures on HMCTS from speeding up the time taken to deal with breach proceedings, as a result of a spike in demand on court time.

Benefits:

60. Figure 8 indicates that around 22% of offenders breached their community order, although the number that resulted in court proceedings is lower (9%; Figure 9).

Figure 8 – Percentage of offenders involved in breach proceedings

	Percentage of all offenders
Offenders that breach	22%
Breach proceedings that result in a new sentence	9%
Breach proceeding that resulted in a modified order	17%
Proceedings withdrawn	5%

Source: Offender Management Community Cohort Study interim findings; this analysis uses administrative data provided by eight Probation Trusts and may not be nationally representative. NB: breach proceedings that result in a new sentence and those that result in a modified order do not add up to the offenders who breach as some offenders breach their orders on multiple occasions

Figure 9 – Percentage of offenders returned to court for breach of community order

	Yes	No
Since it started, have you been taken back to court for breaching your Community Order?	9%	91%

Source: Offender Management Community Cohort Study interim findings. The actual proportion of offenders taken to court is likely to be higher, as offenders could potentially breach after interview.

- There may be some benefits to NOMS if the number of breaches is reduced and/or breaches are heard more quickly. There may be benefits to HMCTS if the number of breach proceedings heard before a Court is reduced or they are heard more quickly.

More effective fines

Aims and outcomes for the policy:

- The consultation paper set out proposals to promote more flexible use of fines, both instead of and alongside community orders. It also sought views on how to improve the information available to courts about offenders' financial circumstances.
- As part of our proposals on a mandatory punitive requirement, we will make it clear that courts can fulfil this duty by imposing a fine on the offender alongside a community order. Alongside this, the Sentencing Council has agreed to consider the inclusion of material on courts' ability to use fine Bands D and E for offences that have crossed the community order threshold in future offence-specific guidelines. They will also consider how best to draw sentencers' attention to their ability to impose a fine alongside a community order.
- Having access to this data at an earlier stage will improve the financial information available to courts, and allow for more fines to be set at the right level in the first instance. It will also improve the information available to HMCTS for enforcing payment of outstanding fines.

Costs:

- HMCTS is the organisation that enforces, collects and retains fine income. If more enforcement is required to collect increased volumes of fines, or if a higher volume of fines are unpaid, HMCTS may incur additional costs.
- Giving HMCTS the legal authority to share information with DWP and HMRC would enable the creation of an IT interface to help the exchange of information between these organisations, for the purpose of fine enforcement. HMCTS would incur costs in IT development as well as annual fees from having access to DWP and HMRC's IT systems.
- We consider that enabling HMCTS to share data with DWP and HMRC may increase the number of Attachment of Earnings Orders ("AEOs") and Deduction from Benefit Orders ("DBOs") issued in pursuit of unpaid financial penalties. AEOs are payment orders set by a County Court which bind the defendant's employer to deduct money from their wages and return it to court. DBOs are payment orders set by a County Court which bind the Department for Work and Pensions ("DWP") to deduct money from statutory benefits and return it to court.

68. Any increase in the use of AEOs and DBOs brought about by this proposal may increase the costs of administering these orders to employers and DWP, respectively.

Benefits:

69. HMCTS could realise additional fine income from this proposal. Fines income is accounted for upon collection and is split between the element retained by HMCTS which is accounted for in HMCTS's accounts and that remitted to the Consolidated Fund which is accounted for in the Trust Statement.

70. As the courts will have access to greater information on offenders' financial circumstances, financial penalties will be set on a basis that is more appropriate to offenders' financial circumstances. This may also reduce the administrative costs of the number of cases that return to court for a re-assessment of the original fine level.

71. Data sharing may also improve compliance with compensation orders. Victims may therefore benefit from a higher value of compensation.

Restorative Justice

Aims and outcomes for the policy:

72. The consultation paper sought views on how to build a better evidence base for the use of pre-sentence restorative justice, and on how to maximise benefits and mitigate risks of such interventions. We also asked for feedback on how to strengthen the role of victims in restorative justice, and on how to increase capacity for restorative justice at a local level.

73. We are introducing an amendment to the Crime and Courts Bill to provide explicitly for courts to defer sentencing to allow for a restorative justice intervention in cases where both victim and offender are willing to participate. Victims and offenders will have to be assessed as suitable and local provision will need to be available. We have also listened to comments by respondents regarding the importance of proper assessments to be undertaken by accredited RJ facilitators. This will be an important component of the cross-CJS framework that is being developed for restorative justice. We have begun to work with the Restorative Justice Council and other partners to consider how awareness of RJ can be improved, how RJ at a local level can be made as accessible as possible and most importantly how accreditation and training standards of RJ practitioners can be maintained and improved.

74. Evidence on RJ that was previously published in the "Breaking The Cycle" Evidence Report included a meta-analysis of the effectiveness of 35 individual restorative justice programmes in Canada and concluded that, in general, the programmes had a positive impact on reoffending rates, in comparison with non-restorative justice interventions.¹⁰

75. A joint Home Office and Ministry of Justice commissioned evaluation of a number of restorative justice pilots found high levels of victim satisfaction, particularly for the conferencing method which was associated with 85% victim satisfaction.¹¹ The evaluation also found that when looking at these pilots, together, they were effective in reducing the frequency of reoffending. Recent further analysis of the data by the Ministry of Justice has suggested that the size of this impact was around 14 per cent.

Costs:

76. There would be costs of investment in 'start up' funds to deliver training to staff and volunteers in local areas. The exact nature of this cost depends on existing provision within local Probation Trusts and local capacity to deliver RJ. We consider that start-up costs would be around £10m which would be incurred by local Probation Trusts. This is based on an extrapolation of the start-up cost of the Thames Valley RJ pilot.¹¹

¹⁰ Latimer, J., Dowden, C., and Muise, D. (2001) The Effectiveness of Restorative Justice Practices: A Meta-Analysis. Carleton University

¹¹ Shapland, J., Atkinson, A., Atkinson, H., Dignan, J., Edwards, L., Hibbert, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A. (2008) Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes. Ministry of Justice Research Series 10/08

77. There would also be ongoing costs arising from increased use of RJ. If all those victims and offenders eligible for restorative justice, wished to participate and the courts agreed, operating costs would be approx £20m per year. In practice, costs may be mitigated as courts will not be able to agree pre-sentence restorative justice without a recommendation from a probation officer, and will not be able to do so unless there is local provision.

Benefits:

78. The joint Home Office and Ministry of Justice evaluation¹² shows that 85 per cent of victims who participated in the restorative process said they were satisfied with the experience. Therefore, there may be social benefits in terms of increased victim (or public) satisfaction with the criminal justice system.

79. There is some evidence that restorative justice programmes can have a positive impact on re-offending rates, in comparison with non-restorative justice interventions.¹³ There may therefore be social benefits if re-offending is reduced among offenders who participate in RJ schemes as a lower future number of crimes may be committed.

Compensating victims

Aims and outcomes for the policy:

80. We sought views on how to improve the information available to courts about loss, damage or injury caused by offences, so that courts could impose compensation in as many cases as possible. We also proposed to remove the current £5,000 cap on a single compensation order for adult offenders in the magistrates' courts, in line with equivalent provisions for fines in the LASPO Act 2012.

81. The Government will consider as part of our forthcoming review of the Victim Personal Statement how more effective use of it can be made to provide courts with relevant information about injury, loss or damage an offence has caused to a victim. Alongside this, the Sentencing Council will examine whether changes could be made to guidelines on compensation orders as part of its review of the Magistrates' Courts Sentencing Guidelines. We are introducing an amendment to the Crime and Courts Bill to remove the current £5,000 limit on compensation orders imposed in the magistrates' courts.

Costs:

82. If more enforcement is required to collect increased volumes of compensation orders, or if a higher volume of compensation orders are unpaid, HMCTS may incur additional costs.

Benefits:

83. The intention behind compensation orders is that offenders should make financial reparation to victims for the physical, emotional and financial costs involved in committing a crime.

¹² Shapland, J., Atkinson, A., Atkinson, H., Dignan, J., Edwards, L., Hibbert, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A. (2008) Does restorative justice affect conviction? The fourth report from the evaluation of three schemes. Ministry of Justice Research Series 10/08

¹³ Latimer, J., Dowden, C., and Muise, D., (2001), The Effectiveness of Restorative Justice Practices: A meta-analysis, Carleton University

Figure 10 – Compensation Orders by value, Magistrates’ Courts and Crown Court, 2011, individuals and companies

	Magistrates' Courts	Crown Court
£0-£99	63%	8%
£100-£199	19%	14%
£200-£299	8%	19%
£300-£399	3%	7%
£400-£499	1%	4%
£500-£749	3%	17%
£750-£999	1%	6%
£1000-£1999	1%	13%
£2000-£2999	<1%	4%
£3000-£3999	<1%	2%
£4000-£4999	<1%	1%
Over £5000	<1%	4%

84. As demonstrated in the figure above, only a small number of compensation orders are currently set close to, or at £5,000 in the magistrates’ courts. However, in some circumstances, enabling magistrates to be more flexible in the value of compensation orders may benefit victims. The value of some compensation orders may increase meaning that victims of crime may benefit from a higher amount of financial compensation, assuming that higher values of compensation orders do not affect the ability of offenders to pay.

Tackling alcohol related crime

Aims and outcomes for the policy

85. We are considering how we can help tackle the problem of alcohol related offending through enforced sobriety schemes. We are undertaking work to test out the purposes and effect of such schemes to establish the circumstances in which it would be appropriate and effective to impose such a requirement rather than enlist other interventions or forms of treatment. Legislative provisions were introduced in the LASPO Act to create an *Alcohol Abstinence and Monitoring Requirement* as part of a community or suspended sentence order. This will allow us to pilot the use of sobriety requirements for more serious offences where alcohol has been a contributing factor.
86. We will also carry out another pilot which will focus on conditional cautions and apply to offenders who commit alcohol-related offences for which a conditional caution can be offered such as being drunk and disorderly, common assault and criminal damage. This will be done within existing legislation. We will set out further details of these pilots in the Government’s forthcoming Alcohol Strategy. The aim is to promote abstinence for offenders whose offending is linked to alcohol, but we are not proposing that these schemes should apply to offenders who have an alcohol dependency. These offenders ought to be given alcohol treatment, as is the case currently, to help them address their rehabilitative needs.
87. The Government published both an impact assessment and equality impact assessment on this proposal when the amendment was tabled to the then LASPO Bill and in the cumulative impact assessment (published when the LASPO Bill received royal assent) and equality impact assessment.
88. These documents are located on the LASPO Act background documents webpage:

www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information

Summary of financial impacts:

	Final Year of the Spending Review (2014/15)
Policy proposal	Total estimated financial costs to the MoJ
A punitive element in every community order	£15m - £40m in annual operating costs
Location monitoring (tracking) offender's whereabouts;	TBC ¹⁴
Offenders' assets	Not known, likely to be Minimal
Promoting greater compliance with community orders	Minimal
More effective fines	Minimal
Restorative Justice	Around £10m investment in start-up funds for local Probation Trusts; Up to £20m in annual operating costs.
Compensating victims	Minimal
Tackling alcohol related crime	Pilot - not costed
Total	£35m - £60m annual costs £10m start up costs for RJ

¹⁴ The cost of this policy proposal is dependent on which offenders it is used for and the future unit costs of electronic monitoring technology.