Ministry of JUSTICE

Punishment and Reform: Effective Community Sentences

Consultation Paper CP8/2012
This consultation begins on 27 March 2012
This consultation ends on 22 June 2012

March 2012

Punishment and Reform: Effective Community Sentences

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

March 2012

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Any enquiries regarding this publication should be sent to us at effectivecommunitysentences@justice.gsi.gov.uk.

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About this consultation

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Additional ways to feed in your views:	Feedback to this consultation can be given online at https://consult.justice.gov.uk/digital-communications/effective-community-services
Response paper:	A response to this consultation exercise is due to be published in the autumn at: http://www.justice.gov.uk

Ministerial Foreword

An effective criminal justice system should punish law breakers and protect the law-abiding. Yet ours has grave weaknesses. Almost half of all adult offenders reoffend within a year of leaving custody. That figure rises to three quarters for those sentenced to youth custody. Reoffending by offenders sentenced to less than 12 months in prison is estimated to cost the economy up to £10 billion annually. Most seriously of all, left unchecked, these rates of repeat crime mean thousands of people are unnecessarily becoming victims.

That is why the Government has embarked on wholesale reform – beginning with prisons becoming places of meaningful work and training, not idleness, where many more prisoners will work a full working week, and the extension of payment by results, so that the taxpayer only funds rehabilitation services that work. Together with determined action in areas like mental health and addiction, these measures will help cut reoffending, protecting the public more effectively, whilst ensuring that wrong-doers are properly punished.

But the changes we are introducing cannot end here. The next stage of reform is sentences in the community and the operation of the Probation Service which supervises them. In two publications, on which we are consulting in parallel, I set out radical plans to make sentences in the community more credible and to reform probation so it is more effective in reducing crime, by extending competition and opening up the management f lower risk offenders to the innovation and energy of the widest possible range of providers.

I have already announced that those given Community Payback will in future be required to do a full five-day week of productive work and job seeking, providing thousands of hours of constructive tasks like cleaning up litter and graffiti. I have also announced plans to increase the maximum length of curfew to 16 hours a day for 12 months.

Now, we plan to go further, not in order to create an alternative to short prison sentences, but to address the fact that reoffending rates for sentences in the community are still far too high, and that they fail to command public confidence as an effective punishment. I share public concern that sentences can require just a weekly meeting with probation officers – and that, in the past, unemployed offenders sentenced to Community Payback have on occasion been required to work for only six hours per week.

Under the proposals in the consultation we will:

- ensure that there is a clear punitive element in every community order handed down by the courts. As a matter of principle, it is right that those who commit crime should expect to face a real sanction, and one that helps make good the wrong they have done;
- explore the creation of a robust and intensive punitive community disposal, which courts can use for offenders who merit a significant level of punishment; and

- support more creative use of financial penalties alongside community orders, ensuring that they are set at the right level and effectively enforced.

Ensuring sentences in the community are properly punitive is the counterpart of our efforts to ensure that prison sentences are properly reformative. But the aim is not just that these sentences will be seen increasingly as a credible, robust and demanding punishment by sentencers, victims and the wider public. The proposals being consulted on also seek to make sentences in the community more effective in helping wrongdoers go straight.

For example, extending the use of curfews and tagging will ensure that offenders are off the street, can't socialise in the evening and have fewer chances to offend. But, used creatively, they will also contribute to reform of the offender – by ensuring that offenders are home before appointments to access drug treatment, or do Community Payback. We are also proposing to expand the use of restorative justice practices, which give victims a greater stake in the resolution of offences and the criminal justice system as a whole, whilst also requiring offenders to face up to the consequences of their actions. And community orders will continue to address the problems that have caused, or contributed to the offending behaviour in the first place – such as drug abuse, alcoholism and mental health problems. In all these areas, meaningful punishment and reform go together.

We are also proposing reforms to the Probation Service. I believe profoundly in the importance of this vital public service, and acknowledge the excellent front-line work being done by many hard-working professionals. Whilst there has undoubtedly been a real shift in emphasis from centralised to localised delivery of services and there are many examples of innovation across probation, we want to see a step change which draws fully on the innovation, expertise and local knowledge of all sectors - public, voluntary and private - in a way which embraces competition and is genuinely open to new ways of doing things better.

Under my plans, we have already begun encouraging better use of front-line professional skills and judgement with the introduction of less prescriptive National Standards for probation staff and light touch performance management. Now I propose to look again at the structure and organisation of the service, keeping the safety of the public uppermost in mind.

The consultation:

- further extends the principles of competition, which have been applied successfully to the prison estate over recent years, to more of community-based offender management. The Offender Management Act 2007 set the basis of this policy and its implementation needs to be speeded up;
- explores how best to ensure that probation can lever in the expertise of the voluntary and private sectors. This builds on existing policies to pay community sentence providers by results;
- sees Probation Trusts in the future taking on a stronger role as commissioners of competed probation services, contracted to be

responsible for driving better outcomes. It proposes to separate clearly the commissioners from the providers of competed services; and

- consults on different models for oversight of probation services, including the potential involvement of Police and Crime Commissioners and local authorities at a later stage.

I believe in competing services as a means to raise the quality of public services. This can deliver innovation, better performance and value for money. Services should be funded by taxpayers, but delivered by whoever is best suited to do so.

Under my plans, the public sector will continue to have a major and well-defined role – as the safety of the public is our priority. In keeping with the model of competition already applied elsewhere in the penal system, my plans envisage that responsibility for monitoring offenders who pose the highest risk, including the most serious and violent offenders, will remain the remit of the public sector. The proposals in the consultation suggest opening to the market the management of lower risk offenders. The public sector will also retain responsibility in the case of all offenders for taking certain public interest decisions including initially assessing levels of risk, resolving action where sentences are breached, and decisions on the recall of offenders to prison. Our proposals also exclude probation advice to court from competition. This advice is principally concerned with identification of the most appropriate sentences for offenders and prosecuting their breaches – which must remain reserved to the public sector.

The aim of all this is to free up a traditional, old-fashioned system and introduce new ways of operating and delivering that will help drive a reduction in reoffending. We must do so without compromising public safety or destabilising performance. If we get this right, we will help end the era of command and control Whitehall public services. The prize is a more dynamic and effective Probation Service – one that keeps the best of the public sector, but that also benefits from the innovative thinking and flexibility of business and charities.

The Government's goal is to reform sentences in the community and probation services so that they are able to both punish and reform offenders much more effectively. Community sentences are not an alternative to short prison sentences. They must be made more effective punishments in their own right, if they are to enjoy greater public confidence and reduce the chances of an offender committing new crimes against new victims. A modernised probation service, freed to focus relentlessly on the goal of reduced reoffending, will be able to unlock better ways of delivering those sentences.

Kenneth Clarke
Lord Chancellor and Secretary of State for Justice

March 2012

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Introduction

1. This consultation sets out proposals for radical reforms to the way in which sentences served in the community operate. Victims and society have a right to expect that wrongdoing results in punishment, and that they will be protected from further reoffending. Ultimately our goal must be to reduce crime and see fewer victims.

2. Custody will always be the right sentence for serious and dangerous adult offenders. Many other offenders are effectively punished and reformed in the community where they can maintain important links to employment, housing and family that will assist in their ability to go straight. A punitive fine, enforced swiftly and effectively, can hit an offender where it hurts – their pockets. A community order, tailored to ensure clear punishment, payback to victims and society, and to support the offender in going straight, can be a robust and effective sentence for some offenders. Restorative justice, used appropriately alongside punishment can ensure that offenders face up to the consequences of their crimes, take responsibility for their actions and in turn reform their behaviour.

3. There is good evidence that the public are open to considering these 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.

4. Presently, the sentencing framework that underpins sentences in the community does not deliver what the public expect. Nor does the way in which community sentences are managed. Reoffending rates for community sentences are still too high. While enforcement of fines has increased significantly in recent years, there is scope for financial penalties to be used more flexibly in addition to or instead of other sentences. Although Community Payback (also known as unpaid work) has given offenders the chance to repair some of the harm they cause, there needs to be a much greater emphasis within community sentences on reparation and opportunities for restorative justice.

5. 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. In this consultation we explore in more detail how we can achieve that.

6. Community orders need to be demanding and rigorously enforced so that they are as punitive and effective as a custodial sentence if not more so. The Government is clear that short prison sentences have their place, and this consultation does not seek to replace them with community sentences. But where an offender is on the cusp of custody,

we want sentencers to have a genuine choice. We seek your views on how we can do that through a tough package of requirements that would involve Community Payback, a significant restriction of liberty backed by electronic monitoring technology, a driving ban, and effective financial penalties.

7. Too many community orders do not include an element which the public and offenders would recognise as 'punishment'. It is a fundamental principle of justice that those who are found to have done wrong should be punished. The Government is committed to that and in this consultation we explore how we can ensure that all community orders have a clear, punitive element of Community Payback, restriction of liberty backed by electronic monitoring, or a financial penalty.

8. This means developing the punitive options available to the courts. Provisions in the Legal Aid, Sentencing and Punishment of Offenders Bill will increase the maximum length of curfews so that we can keep offenders off the street for longer, stop them socialising in the evenings, and remove opportunities for them to cause trouble. We have also ended the unsatisfactory situation in which unemployed offenders sentenced to Community Payback could work for just six hours per week. Instead, these offenders will be required to work more intensively in a way that more closely replicates a normal working day and week. We want to build on these tough punitive options further by being creative with the technology available for monitoring offenders' movements, and by exploring the use of asset seizure as a standalone punishment that could be added to community sentences.

9. We also want to see fines used more flexibly to punish offenders. Financial penalties should not simply be reserved for the lowest-level offenders. In the right circumstances, a heavy fine can be just as effective a punishment as a community order. In this consultation we set out proposals to support sentencers to make more flexible use of the fine, and ask for views on how we can improve the information available to courts to ensure fines are set at the right level.

10. If community penalties are to be taken seriously by offenders and command the confidence of sentencers and the public, they need to be effectively enforced. Targeted enforcement activity by Her Majesty's Courts and Tribunals Service (HMCTS) has already brought improvements to fine collection rates, and this consultation sets out our plans for further improvements. Likewise, for community orders we want to ensure that offender managers have sufficient discretion and powers to ensure offenders comply with their sentence.

11. To be truly effective, sentences in the community should not only punish and reform offenders, but also ensure that offenders pay back to society for the harm they have caused. This consultation asks for views on how we can go further in ensuring as many offenders as possible make reparation to victims and take part in restorative justice approaches whenever appropriate.

12. Throughout all our efforts to reform these sentences, we will continue our relentless focus on reducing reoffending. The Legal Aid, Sentencing and Punishment of Offenders Bill will increase access to treatment, and increase flexibility around its delivery, for offenders who misuse drugs or alcohol or who have mental health problems. We are pioneering a world first offender management system in which we pay providers by results. We have specifically tailored approaches for some women offenders. In this consultation we explore ways in which we can tackle alcohol-related crime, which accounts for a significant proportion of violent offences.

13. Collectively, these proposals will offer a robust sentencing framework that will punish offenders, command public confidence and support our ongoing drive to reduce reoffending and make the public safer.

14. This reform will not occur in isolation. It will build on an ambitious programme of reform set out in *Breaking the Cycle*. The legislative provisions for that reform are contained in the Legal Aid, Sentencing and Punishment of Offenders Bill, currently before Parliament.

15. The linked consultation on probation proposes reforms that will enable community sentences to be delivered more effectively and efficiently, with probation trusts increasing their focus on commissioning services to meet local need, and harnessing the innovation and energy of providers across all sectors. Therefore, this consultation must be considered within the context of changing probation services.

16. The Government is also consulting on its strategy for supporting victims of crime. One of our aims in that strategy is to move away from a culture of state compensation towards one of offenders making direct reparation for the harm they cause. Our reforms to sentences in the community will play a role in achieving that shift.

17. Together, this work provides the basis for the Government to deliver its vision of reducing the harm caused to victims and society by reoffending. Our overall success will be measured by the reduction we make to the rate of reoffending.

18. We are bringing forward these reforms at a challenging time in terms of public finances. Given the wider landscape of financial constraint and consolidation, these proposals must be considered in the context of affordability. Our reforms must enable us to do better with less. Through this consultation we seek views from sentencers and local areas in particular to develop our understanding of the choices around how these proposals could be introduced. The related impact assessment sets out our estimates of the impacts of these reforms; but we will be undertaking further work as part of the consultation exercise to assess the costs and trade-offs of doing so. The value for money of any investment required will be paramount when considering implementation.

1. Tough and effective punishment

19. Sentences in the community need to be demanding and rigorously enforced so that they are as punitive and effective as a custodial sentence, if not more so. In the community an offender can face up to the consequences of their crime, serve their punishment and maintain the important ties which can ultimately move them away from crime and so spare the public further harm. This is the case for many offenders who are on the cusp of a custodial sentence.

20. The Government has made clear in *Breaking the Cycle* that we do not wish to abolish short custodial sentences. Our objective is to ensure that sentences in the community are effective in stopping offending behaviour escalating to the point where prison becomes the only option. Some offending behaviour is so serious that the sentencer's decision is clear cut, and custody is the only response. On other occasions a sentencer has to decide between imprisonment and a community sentence. In these cases, we want to ensure that courts have a sufficient range of robust options which will both punish the offender and help prevent further offending. But to be clear, we do not want to see community sentences replace custodial sentences.

21. In this section we explore how we can create and deliver a tough and intensive community order for those on the brink of custody. We also seek views on how we can ensure that every community order delivers a clear element of punishment. To support this, the consultation sets out proposals for how new powers and advances in technology might support the delivery of robust, punitive community orders.

22. This section also explores how courts might be encouraged to make more effective use of fines alongside, or instead of, community orders. We explore how courts can be provided with better information about offenders' financial circumstances, and set out steps being taken by HMCTS to improve collection of fines.

Intensive Community Punishment

23. The courts already have a range of options for delivering strongly punitive and reformative options in the community. We believe that there is need for an intensive punitive disposal which courts can use for offenders who deserve a significant level of punishment; but who are better dealt with in the community to maintain ties with work and with family – which will ultimately reduce the risk of their reoffending. Provided that these sentences are sufficiently robust, and limit offenders' opportunity to commit further crime, we think that this is a better deal for victims.

24. That is why we propose to develop Intensive Community Punishment, which will include a tough combination of:

    - Community Payback;
    - Significant restrictions on liberty through an electronically monitored curfew, exclusion, and a foreign travel ban;
    - A driving ban; and
    - A fine;

25. When considering the imposition of Intensive Community Punishment, there may be positive reasons why the court would not want to impose a driving ban. This might be the case where to do so would hinder an offender's ability to move away from crime, for example where the offender needs a car to drive to work or for childcare.

26. Later in the paper we explore the potential for new punitive measures for the courts. At paragraphs 55 to 60, we explore the potential to use advances in electronic monitoring technology to track offenders; and at paragraphs 61 - 74, we explore the creation of a stand alone power for courts to seize assets from offenders. In future, if they are taken forward, these could form part of an Intensive Community Punishment approach.

27. We think that these orders will work best if they are short but intensive – a maximum of 12 months. Offenders should be occupied in purposeful activity, whether in their jobs or on Community Payback, throughout the week. They will have the rights that most of us take for granted – to socialise outside their homes in the evening, to travel abroad – removed for the duration of their sentence. Courts will be able to add to this with requirements aimed at ensuring reparation to the victim and the community – such as compensation orders and restorative activities. They will also be able to add rehabilitative requirements where that is necessary. This will add up to an intensively punitive response to crime.

28. Some probation areas already offer intensive community sentences and the Intensive Alternatives to Custody (IAC) pilots were a version of this. They combined intensive probation supervision with a mix of demanding requirements and interventions and they were typically 12 months in length.

29. Since the pilots ceased to be centrally funded in March 2011, many areas have continued to offer intensive orders, which are often positioned alongside Integrated Offender Management so that they can benefit from police input. This can enable greater use of requirements such as prohibited activities and exclusion, which are otherwise difficult to monitor and enforce. Exclusion can be from particular streets or shops and the activities that are prohibited include entering particular pubs or associating with particular individuals.

30. Available information shows that the current intensive community order typically comprises three to five requirements. In some areas certain

requirements, such as curfew, intensive Community Payback, supervision or accredited programmes, have been made mandatory. Many of the orders target substance abuse, include restorative justice elements and continue the extra-statutory mentoring that was an integral part of IAC.

31. Our proposal is that Intensive Community Punishment should build on the IAC, but include a core of punitive elements. Our ambition is that these orders should be available to courts in every area. They can, however, be resource intensive and during the consultation period we will work with Probation Trusts to explore who these orders could be most appropriate for, what their key elements should be and to develop our understanding of the costs. This will enable us to fully understand the choices available for implementation and potential trade-offs that would be made to do this. This must be considered in the context of financial constraint with consideration as to the value for money of any investment required.

Consultation questions

1) What should be the core elements of Intensive Community Punishment?
2) Which offenders would Intensive Community Punishment be suitable for?

A punitive element in every community order

32. The community order was developed to provide sentencers with greater flexibility to issue a sentence that could properly respond to the crime committed and punish the offender as well as tackling the root causes of the crime. It sought to assist the offender in reintegrating into society and provide them with the means to repair the harm that they caused so that they could once more be law-abiding members of society.

33. We are clear that the community order can be more effective in many cases than short custodial sentences, and also more demanding. Proven reoffending of those offenders receiving community orders in 2008 was 8.3 percentage points lower than for those who had served short-term custodial sentences (under 12 months) after controlling for differences between offenders.

34. However, 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 wrong doing will not be tolerated. They are not currently as effective a response to crime as they could be and we want to change that.

Current use of community orders

A total of 118,696 adults started a community order in 2010.The table below shows how these community orders were made up by reference to the number of requirements and the most frequently used combination of requirements in community orders started in 2010.

Number of requirements		Most frequently used requirements	
One	50%; 59,195	Community Payback alone	33%
Two	35%; 42,077		39,170
Three	12%; 14,409	Supervision alone	11%
Four +	3%; 3,015		13,288
Total	**118696**	**Total**	**52,458** (44% of the total number of community orders given)

A single requirement of Community Payback (also known as unpaid work) was the most common community order (given to 33% of adults starting a community order in 2010). Around two thirds of the community orders terminating in 2010 ran their full course or were terminated early for good progress.

What constitutes a punitive requirement in the community order?

The five purposes of sentencing

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

35. The law provides explicitly that supervision may be imposed for the purpose of rehabilitation, and the activity requirement may be for the purpose of reparation. But many requirements are capable of delivering more than a single purpose.

36. For example, Community Payback has a clear reparative element to it, as it ensures that the offender puts something back into society. But it is also punitive as it makes an offender do something they would not ordinarily want to do and prevents them from engaging in their preferred activity. It can also rehabilitate by getting an offender into the habit of regular work.

37. A curfew with electronic monitoring can deliver both punishment and public protection as it restricts an offender's liberty and allows the police to

monitor their whereabouts in the interests of crime prevention. This versatility is a key positive attribute of the community order and one that we can exploit further to our advantage.

Community order requirements

- Alcohol Treatment
- Drug Rehabilitation
- Programme
- Activity
- Attendance Centre
- Exclusion
- Prohibited Activity
- Supervision
- Curfew
- Mental Health treatment
- Residential
- Community Payback

The following two requirements are being introduced by the Legal Aid, Sentencing and Punishment of Offenders Bill)

- Foreign travel ban
- Alcohol abstinence and monitoring requirement

38. All community orders involve some restriction of the offender's liberty and in that respect they can all be regarded as punitive to some degree. But there is currently no obligation on the courts to select a requirement which has punishment as its primary purpose and there are many cases in which community orders consist only of supervision. Supervision can be invaluable in rehabilitating an offender and encouraging them to face up to their behaviour, and it can be demanding of an offender who has never before turned up for appointments. But it is not primarily punitive and, on its own in a sentence, fails to send a clear message that offending behaviour will be dealt with.

39. A key benefit of community orders is the ability for them to be tailored to the circumstances of the offender. We believe that the punitive element of the community order must be some sort of Community Payback, financial penalty or a significant restriction of the offender's liberty such as an electronically monitored curfew. In determining which of these should be imposed, the specific circumstances of the offender should continue to be balanced with the need to signal that they are being punished for having done wrong. This might mean imposing a curfew that can work around an individual's childcare responsibilities, or tailoring requirements to deal with mental health issues that an offender might suffer from.

40. For some offenders, it may be that other requirements of the community order, such as exclusion or prohibited activity, can provide the punitive component rather than Community Payback or a curfew with a tag. In some cases, compliance with these requirements may be able to be monitored electronically as discussed below. Others might be punished with a fine – which can be set at a level relative to the offender's income so that it represents genuine punishment – on its own or as part of a community order.

41. We also need to consider those offenders for whom an explicitly punitive requirement is not suitable or even possible. Some offenders with mental health issues for example may not be capable of undertaking unpaid work. We must avoid undermining our efforts to reform offenders and cut crime and so need to ensure that any mandatory provision to include a punitive element in all community orders contains exceptions that can cater for such offenders.

42. In all other cases however, a distinctly recognisable punitive element should be imposed.

43. We would welcome your views on how we can best balance the purposes of sentencing and how we can encourage more imaginative use of available community order requirements to ensure that all community orders punish and reform offenders as well as ensure reparation to society. We wish to explore with sentencers the potential trade-offs and implications of introducing such measures. Through the consultation we will work with local areas to develop our understanding of the financial implications of these proposals, including the potential implications for breach.

Consultation questions

3) Do you agree that <u>every</u> offender who receives a community order should be subject to a sanction which is aimed primarily at the punishment of the offender ('a punitive element')?
4) Which requirements of the community order do you regard as punitive?
5) Are there some classes of offenders for whom (or particular circumstances in which) a punitive element of a sentence would not be suitable?
6) How should such offenders be sentenced?
7) How can we best ensure that sentences in the community achieve a balance between all five purposes of sentencing?

Creative use of electronic monitoring

44. We explored the use of the electronically monitored curfew requirement in *Breaking the Cycle*. Imposing a curfew requirement on an individual is an effective way of punishing them as it restricts their liberty: courts can place

onerous conditions on offenders, limiting their ability to commit crime. By using electronic monitoring to track offenders subject to a curfew requirement, we are able to ensure that they comply with their sentence, which in turn increases public protection.

45. In *Breaking the Cycle*, we sought your views on how we could make greater use of the curfew requirement. Through the Legal Aid, Sentencing and Punishment of Offenders Bill we are paving the way to achieve this by allowing a court to impose a longer curfew requirement as part of a community order. Instead of a maximum of twelve hours per day, the court will be able to impose up to sixteen hours per day. Instead of the overall maximum length being six months, the court will be able to impose a curfew requirement of up to twelve months. Enabling the courts to impose longer curfews in this way will make the community order capable of being more punitive and a suitable punishment for more serious offenders.

46. We are aware that curfew is already being used imaginatively and punitively as part of the community order and we wish to encourage this. Curfew can be used to ensure that an offender is at home immediately before he has to undertake some other requirement of the order such as Community Payback or a supervision appointment, thus increasing the chances that he will turn up. Courts are making creative uses of curfew including for example:

    - Curfew of an offender in the afternoons, when they habitually engaged in shoplifting. In the morning their community order required them to attend drug rehabilitation sessions.
    - Curfew of an offender for short periods throughout the day to prevent them from having enough time to travel to the area where they tended to offend.

47. Such examples indicate the scope for punishing offenders and reducing the likelihood of reoffending when compared with the more standard curfew period of 7pm to 7am.

Alternative uses for electronic monitoring technology with community orders

48. Current legislation allows electronic monitoring (EM) technology to be used to monitor compliance with any other requirements that are imposed by the court as part of a community order.

49. The vast majority of EM is currently delivered by way of Radio Frequency (RF) technology. In 2010 there were 52,000 curfews as part of a community order or a suspended sentence order started for adults. This technology has proven to be robust and reliable and an accurate way of monitoring an offender's compliance with their curfew requirement.

50. However, the capability of RF technology is limited - the equipment consists of a tag worn around the offender's ankle that sends signals to a receiver (or Home Monitoring Unit) which tells the monitoring provider whether the offender is present at a specified address during specified times. Therefore, in practice a curfew is the only requirement that is currently electronically monitored. We want to build on the positive experiences of monitoring curfews to see if we can make more use of technology in respect of monitoring compliance with other requirements of the community order.

51. A small number of offenders subject to community orders were tracked in three satellite tracking pilot programmes which ran in Greater Manchester, West Midlands and Hampshire between September 2004 and June 2006. Offenders tracked during the pilots were either those at high risk of reoffending or high risk of harm, including offenders convicted of sexual and violent offences.

52. It is a strategic objective for the competition of the new EM contracts to introduce location monitoring technologies such as GPS (Global Positioning System) and GSM (Global System for Mobile Communications), which have advanced since the pilots, and could be used to strengthen community orders in the future. This will include consideration of how location monitoring technologies could be combined with existing RF capability for example. We want new technologies to give greater flexibility to community orders and to be more cost-effective.

53. These technologies could potentially help strengthen community orders further in the future by allowing us to monitor compliance with other requirements imposed by the courts more effectively, in addition to monitoring curfews. For example, subject to appropriate funding and legislative changes, new technologies will be used to monitor compliance with:

    - exclusion requirements (this could be preventing an offender from going to certain areas - for example a victim's or a known associate's house);
    - alcohol abstinence pilots (through a new alcohol abstinence and monitoring requirement);
    - foreign travel prohibition requirements;
    - residence requirements.

54. Following the Cyber Security Strategy published in November last year, we will also be considering and scoping the development of a new way of enforcing restrictions on computer use, through 'cyber-tags'. We are considering how these could be used under the community order framework.

Consultation questions

8) Should we, if new technologies were available and affordable, encourage the use of electronically monitored technology to monitor compliance with community order requirements (in addition to curfew requirements)?

9) Which community order requirements, in addition to curfews, could be most effectively electronically monitored?

10) Are there other ways we could use electronically monitored curfews more imaginatively?

Use of electronic monitoring to track offenders

55. The significant developments in EM technology also present us with an opportunity to consider where they can be used in other new and different ways beyond monitoring compliance with community order requirements.

56. We already use EM technology to gather surveillance information on the movements of offenders to manage prolific offenders on licence and to improve public safety. We are open to considering how the available technologies could potentially be used, through effective targeting, to further protect the public and reduce reoffending. We are aware, for example, that other countries (such as Spain and France) have tried to use such technologies to address serious stalking or domestic violence offenders, or, as in the USA, sobriety requirements through tagging, as detailed below.

57. We consider that these new location gathering technologies may, where they prove reliable and are effectively and properly targeted at high risk offenders, have the capacity to deliver increased public safety by tracking an offender's whereabouts which could act as a deterrent and reduce reoffending. It may also be possible to use these technologies to assist the police in crime investigation by tracking offenders' whereabouts. We would wish to consider carefully the costs and benefits of using the technology in these new ways.

58. We need to look at how to make such uses suitable and viable within our jurisdiction. For example, the current legislation only permits the imposition of an EM requirement on an offender to monitor compliance with a community order requirement (different provisions apply to offenders who are released from custody on licence). To impose an electronically monitored requirement for purposes other than that (for example, for the prevention of reoffending) would require primary legislation.

59. Using EM technology to track offenders on community orders for the purpose of preventing reoffending would be a significant departure from current practice. It would potentially involve monitoring some offenders at

all times. We will need to fully consider the civil liberties implications of these proposals.

60. Appropriate safeguards would also need to be in place to ensure that the new technology is used appropriately, and to ensure compatibility with human rights and data protection requirements. This will involve, among other things, careful consideration of the purposes of such a requirement, how long offenders would be tracked for, and how long the data which is gathered should be retained.

Consultation questions

11) Would tracking certain offenders (as part of a non-custodial sentence) be effective at preventing future offending?

12) Which types of offenders would be suitable for tracking? For example those at high-risk of reoffending or harm, including sex and violent offenders?

13) For what purposes could electronic monitoring best be used?

14) What are the civil liberties implications of tracking offenders and what should we do to address them?

Confiscation of offenders' assets

61. Courts already have a range of powers to seize assets from offenders in certain circumstances. For offenders who default on paying financial penalties, and for whom a more supportive approach to payment would be ineffective or inappropriate, courts have the power to issue warrants of distress. A distress warrant authorises bailiffs to seize and sell goods to recover the outstanding debt owed to the court.

62. Courts also have standalone powers to deprive offenders of property involved in an offence. Through a deprivation order, courts can confiscate property such as tools or vehicles that an offender has used to commit or facilitate a crime. Through a restitution order, courts can require offenders to restore to victims goods which have been stolen or otherwise unlawfully removed from them.

63. Finally, through confiscation orders issued under the Proceeds of Crime Act 2002 courts can order the seizure from offenders of cash and other assets that are linked to the proceeds of crime. These types of confiscation orders are separate to the sentence imposed for an offence, and they and other powers related to recovering the proceeds of crime are out of scope of this consultation.

64. In *Breaking the Cycle*, we consulted on whether there was scope to make more effective use of confiscation of assets within the current framework of dealing with offenders. A number of those who responded concluded that the courts could make more effective use of their powers to issue warrants of distress against offenders who have defaulted on fines. The

Government has therefore started to pilot swifter and more effective use of distress warrants to collect assets and cash.

65. Distress warrants are an important tool for the courts in ensuring payment of fines where more supportive approaches to enforcement have failed. They give defaulters the option of paying the outstanding debt - either in full or by agreeing a programme of instalments – or having goods to the value of the debt seized. Bailiffs acting on the courts' behalf can also charge fees on top of the debt to recover their costs.

66. In the financial year 2010/11 HMCTS issued 564,000 distress warrants, focusing on offenders for whom other enforcement approaches such as attachments of earnings had failed. During the summer of last year, HMCTS tested a swifter and more robust approach to the issue of distress warrants.

67. The tests took place over the summer in Merseyside, Cheshire and Cambridgeshire. Court enforcement officers selected cases suitable for the issue of distress warrants involving offenders with two or more outstanding fines, where attempts to encourage voluntary payment had failed, or as with Cambridgeshire, where a specific geographical area had a poor success rate in fine collection.

68. Warrants were passed to bailiffs with a requirement that all activity on warrants must be concluded within 30 days, with first visits to the offender within 10 days. Normally, bailiffs have a 180 day period in which to execute a warrant. Bailiffs also made clear that property might be seized even if it did not meet the full value of outstanding fines and costs. Where bailiffs were able to trace defaulters, the vast majority of warrants issued resulted in full payment of the outstanding fine. Although successful, these tests took place with a relatively small number of cases. We are now considering how we can roll out the lessons learned from this pilot more widely.

69. We believe that confiscation of assets sends a robust message to offenders that their actions have significant consequences. We also want to explore whether there is any practical and affordable way in which we could introduce a new sentencing power that would allow courts to order the seizure and sale of assets, as a punishment in its own right. We would envisage this power allowing for the confiscation of property regardless of whether or not it was connected to the offence. The punitive impact of seizing even a small value of assets could be significant, and could be seen as more punitive by offenders than an equivalent financial penalty.

70. We would see this power as being most appropriate for use in cases of sufficient seriousness to have passed the community order threshold – perhaps even for those on the cusp of the custody threshold – rather than in less serious cases as a substitute for a fine. We believe that, were such a power to be introduced, it could be used as a punitive sanction alongside a community order.

71. Before we could introduce such a power, we would need to be satisfied that it was workable and affordable. We would welcome views on whether there are particular types of offence or offender for which such a power might be particularly appropriate. We would also welcome views on how courts could ensure that the value of assets seized would be equitable for offenders with both low and high levels of assets.

72. Once an order for property to be confiscated was imposed, we would envisage it being enforced by bailiffs acting on the court's behalf. We would propose that the value of an order included the bailiffs' costs: in other words, that courts would base the value of an order on a minimum value to cover bailiffs fees and then increase it as necessary in order to adjust for the difference in the value of property owned by offenders. Reserving the use of this power for offences approaching the custody threshold would prevent it being used in less serious cases, where a high value order of hundreds or thousands of pounds would be disproportionate to the seriousness of the offence.

73. We would envisage bailiffs operating to similar rules as they do when enforcing distress warrants: for example, not being able to confiscate family items or tools of a trade, and having to retain property for a certain time period before selling it.

74. We would also welcome views on what an appropriate sanction for breach would be (for example, in cases where offenders dispose of goods after sentence or otherwise seek to evade bailiffs). We will take forward further work throughout the consultation to understand the costs of introducing asset seizure, exploring with sentencers how it could be used and the risks of doing so.

Consultation questions

15) Which offenders or offences could a new power to order the confiscation of assets most usefully be focused on?

16) How could the power to order the confiscation of assets be framed in order to ensure it applied equitably both to offenders with low-value assets and those with high-value assets?

17) What safeguards and provisions would an asset confiscation power need in order to deal with third-party property rights?

18) What would an appropriate sanction be for breach of an order for asset seizure?

Promoting greater compliance with community orders

75. Unless terminated early for good progress, community orders must run their full course if they are to achieve their purpose of rehabilitating and punishing offenders: at present about two thirds of community orders run their full course or are terminated early for good progress. In other cases,

offenders will be returned to court for breach action. Offenders need to understand that failure to comply with their sentence will be properly dealt with.

76. There are provisions in the Legal Aid Sentencing and Punishment of Offenders Bill that are designed to improve breach arrangements, by giving courts a wider range of options to respond to breach and encourage compliance. This includes the availability of a fine of up to £2,500 as a penalty for breach and more freedom for courts to act in the interests of promoting completion of the sentence and a reduction in reoffending.

77. But we want to consider what more we can do so that offender managers are empowered to encourage compliance and to deal with breach. At the moment, faced with an unreasonable failure to comply with an order, an offender manager has only two options – to issue a warning or to return the offender to court for breach proceedings. The latter option can take time and uses valuable court and offender management resources.

78. We therefore propose to create a new option for offender managers, of giving a financial penalty, without returning to court. This would operate in a similar way to fixed penalty schemes. The offender would be given a fixed period of time to pay the penalty or to have the breach heard by a court. If no penalty paid was paid in the time allowed, breach proceedings would go ahead. The financial penalty would only be available on one occasion – a failure to comply without excuse after that would result in the offender being taken to court

79. We are exploring a number of practical issues that would be involved in establishing a fixed penalty scheme. These include the arrangements for collecting the money, which would be payable to the Exchequer, and the overall administration of the scheme. In order for these new arrangements to deliver value for money, any additional costs would need to be balanced out by increases in compliance, with fewer court hearings and fewer longer sentences imposed for breach. We must avoid blanket measures here which risk increasing HMCTS debt and breach costs.

80. We would welcome views on whether such a scheme would help offender managers in ensuring greater compliance with community orders and to deal appropriately with breaches. We will ensure that this proposal is consistent with proposals for retaining public interest decisions within the public sector as outlined in the probation review.

Consultation questions

19) How can compliance with community sentences be improved?

20) Would a fixed penalty-type scheme for dealing with failure to comply with the requirements of a community order be likely to promote greater compliance?

21) Would a fixed penalty-type scheme for dealing with failure to comply with the requirements of a community order be appropriate for administration by offender managers?

22) What practical issues do we need to consider further in respect of a fixed penalty-type scheme for dealing with compliance with community order requirements?

More effective fines

81. Fines can be a highly effective punishment for less serious offences. Matched for similar types of offender, there is no evidence of a difference in reoffending rates for offenders given fines and offenders given community orders. There is no reason, therefore, that fines should not be used as a way of clearly demonstrating to an offender that their behaviour is wrong and thus encouraging them to face up to the consequences of their actions.

82. However, in order to deter and punish effectively, fines need to be set at the right level in relation to income. If they are set too low so as not to make an impact on an offender, then the offender will not feel punished; if they are set at an unrealistically high level then offenders may genuinely not be able to pay and a non-financial penalty may be more appropriate. An offender who is unable to repay their debt is very difficult to reform.

83. The great majority of offenders who come before the courts receive a fine. In 2010, 65% of all sentences imposed were fines. However, as a proportion of all sentences the use of the fine has declined over the past decade. In 2000, fines made up 69% of all sentences imposed by the courts.

84. This decline may be linked to the availability of the new community order and suspended sentence order from 2005 onwards. As the use of the fine has declined over the past ten years, so the use of community and suspended sentence orders has increased. It seems likely that some offences that would in the past have attracted high fines are instead receiving other sentences.

85. Some sentencers also lack confidence that fines will be enforced. This perception does not reflect the reality of enforcement activity, which has improved significantly in recent years. However, it is possible that such perceptions may have contributed to a reluctance to use fines in certain cases.

86. In *Breaking the Cycle*, we said that we wanted to see greater and more flexible use made of financial penalties to punish offenders. This section asks for views on how fines could be used more creatively instead of or alongside community orders. It also asks for views on how we can improve the information available to courts to set fines at a proportionate and equitable level that is effective at punishing offenders. It also sets out how we will achieve further improvements in the enforcement of fines, which is critical if sentencers are to have confidence in the effectiveness of these sentences.

More flexible use of the fine

87. Fines should not be seen as a punishment that is suitable only for the lowest-level offenders. For offences that are sufficiently serious to pass the community threshold, and where the circumstances demand rehabilitative requirements that protect the public as well as punishment, a community order will clearly be the appropriate disposal. However, where the primary purpose of a sentence is punishment, and a fine would be a proportionate and sensible response to the offending behaviour, we believe there is no reason why courts should not consider imposing a high-value fine rather than - or as well as - a community order.

88. The community order and custody thresholds already allow courts to sentence in this way. The fact that an offence has passed the community threshold does not prevent a court from imposing a fine. Two exceptional fine bands, D and E, already exist in magistrates' court sentencing guidelines for use in cases where the court believes a community order or custodial sentence might be warranted, but given the circumstances of the case a fine would be appropriate. However, it is not clear whether courts always bear these extra fine bands in mind when determining sentences for offenders at this level.

89. There is also nothing in law to prevent a court from imposing a fine alongside a community order (so long as the total sentence is still proportionate to the offence). In practice, however, this happens very infrequently. Nearly all fines are imposed as standalone disposals: in 2010, only 493 fines were issued alongside community orders. For some offenders, a fine might be a more effective punitive sanction than a curfew or Community Payback requirement, while still leaving courts the discretion to impose a reparative or rehabilitative community order alongside it.

90. We wish to explore what more can be done within the existing legal framework to encourage courts to make more flexible use of fines. One possibility relates to the advice given to courts in pre-sentence reports. These assist courts in determining the most appropriate way to deal with an offender. Report writers will be well-placed to advise courts on whether a fine or a discharge combined with appropriate ancillary orders might be a more effective sentence for some offences that have passed the community threshold. However, evidence from one Probation Trust has shown that report writers have not always been aware of the other options

available to courts beyond a community order. We would welcome views on what support can be given to report writers in drawing courts' attention to cases where fines or ancillary orders might be appropriate.

91. We also want to explore how the choice of disposals available to courts is framed in sentencing guidelines. The community threshold is currently 'one-way': courts can only impose a community order if the seriousness of an offence passes the threshold, but the fact that an offence has passed the threshold does not preclude courts from imposing a fine. Despite this, the current structure of sentencing guidelines could give the perception that fines sit underneath community orders in severity, as part of a ladder of disposals stretching from discharges to custody. For example, offence guidelines do not currently draw courts' attention to the exceptional fine bands D and E.

92. We will ask the Sentencing Council to consider whether there are ways in which the flexibility within fines legislation can be made clearer in sentencing guidelines. We would also welcome views on whether there are other ways in which more flexible use of fines alongside or instead of community orders could be encouraged.

Consultation questions

23) How can pre-sentence report writers be supported to advise courts on the use of fines and other non-community order disposals?

24) How else could more flexible use of fines alongside, or instead of, community orders be encouraged?

Better information about offenders' financial means

93. As with any sentence, the value of a fine must be set at a level which is proportionate to the seriousness of the offence. However, fines also have to be set with regard to the offender's financial circumstances.

94. This ensures that the punishment is fair and the relative impact of the fine on each offender is substantially the same regardless of that offender's means. A modest fine is no problem for a rich offender. Accurate information about offenders' means is therefore essential in setting fines that are both sufficiently punitive and able to be enforced.

95. Currently, defendants in cases where a fine is a possible outcome are required by law to complete a means information form. This includes personal information and sections for weekly or monthly income and outgoings. Courts use this information to determine what is referred to as an offender's 'relevant weekly income' – income less tax and national insurance deductions - which they will then use as part of the process for setting the value of a fine. In the magistrates' courts, sentencers follow guidelines which require them to place the offence on one of three bands (A, B or C) depending on seriousness. Each band has a starting point and range based on a proportion of relevant weekly income. Courts will adjust

the sentence up or down this range depending on any aggravating or mitigating factors specific to the offence. These bands have now also been included in sentencing guidelines for the Crown Court.

Starting point		**Range**
Fine Band A	50% of relevant weekly income	25 – 75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75 – 125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125 – 175% of relevant weekly income

96. This approach relies on the courts being provided with accurate information by individual offenders about their means. Without that information, courts have to make assumptions on the limited evidence before them. In particular, in the absence of any other means information, courts will assume a relevant weekly income of £400 (this is based on the median national income before tax and National Insurance deductions). Where an offender's only income is through state benefits, relevant weekly income is assumed to be £110.

97. Where the offender suppresses the truth about his means and the courts do not have full evidence on means before them, the result can be a fine that is inequitable. For example, wealthier offenders may receive fines which bite less severely on their income than those imposed on other offenders. Offenders on benefits or otherwise in receipt of low incomes may receive fines that are disproportionately punitive and impossible to collect.

98. We plan to do more to improve the information on means that is available to courts when setting fines. This will ensure that we target fines and enforcement measures effectively. At present, courts do not have access to tax information about offenders that might help courts assess an individual's financial circumstances where no other information is available. While courts do have access to information about any benefits an offender may be receiving, this is only available at the point an offender defaults on paying a fine, and not before. The Ministry of Justice is working with the Department for Work and Pensions and Her Majesty's Revenue and Customs to put in place more effective data sharing arrangements between the departments' agencies at an early stage in the criminal justice process.

99. We are also drawing on behavioural approaches to look at other influences and incentives to encourage offenders to pay their debts promptly.

Case study: personalised text messages for fine defaulters

HMCTS has carried out a trial involving 350 personalised text messages sent to fine defaulters. This saw significantly increased response and repayment rates from those people who received a text that began with their first name, compared with the standard message. This is now being robustly trialled on a wider scale in three counties in the South East. Text messages are being sent to people who have failed to pay their fine in order to give them one final chance to pay before issuing a distress warrant to bailiffs to enforce. From January 2012, the texts to be sent out each week are randomly allocated to one of five different messages, including a standard text with no personalisation, through to texts with the defaulter's name, the amount owed, or both. The responses to the different messages will be monitored to determine the effect of personalisation on the response rate, time to payment and size of payment made.

Consultation questions

25) How can we better incentivise offenders to give accurate information about their financial circumstances to the courts in a timely manner?

Setting fines at the right value

100. Fines have become higher and more punitive over the last decade. The mean value of fine imposed in 2010 was £223: a 29% increase in real terms since 2000. There has also been a 44% real terms increase in the median value of fines, which was £175 in 2010. The fact that both median and mean values have risen suggests that these increases are not confined to very low or high value fines.

101. Beneath the surface, however, the picture varies depending on offence category. For either-way and indictable only offences receiving fines, there has been a significant real-terms increase in the mean value, but the median value has remained stable. For summary offences, by contrast, there have been real terms increases in both the median and mean values. This suggests that it is fines in the magistrates' courts that have driven the overall increase in average values. There has been a particular increase in the proportion of fines between £100-199, and of £500 or more.

102. Given these increases in the average value of most fines, we want to ensure that the limits currently set within the sentencing framework do not prevent courts from having the flexibility to set the value of fines appropriately. This is particularly the case for fines imposed for more serious offences, where the offender needs to feel the financial consequences of their actions and where the public need to be confident that an appropriate level of punishment has been imposed.

103. As a result we have included provisions in the Legal Aid, Sentencing and Punishment of Offenders Bill that will make two key changes to the way

that fines operate, and which will affect how the value of fines is set. The first provision will remove the upper limit of £5,000 or more for fines for offences that are triable summarily or either-way. We believe that this will allow courts to impose more appropriate and proportionate fines in the most serious offences that are heard in the magistrates' courts, as well as in either-way cases heard in the Crown Court. It will also give courts greater flexibility to impose proportionate fines on wealthier individuals or on corporate offenders.

104. For fines for less serious offences, the Legal Aid, Sentencing and Punishment of Offenders Bill also gives the Secretary of State a power to increase the current maximum fine amounts for levels 1 to 4 on the standard scale of fines for summary offences. This power will mean that adjustments to the standard scale can be made by secondary legislation, giving greater flexibility to revise the maxima for each level if there is evidence to suggest changes in offenders' average income.

Efficient and effective enforcement

105. HM Courts and Tribunals Service have made significant progress in the enforcement of fines in recent years. For the year to March 2011, the payment rate for all financial penalties by value, excluding administrative cancellations, was 80%. This has increased from 71% in 2008/09. In 2010/11, HMCTS collected an all-time high of over £280m in fines.

Year	Payment rate (excluding administrative cancellations)	Cash collected
2008/09	71%	£246,519,704
2009/10	74%	£259,241,082
2010/11	80%	£282,375,257

NB: cash collected in one financial year may not necessarily relate to financial impositions given in the same financial year.

106. These improvements have been driven by targeting resources to enforce payment as early as possible after sentence. HMCTS have made increased use of telephone and text message chasing, and of intelligence tracing tools such as Experian. Significantly greater use has been made of sanctions such as deduction from benefits orders (DBOs) and attachment of earnings orders. Nearly 650,000 DBOs were issued in 2010/11, more than double the amount in 2008/09. With the introduction of universal credit from 2013 onwards, we will be increasing the maximum weekly deduction that can be made from benefits from £5 to £25.

107. For the most persistent defaulters, HMCTS has carried out 'Operation Crackdown' payment blitzes, targeting specific groups of defaulters often in conjunction with other agencies such as the police. In November 2010, one such operation resulted in 9,701 distress warrants being executed and 71 defaulters being imprisoned.

108. To build on these improvements, HMCTS is embarking on an ambitious programme of further reform by exploring the potential for creating a partnership with a commercial company to build on the improvements we have already made.

109. A partnership would bring the investment and technology needed for HMCTS to achieve its aspirations for compliance and enforcement services in the future. It will enable the automation of many of the manual administrative processes, and in turn decrease the cost of providing fine enforcement and increase the amount of fines that are paid. This will free up staff time to be more proactive in pursuing offenders to ensure they comply with their court order.

2. Reparation and restoration

110. Punishment alone cannot repair the harm that crime causes to victims and communities. In order to be truly effective, sentences served in the community must not only punish and reform offenders, but also ensure that wherever possible, offenders pay back to society for the damage they have caused. Reparation can be achieved through paying back to society as a whole – for example, Community Payback through which offenders make a contribution to their local community, or making financial contributions to support services for victims. It can also involve victims directly, for example by offenders paying financial compensation to victims for loss or damage they have caused.

111. Victims and communities also want offenders to face up to the consequences of their actions. Through restorative processes, victims and offenders can come together to collectively resolve how to deal with an offence. The outcome of this process may be reparation, but it may also involve a range of other outcomes including the offender accepting responsibility for their crime, giving the victim an opportunity to have their say and helping the victim to move on from the offence committed against them.

112. In *Breaking the Cycle* we set out our intention to introduce a more reparative and restorative approach to the sentencing of offenders. We outlined proposals on Community Payback to ensure that we achieve a rigorous and properly enforced scheme. Through Community Payback an offender completes unpaid work such as bringing derelict buildings back into public use. It plays an important part in punishing an offender but also ensures that the offender makes reparation to society. We also set out our intention to ensure that more offenders make financial contributions to victims. Provisions in the Legal Aid, Sentencing and Punishment of Offenders Bill will create a clear positive duty for courts to consider making a compensation order in all cases where harm, damage or loss is caused to an identified victim. In addition, The Victims' Strategy *Getting it right for Victims and Witnesses* proposes to increase the Victim Surcharge and extend its application to a wider range of disposals.

113. Finally, *Breaking the Cycle* sets out the Government's commitment to increasing the use of restorative justice practices. We are aiming to increase provision of restorative justice and the level and standard of practice of delivery to ensure restorative processes are effective.

114. This section builds on those aims, seeking views on how we can ensure that the community sentence framework enables the courts to demand that offenders pay back to society for the harm they have caused. Only in this way can sentences in the community tackle the immediate and longer-term harm that crime causes to victims and society.

Restorative justice

115. Restorative justice (RJ) offers a unique opportunity to give victims of crime the opportunity to be heard and have a greater stake in the resolution of offences and the criminal justice system as a whole. This may entail agreeing a restorative activity for the offender to undertake such as making some form of reparation to the victim, monetary or otherwise or meeting the offender face-to-face to discuss the crime, giving the victim an opportunity to explain to the offender what damage they caused.

116. RJ is also a vital tool in the rehabilitation of offenders and prevention of further offending. But it is not an easy option to undertake - offenders must directly face the consequences of their actions and the impact that it has had upon others. They must seek to make amends for the damage they have caused and it therefore challenges them to change their behaviour as a result.

117. Our own evidence demonstrates the effectiveness of restorative justice practices, in particular its impact upon victims (85% victim satisfaction in RJ) as well as its effect upon reoffending (14% reduction in the frequency of reoffending). Practitioners report the same positive outcomes and they also tell us that it is an instrumental process in providing offenders with the motivation to change and to seek other interventions to enable them to do so. Police forces also tell us it is a particularly effective way of dealing with low-level often first time offences- where the offender and victim agree an appropriate recompense for the damage caused rather than simply issuing a warning or low level fine, which is not to the direct benefit of the victim. Over 18,000 police officers have been trained in restorative practices across England and Wales, and are making use of them in this way, or in addition to criminal disposals.

118. The most innovative and effective practices for RJ have been borne out of locally driven and locally grown initiatives which are responsive to the needs of victims, communities and practitioners in their area. We believe this is the best approach and therefore, whilst we are committed to making more use of RJ, we do not want to do so in a way that is over prescriptive or places unnecessary restrictions or burdens upon the system. We want local areas to retain the discretion on how best to deploy restorative processes most effectively and efficiently according to local circumstances and local budgets.

119. Our focus therefore is upon taking action to support and enable the delivery of restorative justice in more areas, and in more circumstances across the criminal justice system in England and Wales and work is already in train.

120. We are working with a number of local areas to develop Neighbourhood Justice Panels, which bring together the offender, the victim and representatives of the community to respond to low-level crime by using

restorative justice and other reparative processes. Building on excellent local innovation in Somerset, Sheffield and Norfolk, we will be testing the panels over the coming months. We will be evaluating their work to assess whether they are effective in reducing reoffending but also to gain a better understanding of what impact they have on victim satisfaction and public confidence in the system. We will provide further detail on these pilots in the forthcoming Criminal Justice Reform White Paper.

121. We will also shortly be producing new guidance to areas on the use of RJ as part of, or in addition to, out-of-court disposals. This aims to increase clarity around when it is appropriate to undertake restorative activities – as part of both informal and formal responses to crime - and improve the quality in which it is delivered, providing better outcomes for victims in tackling lower level offences.

122. Restoration and reparation form key parts of the youth justice system. The Youth Referral Order brings together the offender, their family and the victim (where possible) in front of a panel of community volunteers to agree collectively a contract of action which provides reparation for the crime committed and aims to prevent the young person reoffending in the future. Through the Youth Justice Board, we are providing £600,000 worth of further training to those involved in the panels to embed restorative techniques in their work.

Restorative justice post-sentence

123. Capacity at the post sentence stage of the system is still limited, despite greater demand for it to be available as part of, or in addition to community and custodial sentences. We have begun to take positive steps in this area. Through the National Offender Management Service we are providing £1.13m to build capacity and capability for RJ in the community and in custody. £1m of the funding (jointly funded by the Monument Trust) will be provided to Restorative Solutions CIC to create and provide training for prison and probation staff to: become restorative justice facilitators; deliver ‘train the trainer’ courses; and give follow up support and advice following implementation of restorative methods. This funding will provide training to over 1000 probation and prison staff, which will greatly boost provision in the system and help us establish RJ as a more common part of community orders.

124. Without good standards of practice though, this cannot be effective or gain the confidence of victims, the public or indeed practitioners in making use of such approaches. An additional £130,000 funding therefore has been awarded to Thames Valley Partnership- Restorative Justice Services to develop and establish best practice templates for the effective introduction, implementation and delivery of face-to-face conferencing across prison and probation services.

Restorative justice pre-sentence

125. We are also giving consideration to pre-sentence restorative justice processes. Indeed, for offences where the offender has been prosecuted and convicted, the court can delay sentencing if they believe it would be useful for additional time to be given for RJ to be undertaken. Such evidence can be used to inform their decision making as to the appropriate sentence.

126. We know that some areas have experienced a number of practical difficulties in trying to build pre-sentence RJ processes, not least in establishing which part of the criminal justice system is responsible for managing and overseeing the process. In circumstances where the offender is likely to receive a community or custodial sentence, probation will prepare a pre-sentence report which can act as a means of assessing and informing the courts of the possibility for pre-sentence RJ. However, this does not apply in all cases and therefore in some circumstances other local mechanisms need to be in place to enable this to happen.

127. Other practical issues exist around court timeliness. The average time it takes for a case to proceed from formal charge to first court hearing is 16 days. The consideration of pre-sentence processes must therefore be balanced against the priority of dealing with offences efficiently with the aim of providing swifter justice. It is vital that pre-sentence processes gain the confidence of sentencers and avoid incurring unnecessary costs and delays which could be seen to outweigh the benefits.

128. We therefore believe that in order for such a process to be successful it will require responsible agencies to establish that sufficient safeguards are in place to ensure that:

- Due care and time has been given to ensure that the victim fully understands the process and that they are willing to undertake it;
- The offender is motivated to participate for the right reasons. This not only requires a guilty plea but also their willingness to face up to the consequences of their actions; and
- It has been ascertained that provision is in place for RJ to take place, so that the case can be returned to court in a timely manner.

129. We need to gather more evidence on the use and effectiveness of pre-sentence RJ. We therefore propose to undertake work with one or more local areas to test pre-sentence RJ processes to establish when it would be appropriate, how it can be carried out and how it influences the views of the court.

Consultation questions

26) How can we establish a better evidence base for pre-sentence RJ?

27) What are the benefits and risks of pre-sentence RJ?

28) How can we look to mitigate any risks and maximise any benefits of pre-sentence RJ?

Victims

130. Providing victims with better outcomes, a greater say in outcomes and a greater sense of justice are central to our ambitions for RJ. The Victims' Strategy *Getting it right for Victims and Witnesses*, published on 30 January this year sets out additional work we propose to undertake to enhance the role, and engagement, of victims in RJ:

- We want to reform the Victims' Code which will allow us, for the first time, to give victims an entitlement to request RJ and to receive this where it is available and resources allow.
- We propose to amend the standard victim of crime letter, sent by police to all victims who report a crime, to provide more information on the criminal justice process. Where RJ provision is in place, we want to ensure every letter explains the availability of RJ and its potential benefits, signposting them to local services.
- With the victim's consent, we will ensure that effective use is made of the Victim Personal Statement to help assess and inform practitioners as to the suitability for RJ, as well as record any RJ outcomes from the victim's perspective for consideration, if the case proceeds to court, at point of sentence.
- Through proposals to reform the commissioning framework for victim services which will be developed with local commissioners we want local areas to be able to commission RJ services which are of direct benefit to them.

Consultation questions

29) Is there more we can do to strengthen and support the role of victims in RJ?

30) Are there existing practices for victim engagement in RJ that we can learn from?

Building capacity across the system

131. Focus upon the use and dissemination of best practice has already led to the development of the Skills for Justice National Occupational Standards in RJ and the Restorative Justice Council's Best Practice Guidance, which many RJ practitioners already adhere to. The Ministry of Justice also provided funding to the Restorative Justice Council to pilot the new Skills for Justice Diploma in restorative practice as well as the development of a practitioners' register. Both the diploma and register were formally launched in September last year and are important enabling tools to improve professional standards of practice in RJ.

132. We want to continue to help drive the culture change of developing effective evidence based RJ practices. We therefore plan to develop a cross-criminal justice system framework for RJ later this year to provide guidance to local practitioners on how RJ approaches can be effectively

developed and when they will be appropriate. We will draw upon existing evidence and practices that are already in place with the aim of spreading best practice across the system.

Consultation questions

31) Are these the right approaches? What more can we do to help enable areas to build capacity and capability for restorative justice at local levels?

32) What more can we do to boost a cultural change for RJ?

Compensating victims

133. Compensation orders are an essential mechanism for offenders to put right at least some of the harm they have caused. They require offenders to make financial reparation directly to their victims, to compensate for the loss, damage or injury they have caused. They can be imposed either as a sentence in their own right or in combination with another sentence: in practice, most are imposed alongside non-custodial sentences, rather than in conjunction with custodial sentences or as standalone disposals.

134. Since their introduction in 1972, there have been significant variations in the proportion of offenders required by the courts to pay compensation. The 1990s saw a gradual decline in the use of compensation orders, but over the last 10 years have seen courts make more use of them again. In 2001, 13% of sentenced offenders were required to pay compensation. In 2010, the equivalent proportion was 18%.

135. We believe that as many offenders as possible should be required to make reparation to victims, and that compensation orders play a critical role in achieving that aim. We are already legislating in the Legal Aid, Sentencing and Punishment of Offenders Bill to create a clear, positive duty on courts to consider imposing a compensation order in cases where a direct victim has been harmed. This section sets out proposals to ensure victims, and society as a whole, are justly served by the effective use of compensation orders.

Compensation orders and community sentences

136. The great majority of compensation orders are issued alongside non-custodial sentences. 182,151 compensation orders were handed down by the courts in 2010, of which around two-thirds were attached either to a community order or a fine. However, when set alongside all fines and community orders, only a minority of both disposals are imposed with compensation orders attached. In 2010, one-third of community orders had a compensation order issued alongside them and less than 10 per cent of fines.

137. We believe that there is scope to increase the proportion of non-custodial sentences that attract financial reparation. Compensation orders are essentially reparative rather than punitive, and should not count towards the 'punitive weight' of a sentence (except where an offender does not have the means to pay both compensation and a fine). As a result, for community orders in particular, they can be an effective means of providing reparation while also leaving the courts capacity to select appropriate punitive, protective or rehabilitative requirements.

138. There are of course good reasons why courts may decide not to impose compensation. For many offences, particularly those for which fines are given, there may not be an identifiable victim. There may not be evidence available to the court of the loss or damage caused, or victims may not wish to prolong their contact with the offender by receiving compensation payments.

139. Nevertheless, we believe that there may be some scope for an increase in their use in at least some situations. For example, compensation orders are imposed in fewer than a third of burglary offences tried in the magistrates' courts, and in less than half of criminal damage offences. Even accounting for the proportions of these offences which receive immediate custodial sentences, there are still significant numbers of cases where compensation might have been appropriate.

140. We would like to see the strengthened duty on courts to consider imposing a compensation order supported through practical steps to ensure sentencers have as full a picture of loss or harm caused to victims as possible, so that they can consider compensation in all appropriate cases. For example, this could be through the prosecuting authority drawing on the content of a Victim Personal Statement, or through relevant information in a pre-sentence report. We would welcome views on how we can ensure courts are provided the right information to support the imposition of compensation.

Consultation questions

33) How can we ensure that courts are provided with the best possible information about injury, loss or damage in order to support decisions about whether to impose a compensation order?

Setting compensation orders at the right value

141. Compensation orders are designed to be used in straightforward cases, where the level of compensation can be easily ascertained. They are a means for the court to require the offender to make at least an element of reparation for their offence, rather than a short-cut to the damages that might be available under a civil claim. As a result, the law requires courts to have regard both to the victim's loss and to the offender's financial means when fixing the value of a compensation order.

142. For some victims, this can mean compensation orders that do not fully meet the cost of the harm they have suffered. It is the case that many of those who commit criminal offences have limited financial means. As a result, we do not think it would be practical or realistic to change the current requirement for compensation orders to be linked to offenders' means (though as with fines we will do more to ensure that the means information we have about offenders is accurate). However, within the current statutory framework we wish to explore whether there is scope to increase the average values of compensation orders any further.

143. The mean value of compensation order imposed in 2010 was £306. In real terms, this average has remained stable over the last decade. This is in contrast to the real terms increase in the average value of fines over the same period. As with fines, these averages also hide variation beneath the surface. In the magistrates' courts, the mean value of compensation awarded in 2010 (excluding summary motoring offences) was £240. However, nearly a quarter of all compensation orders imposed by magistrates are for £1,000 or more. In the Crown Court, by contrast, the mean value was £1,454: but nearly two-thirds of all compensation orders imposed were for less than £100.

144. At present, magistrates receive guidance on compensation orders in an annex to the magistrates' courts sentencing guidelines. This summarises in narrative form the statute law on compensation orders, including the requirement to have regard to offenders' financial circumstances. It also summarises relevant case law, such as the expectation that compensation orders should normally be set at a level that can be repaid within 12 months. However, guidelines do not set out a detailed methodology or framework for calculating the value of compensation orders in the way that they do with fines. We will be asking the Sentencing Council to consider whether there is scope for changes to sentencing guidelines to support a more consistent approach to fixing the value of compensation.

145. There is no limit on the value of compensation order that can be imposed in the Crown Court. By contrast, single compensation orders imposed in the magistrates' courts are capped at £5,000. For fines, we are already legislating to change the equivalent maximum for Level 5 fines in the magistrates' courts from £5,000 to an unlimited amount. In 2010, a small but not insignificant proportion of compensation orders imposed by magistrates were within the region of £4,000 to £5,000. It would be possible to legislate to remove the £5,000 cap, to bring compensation orders into line with changes we are making to fines. We would welcome views on whether doing so would give magistrates greater flexibility in cases where significant damage is caused and offenders have the means to pay.

Consultation questions

34) How could sentencing guidelines support a more consistent approach to fixing the value of compensation orders?

35) Would removing the £5,000 cap on a single compensation order in the magistrates' courts give magistrates greater flexibility in cases where significant damage is caused and offenders have the means to pay?

3. Rehabilitation and reform

146. Community sentences can be more effective than short custodial sentences in reducing future offending: offenders discharged from immediate custodial sentences of less than 12 months reoffend at a higher rate than offenders receiving a court order. The difference ranged between 5.9 and 8.3 percentage points for the years 2005 to 2008. In 2008 the difference was 8.3 percentage points.

147. We are seeking further improvements on these successes by working in partnership with people and organisations in the public, private and voluntary sectors to find sustainable solutions that reduce reoffending and reduce crime. For example, work is in train to get more offenders into stable employment upon release through the Work Programme, while ensuring more prisoners undertake productive work whilst in prison.

148. Similarly, we are working to improve the housing assessments, advice and support services that offenders who are homeless, or at risk of homelessness, receive in custody and in the community. This includes joint working with the Department for Communities and Local Government to improve access to the private rented sector for single homeless offenders- which account for a large proportion of offenders at risk- through a number of schemes run throughout England and Wales.

149. This chapter sets out work that is underway to support further improvements in the way community sentences tackle reoffending. It describes our plans to take forward payment by results pilots for community orders, which will take place on a large-scale in a number of Probation Trust areas. It explores what more can be done to tackle key issues for many offenders, such as health needs, and how we can do more to support women offenders. In particular, it sets out proposals to tackle alcohol-related crime, and seeks views on the scope for a new compulsory sobriety scheme.

Payment by results

150. We are pioneering payment by results - where we pay providers according to their success at reducing reoffending. This represents a fundamental shift in the way we commission offender services. By refocusing providers on the rehabilitation of offenders, and providing a clear financial incentive to succeed, we will encourage a relentless focus on reducing reoffending. We will give them freedom to work with offenders in new and innovative ways, and seek to extend and diversify the market of offender services providers.

151. We aim to apply the principles of payment by results to all providers of offender services by 2015. We are testing the approach through a series of initial pilots. Pilots have already started in two private prisons, with two

more, in public sector prisons, to follow in 2012. We are contributing to eight drug and alcohol recovery pilots run by the Department of Health and are testing through two pilots with the Department for Work and Pensions how we can further incentivise Work Programme[1] providers to reduce reoffending. Two further pilots focus on offenders in the community, under the management of the Wales, and Staffordshire and West Midlands Probation Trusts, and are being developed in line with our wider proposals for reforming probation services.

152. For each of the two community pilots, a proportion of the participating Trust's funding will be placed 'at risk', with payment dependent on the successful rehabilitation of offenders. If the pilot meets its target, measured through a reduction in reconvictions, then the 'at risk' payment will be made. Over-achievement will bring the potential for additional success payments, but failure to meet the reconvictions target will mean that no payment is made.

153. As this approach requires the transfer of financial risk from the Government to the provider, the two public sector Probation Trusts cannot directly engage in their current form. The pilots will seek to test how novel commercial and contractual arrangements between Probation Trusts and partners from outside the public sector can enable probation services to be delivered on a payment by results basis. The pilot providers will be granted new freedoms and flexibilities, to allow them to develop and introduce innovative service delivery models,

154. The pilots will begin in 2013, and run for up to four years. The final scope is still to be agreed, but it is likely that a significant portion of each Trust's community sentence caseload will be included, so that we can have confidence in the results that we observe. Each of the two pilots will be the subject of an independent evaluation, and the lessons learned will inform our strategy for applying payment by results principles more widely to offender services.

Women offenders

155. We are committed to addressing women's offending – both for the benefit of the individual and of society. We currently spend an estimated £80m a year on adult females serving community and suspended sentences, and women are doing slightly better than men on these sentences. Data shows that a slightly higher proportion of women have positive outcomes (successful completion or early termination for good progress) for community orders than men (69% and 65% respectively), whilst a slightly lower proportion of women than men failed to comply with requirements or were convicted of another offence while serving community orders (22% of women and 26% of men). However, women are less likely than their male counterparts to receive a community

[1] http://www.dwp.gov.uk/policy/welfare-reform/the-work-programme/

sentence. In 2010, just 10% of women received a community sentence compared to 16% of men.

156. In *Breaking the Cycle*, we recognised that women offenders tend to have multiple and therefore more complex problems related to their offending, including mental health and substance misuse problems, as well as education, employment and relationship needs. In its response, published in June 2011, the Government gave a commitment that in seeking to reduce reoffending it would take into account the different profile of women's offending.

157. It is important, therefore, that we ensure that community sentences not only are meaningfully punitive, but also that they support women in addressing their needs as part of the rehabilitation process. They could make the justice system more sensible in some situations, such as in ensuring that there are decent non-penal options for offenders with caring responsibilities where their being sent to prison would cause chaos for innocent children in their families. We have noted previously at paragraph 39 the possibility of imposing a curfew that could work around an individual's childcare responsibilities, or tailoring requirements to deal with an offender's mental health issues. These approaches could positively benefit women offenders and help them to maintain a stable family life. Similarly, our proposal to create a new option for offender managers to deal with breach, of giving a financial penalty without returning to court, would help to reduce the number of women offenders in custody: in 2009, 415 women were recorded as going into immediate custody because of a breach of community sentence.

158. A significant number of women offenders have already been helped and supported in the community through a network of community provision for women, which has been developed through probation and the voluntary sector working closely together. These projects provide holistic support for women in the community by tackling a range of problems, including drug and alcohol dependency. This is combined with interventions aimed at helping women offenders come to terms with issues such as physical and sexual abuse. In 2012/13, NOMS will continue to fund the vast majority of the Women's Community Services – some 30 in total to work with over 5,000 women. This is a new commitment amounting to £3.5m.

159. As part of this work we are exploring opportunities for women to complete their Community Payback orders in appropriate settings where they are otherwise likely to be a lone female in a work group. Several women's community centres have already developed practice including in Birmingham, Blackpool, Scarborough, Leicester, Norwich and Bristol.

160. In tackling drug and mental health problems, amongst other work around payment by results and liaison and diversion services, four women-only intensive, treatment based alternatives to custody will be developed in Wirral, Bristol, Birmingham and Tyneside. In doing so, we will seek to

learn the lessons from ongoing work to support vulnerable women in the community when there is no risk to the public.

161. In addition, the Women Awareness Staff Programme has been developed to train those who work with women offenders who are victims of domestic violence and abuse in the community; and the Sex Workers in Custody and the Community training will raise awareness of the life experiences of street based sex workers, and ensure that these women offenders are better signposted to appropriate, specialist services.

Case Study – 'Anawim' women's centre

"Jane" (19) was involved in the riots and given a 2 year suspended sentence, 200 hours Community Payback and a 60 day Specified Activity Order. At first she missed numerous Community Payback appointments due to ill health.

When referred to Anawim, a women's centre, Jane was living in a hostel (due to rent arrears and her mother's mental heath problems), on Job Seekers' Allowance, suffering from severe anxiety and depression, dyslexia and epilepsy, and drink problems. Jane was feeling angry following a month on remand in prison and harassment by other residents at the hostel, and was struggling to communicate how she was feeling. Anawim learnt that Jane had previously suffered sexual abuse and rape and was having difficulty coming to terms with this abuse.

Jane was assessed by a Community Psychiatric nurse at Anawim, who provided 1-1 support pending an appointment with a Clinical Psychologist, during which time Jane took an overdose as she was not coping with her issues. Jane attended a number of workshops at Anawim, including Anger Management and Confidence and Self-Esteem.

With this support, Jane was been able to abstain from alcohol and manage her anger, leading to an improved relationship with her mother. This enabled Jane to return temporarily to live with her mother whilst Anawim helped her to apply for social housing. Jane attended all of her sessions at Anawim, became more communicative, less likely to lose her temper and ceased to have any current self-harm or suicidal ideation. She started to take control, proactively seeking help to resolve a benefits problem. After Jane started to attend Anawim the Probation Service noted a marked improvement in her attendance and engagement in Community Payback.

162. There is a clear and growing role for the voluntary and community sector in providing services to meet the varied needs of women offenders, building on this good work already taking place. In future, as part of the Government's localism agenda, our approach will be based on delivering targeted services on the ground, with responsibility for providing gender specific and holistic services built into the fabric of every Probation Trust as a part of comprehensive local service delivery.

Consultation question

36) How else could our proposals on community sentences help the particular needs of women offenders?

Health

163. Tackling the health factors that lead to, or contribute towards offending are crucial to our success in reducing reoffending. A number of important areas of work are in train to help us achieve this.

164. We aim to tackle drugs and alcohol misuse through close partnership working with the Department of Health. This will work in tandem with the piloting of drug recovery wings in 5 prisons, which is focusing primarily on those given short custodial sentences. The aim of these programmes is to link more effectively into community services following release and focus on supporting offenders to become drug free, encouraging abstinence and moving towards recovery. We are implementing a second tranche of drugs recovery wings in a further 5 prisons, including at three women's prisons and a Young Offenders' Institution. We will also support the Department of Health in designing and implementing drug and alcohol recovery pilots which will further incentivise the delivery of recovery, including reducing offending, by testing a payment by result model. Eight local areas are working with central government to co-design the detail and all sites will begin operating by April 2012.

165. We will address mental health issues by working with the Department of Health and Home Office to roll out liaison services in police custody and in the courts to identify needs and put sufficient actions in train at the earliest opportunity.

166. We are looking to explore and test options for intensive community based treatment alternatives to custody for offenders with drug dependency or mental health problems. Four pilot areas are already underway and further pilots are planned this year. We also plan to remove restrictions on the duration of drug rehabilitation and alcohol treatment requirements so as to make these a more flexible option for use by the courts. By simplifying the assessment process, we are also making it easier for courts to use the mental health treatment requirement and ensure that those who require such treatment receive it as early as possible.

Tackling alcohol-related crime

167. We know that we need to do more to specifically tackle alcohol-related crime which remains a significant problem. The number of offences where alcohol is a factor is high – some 44% of those who commit violent offences are believed to be under the influence of alcohol. We are taking additional steps to address these issues.

168. As set out in the Government's Alcohol Strategy published on Friday 23 March 2012, we are taking forward a wide range of cross-Government action to tackle the issue of excessive alcohol consumption, including the introduction of a minimum unit price for alcohol and work to rebalance the Licensing Act in favour of communities by giving greater powers to police and licensing officers to tackle irresponsible businesses. We will be consulting on a number of these proposals in the coming months.

169. Work is also underway to strengthen violence reduction programmes to incorporate a greater emphasis on tackling the impact of alcohol and drugs on crime, anti-social behaviour and disorder, and we are piloting Drinking Banning Orders in 50 areas across England and Wales which prohibit an individual from undertaking activities such as entering premises that are licensed to supply alcohol. Public spaces are being more effectively protected from alcohol-related crime and disorder by increased use of Designated Public Place Orders to restrict and control drinking. We have recently consulted on reforms to the wide range of tools currently available to tackle anti-social behaviour, including alcohol fuelled anti-social or criminal behaviour. Our aim is to ensure that local areas have a simplified set of tools and powers which will be more effective and more flexible, and we will set out more detail on this shortly.

170. For offenders who are dependent upon alcohol, which is linked to their offending behaviour, and who pass the community sentence threshold, Alcohol Treatment Requirements (ATRs) will continue to be available to the courts as an effective means of tackling these issues. We are taking steps through the Legal Aid, Sentencing and Punishment of Offenders Bill to make it easier for courts to impose these requirements, as part of a community or suspended sentence order, by removing the limit on their minimum length. This will allow the court to impose an ATR in circumstances where they wish to apply a shorter period of intensive, upfront treatment as part of the order which can be followed up by further, more informal ongoing support through community health services.

171. However, we know that a significant number of offenders are problem drinkers who do not fall into the dependency category. We are therefore working with the Department of Health and other Government departments to look at what else we can do to tackle alcohol-related offending by those who misuse alcohol but are not dependent upon it. The cross-Government Alcohol Strategy sets out more information on our plans in this area.

172. For offenders who do not reach the threshold for dependency required by the ATR but have problems with alcohol, the courts can make use of supervision and activity requirements to signpost them into support and advice services to help tackle their needs, and programme requirements which specifically address their offending behaviour. We want to encourage greater use of alternative options for delivering alcohol-

specific interventions to problematic drinkers such as Alcohol Specified Activity Requirements (ASARs) which have been introduced in some areas.

173. Use and practice of these types of requirements vary significantly across areas and several stakeholders told us through the *Breaking the Cycle* consultation that there are large disparities in practice and service provision as well as a need to re-examine the commissioning and delivery mechanisms for alcohol services to offenders. These are issues that we are looking at: about how we can better identify offenders with alcohol-related needs; develop a better cost benefit analysis for alcohol interventions and programmes; and explore how ASARs can be further developed to target the large number of problematic drinkers receiving sentences in the community.

Testing the case for sobriety schemes

174. Another proposal we have been considering to help tackle the problem of alcohol-related offending is compulsory sobriety schemes. Compulsory sobriety schemes have been operated with some success in the USA, notably a 24/7 enforced sobriety scheme in South Dakota. The scheme was developed as a demanding means of tackling high levels of drink-driving cases in the State. The scheme was later expanded to respond to a wider range of alcohol-related crime and disorder. Under the South Dakota model:

- A compulsory sobriety order is available as an alternative to custody;
- The offender must undergo twice daily testing at a designated place;
- They must pay for each test - $1 per test;
- If the offender fails the test or does not turn up, they are arrested and returned to court at the earliest opportunity; and
- Following breach the judge can impose a range of punishments e.g. to impose a custodial period; put them back on community sentence etc.

175. In view of the differences in the legal systems and demographics of England and Wales compared to South Dakota it is not possible to ascertain through the evidence of the USA schemes whether a compulsory sobriety scheme would lead to a reduction in reoffending in this country. We are however keen to consider the effect of similar schemes in England and Wales and the Government is taking forward two ‘proof of concept’ pilots to trial enforced sobriety schemes in England and Wales. We will use these pilots to test out the purposes and effect of enforced sobriety 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.

176. The first pilot strand will focus on conditional cautions, targeted at offences such as drunk and disorderly, criminal damage and public disorder which account for a considerable volume of alcohol-related

offences. The condition requires an offender to abstain from drinking on the days they are most likely to offend as a result of alcohol and attend a police station on those days e.g. Friday, Saturday, Sunday, where they will be tested using a breathalyser. We have announced the pilot areas in the *Government Alcohol Strategy*. The first conditional cautions enforcing sobriety should be administered from April/May.

177. The second pilot will test sobriety as part of our response to more serious alcohol-related crimes looking at the use of community sentences. It will focus on offences, where alcohol is often a contributing factor, such as common assault, actual bodily harm, grievous bodily harm, affray and violent disorder.

178. To provide for this, the Government is taking forward provisions in the Legal Aid, Sentencing and Punishment of Offenders Bill to give courts a new power to impose an *Alcohol Abstinence and Monitoring Requirement* as part of a community or suspended sentence order on an offender who has committed an alcohol-related offence.

179. Under the new requirement:

- Offenders will be required to abstain from drinking for a period specified by the court (up to 120 days).
- They will be either be required to attend a police station or test centre to be monitored by breathalyser equipment, or to wear an alcohol tag around their ankle. We are in the process of testing alcohol tagging technology for this purpose.
- The test for imposing a requirement would be a link between alcohol consumption and the offending behaviour.

180. In the initial trialling stage, we do not propose to include domestic violence (DV) offences. We do not dispute that alcohol is often a causal factor in DV cases, and is a considerable issue we must continue to address. However, the causes of DV are far more deep rooted than simply being an effect of intoxication. It is therefore vital that any alcohol misuse is treated in tandem with addressing the violent behaviour and that considered and holistic steps are taken to tackling the root causes of domestic abuse. Once we have assessed the initial pilots and learned lessons then we can think further about the application of sobriety to other offence types and establish what sufficient safeguards must be in place in order to do so.

181. Both pilots will provide us with relevant evidence as to the practicality of requiring offenders to abstain from alcohol. In particular, for the community sentence pilot we want to test how such a requirement would be viewed and used by the courts when reaching decisions as to the appropriateness of a sobriety requirement

Consultation questions

37) What is the practitioner view of implementing enforced sobriety requirements?

38) Who would compulsory sobriety be appropriate for?

39) Are enforced sobriety requirements appropriate for use in domestic violence offences?

40) What additional provisions might need to be in place to support the delivery of enforced sobriety requirements?

41) What other areas could be considered to tackle alcohol-related offending by those who misuse alcohol but are not dependent drinkers?

Annex A – equality impacts

To inform responses to this consultation document we have published separate analyses of the potential equality impacts of our proposals. The Equality Impact Assessment (EIA) considers the potential effects of our proposals according to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. We welcome comments about the accuracy and extent of the effects identified. We particularly welcome responses from those who identify themselves as sharing a protected characteristic or from interest groups representing those with protected characteristics. The responses received will be taken into account as the Government decides the best way forward following the end of the consultation period.

Consultation questions

42) What do you consider to be the positive or negative equality impacts of the proposals?

43) Could you provide any evidence or sources of information that will help us to understand and assess those impacts?

44) Do you have any suggestions on how potential adverse equality impacts could be mitigated?

45) Where you feel that we have potentially missed an opportunity to promote equality of opportunity and have a proposal on how we may be able to address this, please let us know so that we may consider it as part of our consultation process.

Annex B – full list of consultation questions

1. What should be the core elements of Intensive Community Punishment?
2. Which offenders would Intensive Community Punishment be suitable for?
3. Do you agree that every offender who receives a community order should be subject to a sanction which is aimed primarily at the punishment of the offender ('a punitive element')?
4. Which requirements of the community order do you regard as punitive?
5. Are there some classes of offenders for whom (or particular circumstances in which) a punitive element of a sentence would not be suitable?
6. How should such offenders be sentenced?
7. How can we best ensure that sentences in the community achieve a balance between all five purposes of sentencing?
8. Should we, if new technologies were available and affordable, encourage the use of electronically monitored technology to monitor compliance with community order requirements (in addition to curfew requirements)?
9. Which community order requirements, in addition to curfews, could be most effectively electronically monitored?
10. Are there other ways we could use electronically monitored curfews more imaginatively?
11. Would tracking certain offenders (as part of a non-custodial sentence) be effective at preventing future offending?
12. Which types of offenders would be suitable for tracking? For example those at high-risk of reoffending or harm, including sex and violent offenders?
13. For what purposes could electronic monitoring best be used?
14. What are the potential civil liberties implications of tracking offenders and how can we guard against them?
15. Which offenders or offences could a new power to order the confiscation of assets most usefully be focused on?
16. How could the power to order the confiscation of assets be framed in order to ensure it applied equitably both to offenders with low-value assets and those with high-value assets?
17. What safeguards and provisions would an asset confiscation power need in order to deal with third-party property rights?

18. What would an appropriate sanction be for breach of an order for asset seizure?
19. How can compliance with community sentences be improved?
20. Would a fixed penalty-type scheme for dealing with failure to comply with the requirements of a community order be likely to promote greater compliance?
21. Would a fixed penalty-type scheme for dealing with failure to comply with the requirements of a community order be appropriate for administration by offender managers?
22. What practical issues do we need to consider further in respect of a fixed penalty-type scheme for dealing with compliance with community order requirements?
23. How can pre-sentence report writers be supported to advise courts on the use of fines and other non-community order disposals?
24. How else could more flexible use of fines alongside, or instead of, community orders be encouraged?
25. How can we better incentivise offenders to give accurate information about their financial circumstances to the courts in a timely manner?
26. How can we establish a better evidence base for pre-sentence RJ?
27. What are the benefits and risks of pre-sentence RJ?
28. How can we look to mitigate any risks and maximise any benefits of pre-sentence RJ?
29. Is there more we can do to strengthen and support the role of victims in RJ?
30. Are there existing practices for victim engagement in RJ that we can learn from?
31. Are these the right approaches? What more can we do to help enable areas to build capacity and capability for restorative justice at local levels?
32. What more can we do to boost a cultural change for RJ?
33. How can we ensure that courts are provided with the best possible information about injury, loss or damage in order to support decisions about whether to impose a compensation order?
34. How could sentencing guidelines support a more consistent approach to fixing the value of compensation orders?
35. Would removing the £5,000 cap on a single compensation order in the magistrates' courts give magistrates greater flexibility in cases where significant damage is caused and offenders have the means to pay?
36. How else could our proposals on community sentences help the particular needs of women offenders?
37. What is the practitioner view of implementing enforced sobriety requirements?

38. Who would compulsory sobriety be appropriate for?
39. Are enforced sobriety requirements appropriate for use in domestic violence offences?
40. What additional provisions might need to be in place to support the delivery of enforced sobriety requirements?
41. What other areas could be considered to tackle alcohol-related offending by those who misuse alcohol but are not dependent drinkers?
42. What do you consider to be the positive or negative equality impacts of the proposals?
43. Could you provide any evidence or sources of information that will help us to understand and assess those impacts?
44. Do you have any suggestions on how potential adverse equality impacts could be mitigated?
45. Where you feel that we have potentially missed an opportunity to promote equality of opportunity and have a proposal on how we may be able to address this, please let us know so that we may consider it as part of our consultation process.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	☐ (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 22 June to:

Effective Community Sentences
Ministry of Justice
Post Point 8.22
102 Petty France
London SW1H 9AJ

Email: effectivecommunitysentences@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at https://consult.justice.gov.uk/digital-communications/effective-community-sentences.

Alternative format versions of this publication can be requested from effectivecommunitysentences@justice.gsi.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published in the autumn, The response paper will be available on-line at http://www.justice.gov.uk/index.htm.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic

confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Impact Assessment

This document is accompanied by an initial Impact Assessment which can be obtained from the address in the “How to respond” section above and is also available on-line at https://consult.justice.gov.uk/digital-communications/effective-probation-services.

A full cost benefit assessment of the proposals will be completed following the consultation period.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.

2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

Responses to the consultation must go to the named contact under the How to Respond section.

However, if you have any complaints or comments about the consultation **process** you should contact Sheila Morson on 020 3334 4498, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Ministry of Justice
Consultation Co-ordinator
Better Regulation Unit
Analytical Services
7th Floor, 7:02
102 Petty France
London SW1H 9AJ

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