

<b>Title:</b> Consultation on sentences in the community and the future shape of probation services <b>IA No:</b> <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> NOMS, HMCTS	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 04/01/2012
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
	<b>Contact for enquiries:</b> Community sentences team <a href="mailto:effectivecommunitysentences@justice.gsi.gov.uk">effectivecommunitysentences@justice.gsi.gov.uk</a> Probation consultation <a href="mailto:effectiveprobationservices@justice.gsi.gov.uk">effectiveprobationservices@justice.gsi.gov.uk</a>
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	No   NA

**What is the problem under consideration? Why is government intervention necessary?**

While re-offending rates for community orders are lower among similar offenders who are sentenced to short-term custody, they remain stubbornly high. Community orders do not garner sufficient public confidence and are perceived as insufficiently punitive for the offences for which they are given. Probation Trusts retain a near monopoly on providing services and we need to make better use of the innovation, capacity and diversity of different providers to help cut crime. We want to give further discretion and responsibility to providers and front-line staff so that resources can be targeted most effectively. The Government is committed to delivering better punishment and rehabilitation of offenders, and to improved public protection. We are consulting so that changes can be made to the sentencing framework enabling the judiciary to hand down community sentences that the public have confidence in, and to ensure that an effective and efficient offender management system is in place to support this.

**What are the policy objectives and the intended effects?**

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

The intended effect of our probation proposals is to deliver more effective and efficient services that help us better deliver our key outcomes of reducing reoffending, protecting the public and ensuring the punishment and reform of offenders, including supporting the proposed changes to sentences in the community.

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

The policy options which have been considered in this Impact Assessment relate to two sections:

Section 1: community sentences –

- Option 0: Do nothing
- Option 1: Community sentences - consult on proposals to:
  1. develop a robust, top end community order;
  2. include a punitive element in every community sentence;
  3. increase the use of fines and improve information about offenders' means;
  4. explore the use of asset seizure as a standalone punishment;
  5. ensure compliance;
  6. build capability and capacity for the delivery of restorative justice measures;
  7. increase the use of compensations orders; and
  8. explore how we might tackle alcohol related crime through a compulsory sobriety scheme

Section 2: the future shape of probation services –

- Option 0: Do nothing
- Option 1:
  1. Extend the principles of competition in probation services including to the management and supervision of lower risk offenders;
  2. Introduce more diverse provision in probation services, encouraging the participation of the public, private and voluntary sectors, and on a payment by results basis where possible
  3. Strengthen the commissioning role of public sector Probation Trusts with a clearer focus on outcomes and to better meet local need;
  4. Strengthen the local delivery of probation services and consult on the potential over time for other public bodies to take responsibility for probation services.

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

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

Signed by the responsible SELECT SIGNATORY: ..... Date: .....

# Summary: Analysis & Evidence

# Policy Option 1

Description: Community Sentence proposals

## FULL ECONOMIC ASSESSMENT

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

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	Unknown	Unknown	Unknown

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

Not quantified at this stage

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

We will use the consultation period to understand potential costs and benefits better and to explore the potential choices that may impact these. However, there could be financial costs with introducing Intensive Community Punishment, adding a punitive element to every Community Order; providing start up funds for restorative justice and increasing the use of electronic monitoring of offenders. There may also be financial burdens on the Ministry of Justice in terms of additional enforcement costs for financial penalties and asset seizure, a higher volume or value of unpaid financial penalties and potential breach costs arising from the sobriety pilots.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	Unknown	Unknown	Unknown

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

Not quantified at this stage

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

There may be some intangible benefits arising from a greater level of public confidence in the Criminal Justice System. There may also be some financial benefits to the Ministry of Justice through greater use of financial penalties.

### Key assumptions/sensitivities/risks

Evidence is unclear on the effectiveness of individual Community Order requirements in reducing re-offending. The Ministry of Justice is currently undertaking analysis to determine the impact of punitive Community Order requirements on re-offending rates.

### Discount rate (%)

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO? Yes/No	Measure qualifies as IN/OUT/Zero net cost
Costs:	Benefits:	Net:		

# Summary: Analysis & Evidence

# Policy Option 2

Description: The future shape of Probation Services

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low					
High					
Best Estimate	Unknown		Unknown		Unknown
<p><b>Description and scale of key monetised costs by 'main affected groups'</b></p> <p>There will be a cost associated with competing probation services, the scale of which will be determined by the extent and complexity of any competition.</p>					
<p><b>Other key non-monetised costs by 'main affected groups'</b></p> <p>We will use the consultation period to understand potential costs and benefits better and to explore the potential choices that may impact these.</p>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low					
High					
Best Estimate	Unknown		Unknown		Unknown
<p><b>Description and scale of key monetised benefits by 'main affected groups'</b></p> <p>There is evidence that competition in offender services can lead to greater efficiency and increased value for money.</p>					
<p><b>Other key non-monetised benefits by 'main affected groups'</b></p> <p>Competition in offender services can provide commissioners with the means to secure new services, improve existing service delivery, encourage innovation and drive value for money.</p>					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
<p>We will use the consultation period to understand potential costs and benefits better and to explore the potential choices that may impact these.</p>					

## BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net:</b>	Yes/No	IN/OUT/Zero net cost

# Introduction

1. This Impact Assessment is divided into two sections, to reflect the two separate but linked consultation exercises on (1) the future of sentences in the community, and (2) the future shape of probation services. Each section presents a summary of the relevant evidence and then considers the potential impacts in terms of the likely scale and scope of the costs and benefits arising as a result of the policy proposals covered by the consultation documents.
2. The first section covers sentences in the community, where the evidence base covers the current state of knowledge about the use and effectiveness of these sentences. The second section covers the future shape of probation services, where the evidence base covers potential benefits from increased use of competition, the current knowledge of the cost base of the current state of probation service provision and a summary of the current position with regard to probation staff

## Section 1: Community Sentences

### Evidence Base

3. The Criminal Justice Act (2003) created a single community order, which replaced all previous adult community sentences. Community orders are designed to restrict an offender's liberty while providing punishment in the community, rehabilitation for the offender and ensuring the offender engages in reparative activities. Community orders consist of one or more of 12 possible requirements, each aimed at achieving one or more specific outcomes. The duration may last from 12 hours to three years. If a Community Order is breached, the court can amend it by making it more onerous, or it can revoke and re-sentence the offender, which may mean custody.
4. The 12 requirements available for Community Orders:
  - Unpaid work (Community Payback) (40-300 hours)
  - Supervision (up to 36 months)
  - Accredited programme (length to be expressed as the number of sessions; must be combined with a supervision requirement)
  - Drug rehabilitation (6-36 months; offender's consent is required). Proposals in the LASPO Bill seek to remove the statutory minimum length)
  - Alcohol treatment (6-36 months; offender's consent is required)
  - Mental health treatment (up to 36 months; offender's consent is required). Proposals in the LASPO Bill seek to remove the statutory minimum length)
  - Residence (up to 36 months)
  - Activity (up to 60 days)
  - Prohibited activity (up to 36 months)
  - Exclusion (up to 24 months)
  - Curfew (up to 6 months and for 2-12 hours in any one day; if a stand-alone curfew order is made, there is no probation involvement)
  - Attendance centre (12-36 hours with a maximum of 3 hours per attendance)
5. Offenders commencing community orders are tiered according to their likelihood of re-offending and their risk of serious harm, and the requirements of their sentence. Higher tier offenders receive higher levels of resource. Tiers 1 and 2 are usually supervised by Probation Service Officers ("PSOs") and tiers 3 and 4 by qualified Probation Officers (POs).

### **Since their introduction in 2005, there has been an upward trend in the number of offenders sentenced to community orders**

6. The volume of offenders starting community orders has increased significantly since their introduction in 2005, but between 2009 and 2010 the number of offenders starting community orders fell for the first time (by 3%). Over the period, there has been a marked increase in offenders on community orders given unpaid work, curfew, activity and alcohol treatment requirements. At the same time, there has been a reduction in offenders on community orders commencing supervision, accredited programmes and mental health requirements.

**Figure 1: volume of community order starts by requirement**

	2006	2007	2008	2009	2010
<b>Community Orders</b>	<b>211,905</b>	<b>223,511</b>	<b>226,234</b>	<b>231,444</b>	<b>223,227</b>
Supervision	76,234	78,102	77,777	77,769	72,998
Unpaid Work	66,937	74,779	74,629	76,699	73,797
Accredited Programme	34,287	30,143	26,483	23,442	20,444
Curfew	9,615	12,608	15,526	16,479	17,476
Drug treatment	11,895	12,145	13,153	12,087	11,996
Activity	7,706	8,763	9,639	13,476	15,189
Alcohol treatment	2,439	3,267	4,664	6,485	5,949
Residential	762	930	956	929	1,062
Prohibited Activity	483	847	1,116	1,376	1,491
Exclusion	510	845	1,029	1,106	1,135
Mental Health	750	652	739	809	743
Attendance Centre	287	430	523	787	947

**Around half of offenders sentenced to a community order are subject to only one requirement**

7. In 2010, 118,700 adults started a community order – around half of these had one requirement; 35% two; 12% three and 3% four or more. Unpaid work alone was the most common combination of requirements (given to 33% of adults starting a community order in 2010).

**In 2010, 37% of those offenders who started community orders were tier 1 offenders**

8. In the same period, 61% of offenders were supervised by an unqualified Probation Service Officer (PSO) (tiers 1 & 2) and 38% were supervised by qualified Probation Officers (POs) (tiers 3 & 4). More than 80% of standalone unpaid work cases were in tier 1. The combinations of accredited programmes and supervision, and drug treatment and supervision were represented most in the higher supervision tiers. Around two thirds of the community orders terminating in 2010 ran their full course or were terminated early for good progress<sup>1</sup>.

**Figure 2: volume of community order starts by tier, 2010, England and Wales**

	Volume	Percentage
Tier 1	43,949	37%
Tier 2	28,111	24%
Tier 3	40,300	34%
Tier 4	5,101	4%
Not stated	1,235	1%
<b>Total</b>	<b>118,696</b>	<b>100%</b>

Source: *Offender Management Caseload statistics publication*

<sup>1</sup> The tiering methodology is currently under review and changes being considered are likely to affect the volume of offenders in each tier.

**Unpaid work is the most commonly used requirement among Tier 1 offenders while supervision is the most commonly used requirement among all other offenders**

**Figure 3: requirements by tier**

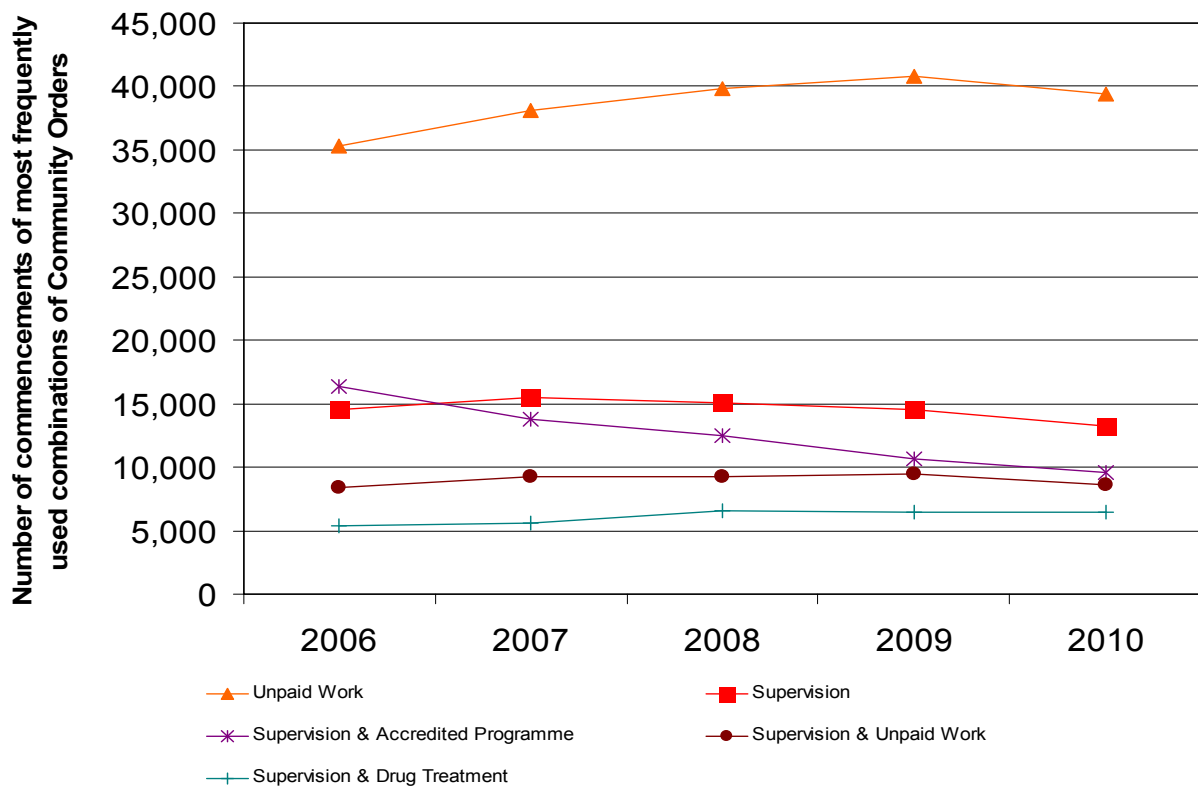
	Tier 1	Tier 2	Tier 3	Tier 4	All requirements
Residential	0.2%	0.6%	1.2%	4.2%	0.7%
Accredited programme	1.6%	12.6%	33.5%	32.1%	15.7%
DRR	0.4%	6.1%	17.1%	19.8%	7.9%
ATR	0.4%	6.5%	7.8%	6.8%	4.5%
Curfew	9.9%	12.5%	11.1%	14.6%	11.6%
Attendance centre	0.7%	0.6%	0.4%	0.3%	0.7%
MHTR	0.0%	0.4%	1.2%	2.1%	0.6%
Specified activity	3.6%	16.5%	13.6%	14.7%	10.4%
Prohibited activity	0.6%	1.1%	1.5%	3.1%	1.1%
Supervision	8.5%	78.6%	87.3%	84.6%	54.1%
Unpaid work	89.9%	41.5%	28.2%	24.4%	55.0%
Exclusion	0.6%	0.8%	1.0%	1.3%	0.8%

Source: Interim dataset of the Offender Management Community Cohort Study (admin data covering the period October 2009 – December 2010). Values may change in final dataset

**Standalone unpaid work is the most commonly used requirement for community orders**

- Stand alone unpaid work is the most commonly used requirement for community orders. For offenders who receive more than one requirement, supervision and accredited programmes and supervision and unpaid work are the most commonly used combinations. Between 2006 and 2010, for combinations of requirements made under community orders, increases can be seen in standalone unpaid work. Those combinations which include accredited programmes have fallen significantly over the period whereas those combinations involving activity have increased<sup>2</sup>.

**Figure 4: volume of community order starts by top requirement combinations**



<sup>2</sup> Activity requirements include packages of basic skills, employment, training and education or in some case specialist activities such as restorative justice. Not all activity requirements can be classified as rehabilitative in nature.

## **For similar offenders, community orders have lower re-offending rates than short custodial sentences**

10. For similar offenders, community orders have lower re-offending rates than short (less than 12 months) custodial sentences – 8.3 percentage points in 2008. Offenders sentenced to community orders had slightly higher re-offending rates than those sentenced to suspended sentence orders – the difference being 2.7 percentage points. Those offenders subject to community orders had a re-offending rate 1.6 percentage points higher than similar offenders sentenced to fines. Offenders sentenced to a conditional discharge had re-offending rates that were 5.6 percentage points lower than similar offenders sentenced to community orders<sup>3</sup>.

## **There is considerable evidence to support the effectiveness of behaviour/cognitive behavioural programmes in reducing re-offending.**

11. Home Office research concluded that actual re-offending rates were better than predicted for all groups of offenders sentenced to certain behavioural/cognitive skills programmes in the community. This difference was much higher for completers than for either non-starters or non-completers<sup>4</sup>. There is somewhat promising evidence about the impact of drug treatment programmes, education, training, employment and violence/ anger management programmes<sup>5</sup>. There is very limited evidence from the UK on the effectiveness of alcohol treatment although there is sparse evidence that suggests that some specific treatments will result in addressing the offender's need which may lead to reductions in re-offending<sup>6</sup>.

## **Feedback from stakeholders on the intensive alternatives to custody (IAC) pilots suggest that IAC orders have a positive impact on offenders and the potential to impact on re-offending**

12. The IAC pilot programme ran from 2008/09 to 2010/11 to test the use of intensive community orders in diverting offenders from short-term custodial sentences. There was considerable difference between the group of offenders targeted in each pilot area and the interventions delivered in each site. Sentencers, probation staff and partners welcomed the IAC order as a viable alternative to custody and thought that IAC orders and the way in which they were delivered had a positive impact on offenders and the potential to impact on re-offending. Many of the persistent offenders targeted by the pilots were positive about the IAC order, saying it was intensive but provided order and stability, allowing them to move away from the criminal lifestyle<sup>7</sup>. MoJ are undertaking analysis to compare re-offending rates for IAC offenders with re-offending rates for similar offenders receiving custodial sentences of less than 12 months, and similar offenders receiving court orders.

## **Research on electronic monitoring has found that it can have an impact on recidivism providing the right people are targeted and monitored rigorously.**

13. A variety of international studies have found that electronic tagging can have a significant effect on reducing the recidivism rates of offenders, and that monitoring significantly reduces the likelihood of failure under community supervision<sup>6,8,9,10,11,12,13</sup>. However, the UK evidence points towards a more neutral impact on re-offending<sup>14</sup>.

<sup>3</sup> Compendium of re-offending statistics and analysis, 2011; offenders were matched on age, gender, ethnicity, number of previous criminal offences and latest offence type

<sup>4</sup> Do Cognitive Skills Programmes Work With Offenders? Ministry of Justice and NOMS publication May 2010

<sup>5</sup> This evidence is summarised in a review carried out by the Home Office in 2005: Harper, G. and Chitty, C. (eds), The impact of corrections on re-offending: a review of what works. Home Office Research, Development and Statistics Directorate, 2005

<sup>6</sup> Chick, J., Treatment of alcoholic violent offenders: ethics and efficacy, Alcohol and Alcoholism, 33: 20-25, 1998

<sup>7</sup> Ministry of Justice research summary 3/11, Evaluation of the Intensive Alternatives to Custody pilots, 2011

<sup>8</sup> Washington State Institute for Public Policy (WSIPP) *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes Technical Appendix*, 2011

<sup>9</sup> National Institute of Justice (NIJ) *'Electronic Monitoring Reduces Recidivism'*, 2011

<sup>10</sup> Bonta J., Wallace-Capretta S., Rooney J.: A quasi-experimental evaluation of an intensive rehabilitation supervision program, 2000

<sup>11</sup> WSIPP *What works in Community Supervision: Interim Report*, 2011

<sup>12</sup> Lapham, S., De Baca, J., Lapidus, J., and McMillan, G., "Randomized Sanctions to Reduce Reoffense Among Repeat Impaired-Driving Offenders." *Addiction* 102:1618–25, 2007

<sup>13</sup> Bonta J., Wallace-Capretta S., Rooney J., Can electronic monitoring make a difference? An evaluation of three Canadian programs, 2000

<sup>14</sup> Home Office Research paper 141, Electronic monitoring and offending behaviour – reconviction results for the second year of trials of curfew orders, 2001



**Research on supervision suggests that the supervisory relationship between the offender and the case manager plays an important role in securing compliance and promoting desistance.**

14. Pro-social modelling has been found to be associated with higher rates of compliance and lower rates of recidivism<sup>15</sup>. Factors identified as key include a constructive and consistent relationship between offender and offender manager, sufficient resource to ensure offender needs are met and a flexible approach that enables offenders to meet other responsibilities while simultaneously completing their order.

**There is no evidence that unpaid work has a positive impact on re-offending.**

15. Research specifically on unpaid work is sparse and dated. However, limited evidence suggests that offenders perceive it as a positive experience<sup>16</sup>.

**Fines**

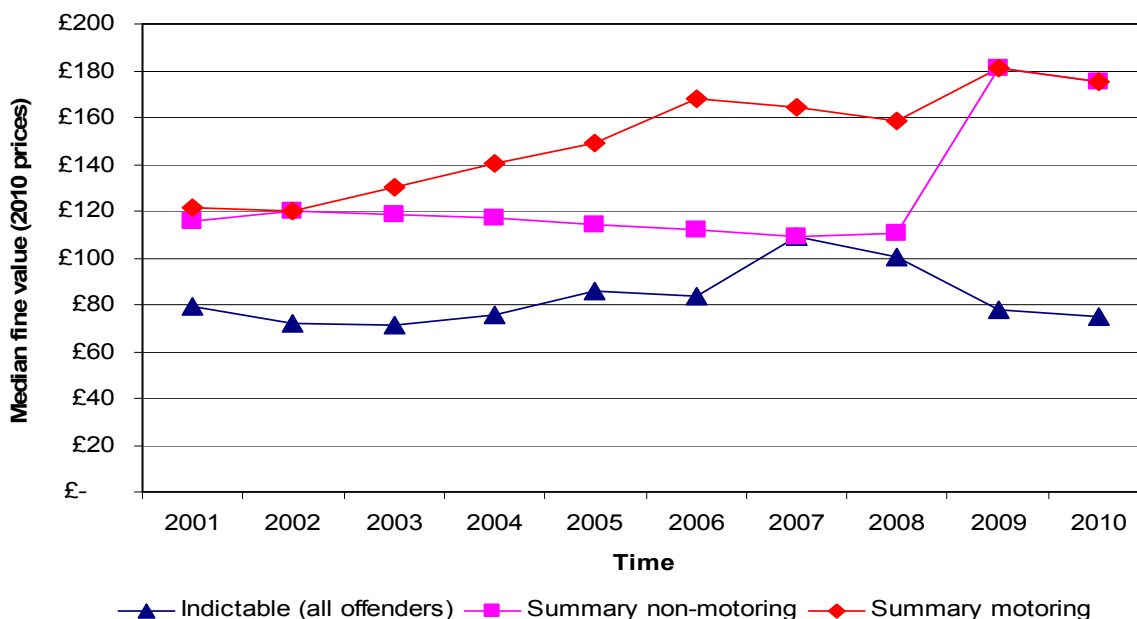
**The use of fines has decreased over the last 10 years. Fines are rarely given in conjunction with community orders.**

16. From 2001 to 2010, the number of offenders fined for all offences fell by 4% while over the same period there was an increase of 15 per cent in the use of community sentences; offenders fined for indictable offences decreased by 22% and offenders fined for summary (non-motoring) offences decreased by 1%. In 2010, 490 fines were issued alongside a community order. The median fine amount in 2010 was £175, a nominal increase of 75% since 2001 or a real increase of 44% over the same period.

**Figure 5: volumes of offenders sentenced by outcome, 2001-2010, England and Wales**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Total number sentenced</b>	<b>1,348,494</b>	<b>1,419,608</b>	<b>1,489,827</b>	<b>1,547,352</b>	<b>1,482,453</b>	<b>1,420,571</b>	<b>1,414,742</b>	<b>1,362,064</b>	<b>1,406,905</b>	<b>1,365,347</b>
<i>Number given:</i>										
Immediate custody	106,273	111,607	107,670	106,322	101,236	96,017	95,206	99,525	100,231	101,513
Suspended sentence	2,755	2,519	2,717	2,855	9,666	33,509	40,688	41,151	45,157	48,118
Community sentences	164,997	186,520	191,422	201,503	204,247	190,837	196,424	190,171	195,903	189,321
Fines	930,121	972,737	1,033,617	1,082,690	1,025,064	961,535	941,534	890,296	946,146	893,931
Other disposals	144,348	146,224	154,401	153,982	142,240	138,673	140,890	140,921	119,468	132,464

**Figure 6: median values of fines, by offence type 2001-2010, 2010 prices**



Source: Criminal Justice Statistics 2010, deflated using Consumer Prices Index<sup>17</sup>.

<sup>15</sup> Trotter, C., the Supervision of Offenders: what works? Report to the Australian Criminology Research Council, 1993

<sup>16</sup> Davis, R., Rubin, J., Rabinovich, L., Kilmer, B., Heaton, P., A synthesis of literature on the effectiveness of community orders, 2008

17. 891,400 offenders were sentenced to fines at the magistrates' court in 2010; of these 7,400 were organisations such as companies and public bodies. The table below gives a break down by value.

**Figure 7 – number of offenders sentenced to fines at the Magistrates' Courts, 2010**

Fine amount	All offenders	Persons		Organisations	
Up to £99	247,994	247,839	28%	155	2%
£100-199	361,640	360,856	41%	784	11%
£200-299	86,035	85,574	10%	461	6%
£300-399	79,658	78,760	9%	898	12%
£400-499	19,328	18,974	2%	354	5%
£500-749	89,566	87,507	10%	2,059	28%
£750-999	3,420	2,111	0.2%	1,309	18%
£1000-2499	2,927	1,943	0.2%	984	13%
£2500-4999	580	301	0.03%	279	4%
£5000 and over	272	117	0.01%	155	2%
<b>Total</b>	<b>891,420</b>	<b>883,982</b>		<b>7,438</b>	

Source: Criminal Justice Statistics Publications

18. In 2010, 2,500 offenders were sentenced to fines at the Crown court in 2010; of these 170 were organisations such as companies and public bodies. The table below gives a break down by value for those offenders sentenced to fines at the Crown court in 2010.

**Figure 8 – number of persons sentenced to fines at the Crown Court, 2010**

Fine amount	All offenders	Persons		Organisations	
Up to £99	286	285	12%	1	1%
£100-199	433	431	18%	2	1%
£200-299	567	563	24%	4	2%
£300-399	175	174	7%	1	1%
£400-499	138	138	6%	0	0%
£500-749	356	355	15%	1	1%
£750-999	98	97	4%	1	1%
£1000-2499	215	205	9%	10	6%
£2500-4999	51	45	2%	6	3%
£5000 and over	192	46	2%	146	85%
<b>Total</b>	<b>2,511</b>	<b>2,339</b>		<b>172</b>	

Source: Criminal Justice Statistics Publications

## **Restorative Justice**

**Restorative justice is a process through which parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.**

19. In England & Wales, the most common types of restorative justice are:

- **Direct or indirect restorative justice processes** - The victim and offender, guided by a facilitator, communicate with one another. Other people can also be involved in the process, such as supporters of the victims and perpetrator, and also members of the wider community. This can take place through a direct face-to-face meeting, or, when several other people are involved, a conference; or indirectly with the facilitator acting as 'go between' in 'shuttle mediation'. An agreement is usually reached to decide how best to repair the harm caused and a rehabilitative programme may be agreed.

<sup>17</sup> The median fine amount is used as occasional large fines (>£1,000,000) handed down to companies or other organisations can have a misleading impact when using the mean to represent average fine amounts. In this situation the median (the middle number in a sorted list of numbers)

- **Community conferencing** -This is a large-scale conference particularly useful at resolving anti-social behaviour. These conferences can deal with a large number of participants including local community members, several victims and perpetrators. In this approach the community as a whole is often the victim. This process is similar to community problem solving meetings. However, it is restorative if the process focuses on the harm caused and its resolution.
  - **Referral order panels** - Young people who receive a court Referral Order attend a panel meeting to discuss their offence and the factors that may have contributed to their offending behaviour; the aim of the meeting is to agree appropriate outcomes/ action which are restorative and/or reparative. The panel is made up of Youth Offending Team staff and community volunteers. The victim, or their representative, may also attend so that their views may be put forward.
  - **Mediation** - Mediation is a process in which an impartial third party - the mediator - helps people in dispute work out an agreement. The people in dispute work out the agreement rather than the mediator, who runs the meeting with ground rules.
20. For adults, restorative Justice is currently used mainly (though not exclusively) in combination with conditional cautions. RJ processes must always be voluntary for both the victim and the offender. Where RJ is to be considered as part of a diversionary process (e.g. with a conditional caution) offenders need to have admitted responsibility for the harm they have caused. Involvement in an RJ process can either be made a part of a conditional caution where both victim and offender agree to take part; or the RJ process can itself be the way in which the conditions of the cautions are arrived at.

### **The evidence on restorative justice is promising.**

21. A range of restorative justice approaches are used at various stages of the criminal justice process in Australia, New Zealand, Canada, Germany and Northern Ireland. Evidence suggests that a variety of restorative justice approaches have a positive impact on victim satisfaction and may have a positive impact on reoffending in some circumstances.
22. The Youth Conference Service, introduced in Northern Ireland in 2003, for example, is used for a wide array of offences with a quarter of referrals (between 2003 and 2005) for violence against the person offences. There are two types of conference – diversionary, where a person is referred prior to conviction, and court-ordered, where a young person is referred post conviction. It is too early to reach definitive conclusions about the effectiveness of youth conferencing but there is evidence to suggest that victims are satisfied with the process and outcomes.
23. A 2005 evaluation of the court-referred Restorative Justice (RJ) Pilot in New Zealand found that 92 per cent of victims who participated in court-referred RJ conferences said they were pleased they took part and three-quarters felt better as a result of taking part. Ninety-four per cent of the victims in the pilot said their needs were met, at least partly, through the conference agreement. The evaluation also concluded that the effect of conferences on re-offending rates was not statistically significant.
24. A meta-analysis of the effectiveness of 35 individual restorative justice programmes in Canada concluded that, in general, the programmes had a positive impact on reoffending rates, in comparison with non-restorative justice interventions<sup>18</sup>.
25. A joint Home Office and Ministry of Justice commissioned evaluation of a number of restorative justice pilots found that 85 per cent of victims who participated in the restorative process said they were satisfied with the experience. The evaluation also found that when looking at the restorative conference pilots together, they were effective in reducing the frequency of re-offending. Recent further analysis by the Ministry of Justice has suggested that the size of this impact was statistically significant and around 14 per cent.

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<sup>18</sup> Latimer, J., Dowden, C., and Muise, D., The Effectiveness of Restorative Justice Practices: A meta-analysis, Carleton University, 2001

## Compensation orders

**Across all Courts and Offences (excluding summary motoring) 18% of offenders sentenced were given compensation orders as part of their sentence in 2010.**

26. Numbers of compensation orders have risen from 102,400 in 2000 to 152,200 in 2010. In 2010, 20% of offenders sentenced were given compensation orders as part of their sentence at the magistrates' courts and 6% at the Crown Court (excluding summary motoring offences). Of the 152,200 offenders given a compensation orders for all offences (excluding summary motoring) only 7,800 (5%) received them as the sole or main penalty, 55,600 compensation orders were issued alongside community orders (around a third of all compensation orders issued in that year). The table below shows that the average value of compensation awarded under compensation orders was around £290 for all offences (excluding summary motoring).

**Figure 9 – volume of offenders ordered to pay compensation by type of offence, 2010**

	Volume of offenders	Offenders given compensation orders as a percentage of all those sentenced (%)	Average compensation (£)
<b>Indictable offences</b>			
Violence against the person	10,062	23	382
Sexual offences	422	7	449
Burglary	4,599	19	246
Robbery	1,515	18	155
Theft and handling stolen goods	24,863	21	242
Fraud and forgery	4,418	21	2,310
Criminal damage	2,946	38	259
Drug offences	61	0	281
Other (excluding motoring offences)	1,576	3	698
Motoring offences	140	4	525
<b>Summary offences</b>			
(excluding motoring offences)	101,615	21	202
<b>All offences</b>			
(excluding summary motoring offences)	152,217	18	290

## Alcohol related crime

**In 2010/11, around 44% of all violent offences are thought to be committed by offenders under the influence of alcohol**

27. According to the 2010/11 British Crime Survey, victims believed the offender(s) to be under the influence of alcohol in just under half (44%) of all violent incidents. Based on the 2010/11 BCS, there were 928,000 violent incidents where the victim believed the offender(s) to be under the influence of alcohol<sup>19</sup>. The total cost of alcohol related crime in the UK is between £8 billion and £13 billion per year (in 2003 prices)<sup>20</sup>. This estimate takes into account the costs in anticipation of crime, the direct physical and emotional costs to victims, the value of lost output, and the costs to the health service and Criminal Justice System.

<sup>19</sup> British Crime Survey 2010/11 - <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/nature-violent-crime?view=Binary#7.11!A1>

<sup>20</sup> Home Office impact assessment 2008 - [www.ialibrary.bis.gov.uk/uploaded/IA%20Alcohol%20Mandatory%20Code.pdf](http://www.ialibrary.bis.gov.uk/uploaded/IA%20Alcohol%20Mandatory%20Code.pdf)  
Importantly, these figures all relate to crimes committed where the offender was believed to be under the influence of alcohol rather than simply those committed by offenders with alcohol dependency.

## **Compulsory sobriety schemes may support reductions in re-offending for certain alcohol related offences**

28. There is some international evidence to support the effectiveness of compulsory sobriety, primarily from the South Dakota '24/7 sobriety program'<sup>21</sup>. While the South Dakota scheme '24/7 sobriety program' is different to that outlined in the consultation, the research indicates that such schemes could work.
29. The South Dakota model is a variant example of that described in the consultation. In addition there are also significant differences in institutional and legal arrangements between South Dakota and that of England and Wales. The South Dakota scheme combined intensive testing and monitoring of drug and alcohol consumption with swift and certain punishment for infractions, for those convicted of driving under the influence (DUI) offences. It was also paired with education and change offenders' behaviour. DUI offences were identified as a significant problem for South Dakota, being a rural state with a sparse population and little public transport. In the analysis of the scheme, there were no statistically significant differences in the 3-year follow up arrest rates among for first time offenders. For second and third time offenders, there were statistically significant reductions in the 3-year arrest rates. This impact was diminishing as the number of previous drink driving offences increased: 74% reduction in recidivism rates for second time offenders; 44% for third time offenders and 31% for fourth time offenders (not statistically significant).

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<sup>21</sup> South Dakota 24/7 Sobriety Program Evaluation Findings Report, Mountain Plains Evaluation LLC, 2010

# **Impact Assessment**

## **INTRODUCTION:**

30. The government is determined to cut re-offending in order to reduce crime and make society a safer place. In *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. Custody will always be the right sentence for serious and dangerous adult offenders. But for many other offenders, it is right that they should be 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.
31. 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 and in turn reform their behaviour. These options are currently available to the courts when sentencing offenders. But they are not working as well as they could.
32. There is some evidence that the public tend to see sentences in the community as less effective than custody<sup>22 23</sup>. However, there is also 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<sup>24</sup>.
33. Significant improvements to community orders and how they are delivered and enforced are already being taken forward in provisions in the Legal Aid, Sentencing and Punishment of Offenders (“LASPO”) Bill, which is currently before Parliament, which followed the consultation on ‘Breaking the Cycle’. The government aims to do this in a way that delivers value for money and is consistent with the spending review obligations of the Ministry of Justice (“MoJ”). This impact assessment accompanies a consultation seeking views on how we can improve the effectiveness and credibility of community sentences by ensuring that all offenders face the consequences of their crime, are punished properly and in turn are encouraged to desist from re-offending.
34. The policy details of these proposals are yet to be finalised and this IA contains no detailed quantification of costs and benefits. We will update our estimates on the impact of these policies, once final proposals are developed.

## **Organisations in scope of these proposals:**

35. The main groups affected by these proposals are:
  - Ministry of Justice
  - Home Office
  - National Offender Management Service (“NOMS”)
  - Probation trusts
  - HM Courts & Tribunals Service (“HMCTS”)
  - Offenders
  - Members of the public

## **Rationale for intervention:**

36. Community sentences have for too long failed to effectively punish offenders and to command the confidence of the public. We need to ensure that everyone faces the consequences of their offending behaviour. For some this will be a fine, whilst for others it will be a robust, punitive community order. It could also include engaging in effective restorative justice practices or programmes that seek to tackle the offending behaviour in the first place. Each element of the community sentence must be proven to be effective. This consultation therefore explores the community sentence framework to determine how we can ensure that these sentences offer a credible and robust form of punishment that will reduce re-offending.

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<sup>22</sup> 'Engaging Communities in Fighting Crime - Casey, 2008

<sup>23</sup> 'Understanding public attitudes to Criminal Justice' - Hough and Roberts, 2005

<sup>24</sup> 'Fitting the Crime. Reforming community sentences: Mending the weak link in the sentencing chain' - London Policy Exchange, 2010

**Policy objectives:**

37. To provide a robust community sentence framework that effectively punishes and rehabilitates offenders. We want to demonstrate to offenders and to society as a whole that anyone who commits an offence will face the consequences of doing so. We want to ensure that sentencers have the tools available to select community sentences that make a real impact on reducing re-offending, punish the offender and demand as much if not more of them than a short custodial sentence would.

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

38. In 2010, approx 118,700 offenders commenced community orders. Around half of these had only one requirement; 35% two; 12% three and 3% four or more requirements.

**Figure 10 – volume of offenders sentenced to community orders, by number of requirements, 2010**

Number of requirements	Volume of offenders
1	59,195
2	42,077
3	14,409
4	2,581
5	379
6	45
7	8
9	2
All	118,696

39. In 2010, 51% of those offenders who commenced community orders received unpaid work (but not curfew) as a requirement; 8% had curfew (but not unpaid work) as a requirement; and 4% had both unpaid work and curfew as requirements.

**Figure 11 – volume of offenders given requirements (or combinations of requirements), 2010**

Requirements	2010
Unpaid work but no curfew	60,354
Curfew but no unpaid work	9,640
Unpaid work and curfew	4,310

40. Under the do-nothing option, we assume that the volume of community orders as well as the composition of requirements would remain unchanged from 2010. We assume that the volume of community orders issued in conjunction with fines stays static but there may be some variation in fine values, as the upper limit on fines at the Magistrates’ Court is being removed in the LASPO bill. We also assume the volume of Compensation Orders and use of restorative justice stays constant. As this consultation accompanies the probation review, we also consider the potential for reductions in unit costs of Community Order requirements.

**Option 1 – Alternatives for reforms**

41. This section reflects the terminology and order of issues as they are discussed in the consultation document “Sentences in the Community”.

## **Intensive Community Punishment**

### **Aims and outcomes for the policy:**

42. This proposal explores how we can create and deliver a tough and intensive community order for those on the cusp of custody. We believe there is a 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 where they can maintain ties with work and family which can ultimately move them away from crime. Intensive Community Punishment will include a combination of:
- Community Payback;
  - significant restrictions on liberty through an electronically monitored curfew, exclusion, or a foreign travel prohibition requirement; and
  - a fine;
43. We will also explore how other, new punitive measures outlined elsewhere in the consultation might form part of Intensive Community Punishment.
44. We propose that these orders should be short and intensive, lasting a maximum of 12 months. Offenders should be occupied in purposeful activity throughout the week and certain activities such as socialising in the evening and foreign travel will be curtailed for the duration of the sentence. Courts will be able to add to this with requirements aimed at ensuring reparation to the victim and community and rehabilitative requirements, where this is necessary.
45. These orders should have a core of punitive elements and 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 this order could be appropriate for. This will help build a picture as to the sentences they currently receive and the potential trade-offs that may be made through implementation.

### **Costs:**

46. As this consultation asks respondents for their views on how Intensive Community Punishment could work, it would be premature to provide accurate estimates of the cost of this policy at this stage. However, adding punitive requirements to community sentences without substituting for other requirements would increase the operating costs of community sentences. Through the consultation we want to explore what the key elements of an order of this type could be and develop our understanding of the costs. This will help build a picture as to the choices around implementation and the potential trade-offs that would be made to enable them.
47. Given a limit on the overall level of resources available for probation services, and the need for sentences to remain proportionate to the seriousness of the offending, delivering top end community orders may cause a number of primarily rehabilitative requirements to be substituted for primarily punitive ones. Evidence is unclear on the effectiveness of individual community order requirements in reducing re-offending i.e. some requirements may be more effective at reducing re-offending than others. For offenders who receive Intensive Community Punishment, there is a risk that re-offending rates may be higher than other Community Orders if some of the rehabilitative requirements are replaced.
48. This proposal must be considered in the context of financial constraint with consideration as to the value for money of any investment required paramount in the decision making process. MoJ will be undertaking analysis during the consultation period, in order to determine the effectiveness of different community order requirements, in terms of reducing re-offending rates for similar offenders.

### **Benefits:**

49. Intensive Community Punishment is designed to give the public a greater level of confidence in community orders. There may be some intangible benefits arising from a greater level of public confidence in the Criminal Justice System, and from justice being seen to be done through offenders undertaking visible and punitive requirements on community orders.



50. There is evidence to show that offenders on community orders have lower re-offending rates compared to similar offenders sentenced to short term custody. For similar offenders, community orders have lower re-offending rates than custodial sentences of less than 12 months – 8.3 percentage points in 2008. Therefore, for offenders on the cusp of custody, there may be some economic and social benefits as a result of lower re-offending rates. There will also be social benefits if they are given a sentence in the community where they can maintain ties with work and family.
51. Evidence is unclear on the effectiveness of individual community order requirements in reducing re-offending i.e. some requirements may be more effective at reducing re-offending than others. If, through some mechanism like deterrence, punitive disposals reduce re-offending rates, there will be economic and social benefits as a result. MoJ will be undertaking analysis during the consultation period, in order to determine the effectiveness of different community order requirements, in terms of reducing re-offending rates for similar offenders.

## **A punitive element in every community order**

### **Aims and outcomes for the policy:**

52. Too many community orders do not include a clear punitive element alongside other requirements aimed at rehabilitation and reparation and so they do not effectively signal to society that wrongdoing will not be tolerated. We propose that every community order should include a distinctly recognisable punitive element, which we think should be either Community Payback, an electronically monitored curfew, or a fine. We seek to encourage more imaginative use of community order requirements to ensure that all community orders both punish and reform offenders as well as ensure reparation to society.

### **Costs:**

53. As this consultation asks respondents for their views on how the Ministry of Justice can ensure that each community order contains a punitive requirement, it would be premature to provide accurate estimates of the cost of this policy at this stage. However, adding punitive requirements to community sentences without substituting for other requirements is likely to increase the operating costs of community sentences. Given the need for proportionality in sentencing, we will 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 such an order, including the wider impacts around breach.
54. Given a limit on the overall level of resources available for probation services, delivering a clear punitive element to every community order may cause the primarily rehabilitative requirements to be substituted for primarily punitive ones. Evidence is unclear on the effectiveness of different community order requirements in reducing re-offending i.e. some requirements may be more effective at reducing re-offending than others. There is a risk that some of the rehabilitative benefits of current Community Orders could be lost with adverse implications for the re-offending rate of those offenders subject to community orders. MoJ will be undertaking analysis during the consultation period, in order to determine the effectiveness of different community order requirements, in terms of reducing re-offending rates for similar offenders.

### **Benefits:**

55. Adding a punitive element to every community order is designed to give the public a greater level of confidence in community orders and demonstrate that all wrongdoing has consequences. There may be some intangible benefits arising from a greater level of public confidence in the Criminal Justice System, and from justice being seen to be done through offenders undertaking visible and punitive requirements on community orders.
56. Evidence is unclear on the effectiveness of individual community order requirements in reducing re-offending i.e. some requirements may be more effective at reducing re-offending than others. If, through some mechanism like deterrence, punitive disposals reduce re-offending rates, there will be economic and social benefits as a result. This impact is not certain and MoJ are currently undertaking analysis to determine the impact of punitive community order requirements on re-offending rates.

## **Creative use of electronic monitoring**

### **Aims and outcomes for the policy:**

57. This proposal would harness new technologies such as Global Positioning System (GPS) and GSM (Global System for Mobile Communications) to monitor compliance with other requirements of a community order. Currently, curfew is the only requirement that is electronically monitored. These technologies could potentially help strengthen community orders further in the future by allowing us more effectively to monitor compliance with other requirements imposed by the courts, in addition to monitoring curfews. For example we could consider the use of new technologies to monitor compliance with:
- exclusion requirements;
  - alcohol prohibitions;
  - foreign travel prohibition requirements;
  - residence requirements.
58. A further proposal, flowing from significant developments in EM technology, is a consideration as to where such new technology can be used in other new and different ways which go beyond monitoring compliance with community order requirements, and instead be used as a 'freestanding' requirement for suitable offenders.
59. We consider that these new 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 offenders' whereabouts. This could act as a deterrent and reduce re-offending. It may also be possible to use these technologies to assist the police in crime investigation by tracking offenders' whereabouts.

### **Costs:**

60. Electronic monitoring is contracted to private providers but the cost is paid for by NOMS. Greater or more intensive use of electronic monitoring for the purposes of assisting with crime investigation will mean that these costs may increase. We are currently unable to estimate the likely costs of GPS technologies to monitor compliance requirements, but any reforms which will increase the electronic monitoring caseload are likely to result in new costs.

### **Benefits:**

61. Greater use of electronic monitoring of compliance with the requirements of an offender's community order could deter the offender from breaching the requirements of their community order if they face being sanctioned. Equally, it could increase the number of detected breaches of community orders. If greater use of electronic monitoring were to deter offenders from breaching their community orders, there may be social benefits in terms of reduced re-offending and reduced cross-Criminal Justice System costs (NOMS, HMCTS and the LSC).
62. Electronic monitoring of violent and prolific offenders increases the probability of being caught committing a crime, thereby reducing any pay-offs associated with committing a crime. Use of electronic monitoring as a preventative measure may potentially reduce future offending by this group of offenders. If this were the case, there may be social benefits in terms of reduced social costs of crime. The social costs of crime include the costs to victims (physical, emotional and financial costs) as well as the financial costs to the Criminal Justice System.

## **Confiscation of offenders' assets**

### **Aims and outcomes for the policy**

63. Courts already have powers to issue distress warrants (executed by a bailiff) against offenders who default on paying financial penalties. Normally, distress warrants are issued after other methods of enforcement and sanctions have failed, and the bailiff company would then have 180 days in which to execute the warrant. Courts can also use asset seizure in relation to the proceeds of crime (both cash and assets).

64. 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 alongside a community order, independently of any financial penalty. We would envisage this power allowing for the confiscation of property regardless of whether or not it was connected to the offence.

**Costs:**

65. Judicial time would be required to determine the value of the assets to be seized under any court order. If a dispute surrounding value or ownership of any seized assets arose, judicial time may be required to resolve these issues. These costs could be significant.

66. There may be some costs to bailiffs from seizing offenders' assets. These will be further explored during the public consultation period.

**Benefits:**

67. Any assets seized will be sold and any value would be retained by the taxpayer.

68. There may be social benefits from an increased level of public confidence in the Criminal Justice System.

**Promoting greater compliance with community orders**

**Aims and outcomes for the policy:**

69. The proposals would give offender managers the power to issue a fixed penalty notice for failure without reasonable excuse to comply with the requirements of a community order. The proposals would involve the offender manager continuing to be able to issue a warning for the first failure to comply, but having the power on the second failure within twelve months to issue the offender with a fixed penalty notice offering the choice between paying the penalty, which we believe should be small, and being subject to breach proceedings in court. The offender would need to be given a period in which to take this decision.

**Costs:**

70. HMCTS is the organisation that enforces the payment of fixed penalty notices. HMCTS may therefore also incur additional costs, if more enforcement is required.

**Benefits:**

71. Giving offender managers the power to issue fixed penalty notices to offenders who breach the requirements of their community orders twice in twelve months may deter some offenders from breaching the requirements of their community orders. There may be some benefits to NOMS if the number of breaches is reduced; and to HMCTS if the number of breach proceedings heard before a Court is reduced.

**More effective fines**

**Aims and outcomes for the policy:**

72. This proposal would explore how we could use the fine more flexibly. 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 sentence threshold, and where the circumstances demand rehabilitative requirements and public protection 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 a community order. In addition, we wish to explore what more can be done in the existing framework to encourage courts to make more flexible use of fines, for example alongside a community order.

73. We will also look at ways in which we can improve the information we have about offenders' financial means. Accurate information about offenders' means is essential in setting fines that are both sufficiently punitive and able to be enforced.

**Costs:**

74. HMCTS is the organisation that enforces, collects and retains fine income. HMCTS may incur additional expenditure in relation to fine enforcement as a result of this proposal – the exact nature of this additional cost is difficult to predict.

**Benefits:**

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

**Restorative Justice**

**Aims and outcomes for the policy:**

76. We want to continue to help drive the culture change of developing effective evidence based restorative justice (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.
77. We 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 of the impact of such a pre-sentence intervention. Such an intervention will be focused upon offenders who are likely to be subject to a community or custodial sentence.

**Costs:**

78. There would be costs to MoJ of investment in 'start up' funds to deliver training to staff and volunteers in local areas.

**Benefits:**

79. There may be social benefits in terms of increased victim (or public) satisfaction with the Criminal Justice System.
80. There is some evidence that restorative justice programmes can have a positive impact on re-offending rates, in comparison with non-restorative justice interventions<sup>25</sup>. There may therefore be social benefits if the chance of a convicted offender who participates in restorative justice schemes re-offending is lower than those who do not.

**Compensating victims**

**Aims and outcomes for the policy:**

81. 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 by:

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<sup>25</sup> Latimer, J., Dowden, C., and Muise, D., (2001), The Effectiveness of Restorative Justice Practices: A meta-analysis, Carleton University

- ensuring sentencers have as full a picture of loss or harm caused to victims as possible when determining whether to impose a compensation order
- supporting a more consistent approach to fixing the value of compensation orders
- considering removal of the £5,000 cap on a single compensation order in the magistrates' court

**Costs:**

82. HMCTS also enforce payment of compensation orders. HMCTS may therefore also incur additional costs, if more enforcement is required or if a higher volume of fines are unpaid.

**Benefits:**

83. The intention behind compensation orders is that offenders should make compensation to victims for the physical, emotional and financial costs involved in committing a crime. If the value of compensation orders increases, victims of crime may benefit from a higher amount of compensation, assuming that these higher amounts do not affect the payment rate.

**Tackling alcohol related crime**

**Aims and outcomes for the policy**

84. We are considering how we can help tackle the problem of alcohol related offending through enforced sobriety schemes. We are undertaking work to test out the purposes and effect of such schemes to establish the circumstances in which it would be appropriate and effective to impose such a requirement rather than enlist other interventions or forms of treatment. Legislative provisions are being brought forward in the LASPO Bill to create an *Alcohol Abstinence and Monitoring Requirement* as part of a community or suspended sentence order. This will allow us to pilot the use of sobriety requirements for more serious offences where alcohol has been a contributing factor.

85. We will also carry out another pilot which will focus on conditional cautions and apply to offenders who commit alcohol-related offences for which a conditional caution can be offered such as being drunk and disorderly, common assault and criminal damage. This will be done within existing legislation. We will set out further details of these pilots in the government's forthcoming Alcohol Strategy.

**Costs:**

*Probation Trusts/ NOMS:*

86. Local Probation Trusts will monitor offenders subject to the Alcohol Abstinence and Monitoring Requirement as part of Community Orders and Suspended Sentence Orders. Local Probation Trusts will incur costs from monitoring offenders subject to the new requirement. The exact nature of these costs will depend on the method used for monitoring offenders. These details will be outlined in subsequent secondary legislation and are yet to be confirmed.

87. If an offender breaches the Alcohol Abstinence and Monitoring Requirement, NOMS may incur costs from imposing sanctions on these offenders. Due to the nature of the requirement, the breach rate for this requirement may be higher than the breach rate for existing requirements. Breach costs include the costs of longer sentences imposed for breach, additional probation time involved in managing offenders, additional time spent on the scheme and any additional monitoring costs that arise from this. Those offenders subject to Suspended Sentence Orders who breach their requirements would also be liable to serve a custodial sentence, which may increase demand for prison places. NOMS would only incur costs where an offender breaches their requirements, where they previously would not have. It is difficult to estimate how many additional offenders may breach the requirements of their Community Order or Suspended Sentence Order as the details of the requirement will be made in the relevant secondary legislation.

88. The Government's pilot schemes will form limited proof of concept pilots to provide evidence on the principles and practicalities, including cost implications, of this requirement. The scope of the pilot would therefore limit potential cost implications and costs will only be incurred from areas

where the Secretary of State for Justice has commenced the provision, so financial implications can be contained to minimise potential impacts. However, additional safeguards will be applied to the pilots to allow for the pilots to be switched off if considerable costs are incurred.

*HMCTS:*

89. Offenders who breach their requirements will have to appear at Court for their breach hearing so that any sanctions for breaching their requirements can be imposed. We consider that the breach rate for this requirement could be higher than average and there could be potentially a high volume of offenders who are brought before the Courts. This could impose a burden on court time; which may not necessarily impose a financial cost but if absorbed within existing budgets other activities may have to be sacrificed or waiting times would increase. These costs would only be incurred by HMCTS in those areas where the Secretary of State for Justice has commenced the provision.

*CPS/ Police:*

90. There may also be cost implications for the police and CPS through the Conditional Caution pilot in terms of administering the testing and monitoring requirements e.g. setting up an alcohol testing centre, as well as enforcement costs if an offender does not comply with the conditions of their caution.

**Benefits:**

*Social benefits:*

91. All criminal offences impose costs on society – most notably the physical, financial and emotional impact on victims; fear of crime among members of the public; and costs to the Government in dealing with the consequences of crime.
92. For crimes committed while an offender is under the influence of alcohol, it is not clear whether these offences would have happened or would have reached the same level of seriousness, had the offender not been under the influence of alcohol. While compulsory alcohol requirements may reduce the number of offenders under the influence of alcohol, the extent to which compulsory alcohol requirements reduce crime is not clear.
93. According to the British Crime Survey, offenders were under the influence of alcohol in approx 928,000 crimes in 2010/11. If an Alcohol Abstinence and Monitoring Requirement reduces the number of alcohol related offences then there may be social benefits in terms of lower social costs of crime. The extent to which any re-offending is directly related to these Alcohol Abstinence and Monitoring Requirements will be difficult to measure as many offenders receive more than one requirement. We also cannot know how often the courts may impose this requirement and whether it will be used as a complement to or substitute for existing requirements. If the requirement is used as a substitute for other rehabilitative requirements, then some of the rehabilitative effect of existing requirements on offenders may be lost.
94. As this provision will only be commenced in certain geographic areas at the pilot stage, the Government will keep these areas under review to monitor the effectiveness of this policy in reducing alcohol related re-offending.

## Section 2: Future shape of probation services

### Evidence Base

#### Probation Services

95. The task of managing offenders who receive community sentences or are released from longer periods in custody is the responsibility of probation services. The Offender Management Act 2007 (OMA 2007) makes the Secretary of State responsible for ensuring that probation services are provided. In the consultation “probation services” refers to a wide range of community-based offender services aimed at delivering the sentence of the court, protecting the public and reducing re-offending. The following table provides an overview of how probation services are currently delivered:

#### Currently delivered by Probation Trusts:

- Bail and Court Work
- Offender Management
- Post-release supervision
- Residence requirements
- Drug Rehabilitation requirements\*
- Alcohol Treatment requirements\*
- Mental Health Treatment requirements\*
- Assessments and Reports
- Supervision requirements
- Activity requirements
- Offending Behaviour Programmes
- Community Payback requirements
- Approved Premises
- Victim Liaison

*\* in collaboration with specialist providers*

#### Contracted out:

- Curfew requirement (electronically monitored)
- Bail Accommodation and Support Services

#### Provided by the voluntary sector:

- Approved Premises

#### Delivered direct by the National Offender Management Service (NOMS):

- Attendance Centres

96. The OMA 2007 allows for the creation of Probation Trusts. There are currently 35 Trusts operating as Non-Departmental Public Bodies (NDPBs) contracted to the Secretary of State to deliver probation services. The National Offender Management Service (NOMS) is responsible for contract management arrangements (setting and monitoring performance standards, setting and monitoring budgets etc) and manages national estates and ICT contracts. Each Trust has its own chair and board.

97. Trusts undertake various statutory responsibilities on behalf of the Secretary of State including:

- Responsible authority on Community Safety Partnerships
- Part of the responsible authority on Multi Agency Arrangements for Public Protection

98. Trusts consist of a number of Local Delivery Units (LDUs) and vary significantly in size, from one to 22 LDUs. In September 2011, there were around 18,400 FTE staff in the Probation Service (including Chief Executives).

## Offender Management

99. Probation Trusts are currently responsible for delivering Offender Management as outlined in the table above, which involves:

- a) assessing an offender's risk of harm and reoffending in order to provide advice to Courts and the Parole Board;
- b) managing and reducing those risks during their sentence;
- c) planning the delivery of the offender's sentence;
- d) ensuring that they get the right services or interventions in line with the sentence plan;
- e) monitoring to make sure the offender complies with the sentence; enforcing this where necessary (e.g. returning offenders to Court or arranging their recall to prison); and
- f) evaluating whether overall the objectives of the sentence plan have been met.

100. The current tiering model used in Probation is a means of identifying the risks posed by an offender and therefore the level of management and intervention required in order to successfully address those. The following table outlines the volume of offenders in each tier, with Tier 4 representing those offenders who pose the greatest risk.

**Figure 12: volume of offenders on probation by tier, 2010**

	Community Orders		Suspended Sentence Orders	
	Volume	Percentage	Volume	Percentage
Tier 1	43,949	37%	12,992	27%
Tier 2	28,111	24%	11,667	24%
Tier 3	40,300	34%	19,713	41%
Tier 4	5,101	4%	3,082	6%
Not stated	1,235	1%	448	1%
<b>Total</b>	<b>118,696</b>		<b>47,902</b>	

Source: *Offender Management Caseload Statistics* <sup>26</sup>

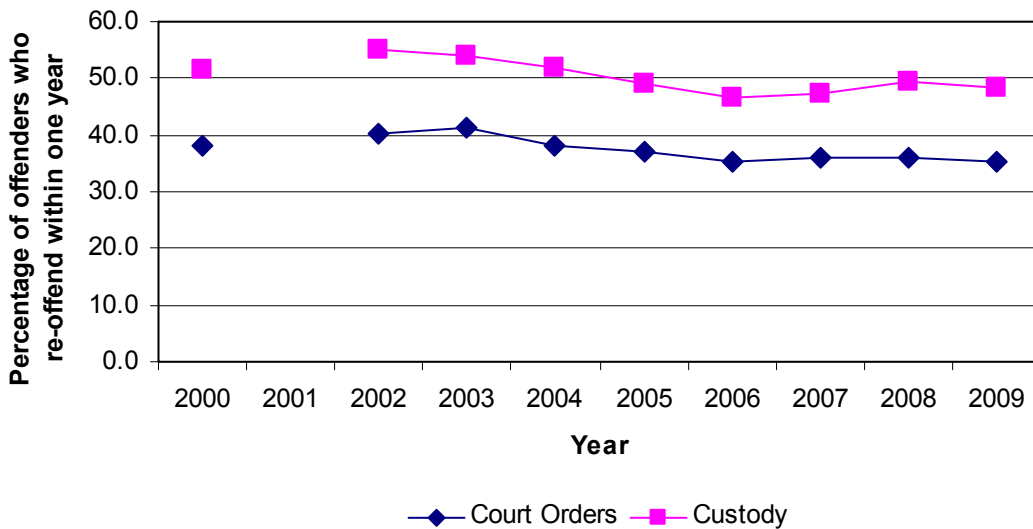
## Re-offending Data

101. As shown in Figure 12 below, there have been slight reductions in the level of re-offending over the period 2000-2009. However, re-offending rates have remained persistently high both for adult offenders released from prison and those who were subject to court orders. The latest available re-offending figures (for the year to March 2010) show that 34% of adults commencing a court order and 47% of adults released from prison re-offended within a year. The re-offending rate is 57% in the same period for those adults discharged from custody who were serving sentences of less than 12 months (these offenders do not receive statutory supervision post-release but may be a priority group in local Integrated Offender Management arrangements involving Probation).

<sup>26</sup> NB: tier breakdown is not available for offenders supervised on licence



**Figure 13: Re-offending by disposal type. 2000-2009**



Source: *Re-offending of adults statistics*<sup>27</sup>

### Costs of Providing Community Sentences

102. The total budget for Probation Trust contracts in 2011/12 is £821m. This covers expenditure on delivering the management of sentences of offenders on community sentences and pre-release (in custody) and post-release (on licence) as well as a contribution to Youth Offender Teams (YOTs). It also includes the delivery of requirements ordered by the court as part of a community sentence and provision of advice to courts, including assessment and pre-sentence reports and bail services. This budget excludes costs met centrally for IT and Estates and the cost of centrally-managed contracts for electronic monitoring, Approved Premises, the Bail Accommodation and Support Service (BASS) and attendance centres which take the overall NOMS spend on community services to almost £1bn.
103. In recent years there has been an increasing focus on the need for efficient delivery and Trusts will be required to make further efficiencies in order to meet savings required over the Spending Review period, supported by work undertaken to develop knowledge of probation costs.
104. In recent years NOMS has made good progress in improving the understanding of service costs for use as an integral part of business and financial planning, to improve provider performance and in developing the commissioning system and strategy. The Specification, Benchmarking & Costing (SBC) programme<sup>28</sup> has specified and costed the prison and probation services funded by NOMS. The scope covered the direct costs of all prison and probation services funded by NOMS and delivered to offenders, defendants, victims and courts. For each service, the outcomes and outputs required (the “what” not the “how”) were specified as a basis for commissioning and competition of services and calculations were made of the cost of efficient service delivery to inform the assessment of value for money.
105. This work enables effective benchmarking of existing delivery and of the potential for savings through competition, both by comparison with the SBC efficient “should cost” and by the creation of common definitions of services so that comparable data on the actual costs of delivering the services can be collected. The PREview system is being used and developed to collect Probation Trust delivery costs for the specified services and other non-specified service costs covered by the probation budget.

<sup>27</sup> NB: Court Orders includes both community orders and suspended sentence orders. Importantly, figure 12 does not allow us to compare the effectiveness of prison with court orders, as both groups of offenders have different characteristics which affect their likelihood of re-offending.

<sup>28</sup> [www.justice.gov.uk/about/noms/noms-directory-of-services-and-specifications.htm](http://www.justice.gov.uk/about/noms/noms-directory-of-services-and-specifications.htm)

106. PREview provides total service costs, to support understanding of where staff and financial resources are used. It also provides unit costs of delivery which drive efficiency by enabling benchmarking and identification of good practice as well as understanding of cost drivers and variability.
107. Three national PREview exercises have been completed and the results distributed internally, including to NOMS commissioners and probation chiefs. These data are not yet sufficiently robust for publication. Work is underway to improve processes and data quality, including refining the definitions of non-specified service costs to support better quality data and an improved understanding of these costs and their drivers to enable identification of potential efficiencies. Under the government's transparency agenda it is planned to publish in autumn 2012 indicators based on PREview information on the costs of probation services delivered in 2011-12

### Costs of Competition

108. There will be a cost associated with competing probation services, the scale of which will be determined by the extent and complexity of any competition.

### Benefits of Competition:

109. The Office of Fair Trading<sup>29</sup> has summarised the benefits of competition as a driver that can:

- place downward pressure on costs;
- force providers to be more focused on meeting customer needs;
- lead to more efficient allocations of resources between providers;
- act as a spur to innovation.

110. The OFT's 'Commissioning and Competition in the Public Sector' study (March 2011) argues that having an open, transparent and competitive tender process is not enough on its own to ensure that public services markets are open and contestable. Achieving effective competition in public services must also involve: reducing barriers to entry and exit; encouraging a diverse supplier base; ensuring suppliers have the right incentives to make efficiency savings, to raise quality and to innovate.

111. *The Competition Strategy for Offender Services*<sup>30</sup> described the benefits of using competition: "Competition can provide commissioners with the means to secure new services, improve existing service delivery, encourage innovation and drive value for money. In addition, competition in Offender services has been shown to be effective at encouraging the management and workforces of existing and future providers to improve outcomes, drive efficiency and deliver more innovative models of service delivery. As such it is a powerful tool for commissioners of Offender services".

112. Our approach to competition in community offender services is the same as set out in the Competition Strategy for Offender Services<sup>31</sup> - "over time, every service will be competed unless there are compelling reasons why it should not be."

113. Positive outcomes have been achieved by competition in offender services:

- increased value for money in the national delivery of three services - Prisoner Escort and Custody Services, the Bail Accommodation and Support Services, and Electronic Monitoring;
- competition has been used by commissioners to find the most suitable providers to deliver services in both custody and the community, including services for health, substance misuse and offender learning and skills;

<sup>29</sup> Choice and Competition in Public Services, A guide for policy makers, A report prepared for the OFT by Frontier Economics, March 2010, OFT1214

<sup>30</sup> [www.justice.gov.uk/publications/corporate-reports/moj/2011/oscs](http://www.justice.gov.uk/publications/corporate-reports/moj/2011/oscs)

<sup>31</sup> [www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm](http://www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm)

- efficient and affordable increases in prison capacity, through the PFI prison building programme;
- competition has also been applied to offender employment support services through the European Social Fund with £142m of services covering all of England having been competed to date. The successful bidders cover a broad mix of service providers from all sectors who meet particular local market conditions.
- the recent round of prison competitions generated around £22m of savings in the Spending Review period and £216m overall when compared to current cost. Competitive pressure led to savings at all of the establishments competed including HMP Buckley and HMP Doncaster, where contracts were retained by the existing providers;
- the letting of a contract for HMP Oakwood (Featherstone II), a new 1,605 CNA place prison, which will provide places at the lowest operational unit cost in the estate at £11,000 per prisoner per year, against an average of £27,400 per prisoner per year. This low cost does not come with an impoverished regime – the specification for the prison requires standards as high as those in our existing prisons;
- an expected release gross forecast cashable savings of around £30m (18%) in year one and £260m (20%) over the minimum seven year contract period following the re-compete of the Prisoner Escort and Custody Services.

114. This Government also recognises the value in making the best use of the innovation, capacity and diversity of voluntary and community sector (VCS) and small and medium sized enterprises (SMEs). We will continue to work to reduce the barriers faced by these organisations to participation in the Offender services market. For example, the refreshed Compact on relations between Government and the VCS also includes undertakings to help level the playing field.

## **Impact Assessment**

### **INTRODUCTION:**

115. The Government is committed to delivering better punishment and rehabilitation of offenders in order to protect the public. The task of managing offenders who receive community sentences or are released from longer periods in custody is the responsibility of probation services, and is integral to maintaining public safety. Much progress has been made in recent years and we recognise the high degree of professionalism and commitment shown by probation staff. However re-offending rates remain too high and are a burden on society.
116. We want to deliver more effective and efficient probation services and there is a clear case for change. Probation Trusts retain a near-monopoly on providing probation services, despite the intention of the 2007 Act to introduce much greater competition. We are not making the best use of diverse providers from the public, private and voluntary sectors to help cut crime. We need to give providers further discretion and freedom over the design and delivery of services while holding them more strongly to account for reducing reoffending. Probation needs to respond to the changing organisation and structure of its key partners, such as the forthcoming introduction of Police and Crime Commissioners. Despite the savings of recent years, we believe probation can make further efficiencies, particularly in back office and management overheads, whilst protecting front-line services dealing with offenders.
117. This impact assessment accompanies a consultation seeking views on how we can reform probation services to more effectively and efficiently deliver our key outcomes of reducing reoffending, protecting the public and punishing and reforming offenders, including supporting our proposed changes to sentences in the community. The consultation document outlines our proposals to extend competition in probation services including in the management and supervision of lower risk offenders; introduce more diverse provision in probation services, on a payment by results basis where possible; strengthen the commissioning role of Probation Trusts; and strengthen the local delivery of probation services.

118. The evidence section above outlines the benefits that we have already seen in extending competition in offender services. As the policy details of our proposals for probation are yet to be finalised, it is not possible to provide a detailed quantification of costs and benefits. We will update our estimates on the impact of these policies, once final proposals are developed.
119. It is recognised that merging or restructuring Probation Trusts or transfer of staff as a result of competing services may have consequences for pension funds. The extent of any impact on the pension funds would depend on restructuring decisions and on the design of any competitions that are taken forward as well as decisions about the treatment of pension deficits. Fair Deal arrangements would apply to any Probation Trust employees affected by competitions.

**Organisations in scope of these proposals:**

120. The main groups affected by these proposals are:

- Ministry of Justice
- Home Office
- National Offender Management Service (“NOMS”)
- Probation Trusts
- HM Courts & Tribunals Service (“HMCTS”)
- Offenders
- Members of the public

**Rationale for intervention:**

121. The government is committed to reducing re-offending and protecting the public, and we need to ensure we have the right offender management system in place to support this. While progress has been made in recent years, re-offending rates remain too high. Probation Trusts retain a near monopoly on the provision of services and we are not making the best use of diverse providers to help cut crime. We need to ensure providers are more strongly held to account for reducing reoffending and that delivery at the local level is strengthened.

**Policy objectives:**

122. Our main policy objective is to deliver more effective and efficient probation services that help us to better deliver our key outcomes of reducing re-offending, protecting the public and punishing offenders, including supporting our proposed changes to sentences in the community.

**Option 0 – do-nothing – Maintain the current structure of the probation service**

123. Maintaining the current structure of the probation service will maintain the current situation concerning the costs of probation services and the wider social benefits that occur.

**Option 1**

**Aims and outcomes for the policy:**

124. The consultation document outlines our proposals for reforming the way that probation services are delivered which are intended to:
- Extend the principles of competition in probation services including to the management and supervision of lower risk offenders;
  - Introduce more diverse provision in probation services, encouraging the participation of the public, private and voluntary sectors, and on a payment by results basis where possible;
  - Strengthen the commissioning role of public sector Probation Trusts with a clearer focus on outcomes and to better meet local need;

- Strengthen the local delivery of probation services and consult on the potential over time for other public bodies to take responsibility for probation services.

## **Costs and Benefits**

125. The purpose of this consultation document is to seek views on our proposals to deliver more effective and efficient probation services. As the policy details of these proposals are yet to be finalised, this impact assessment does not evaluate the likely scale of their costs and benefits. As proposals are developed as a result of the consultation exercise, we will work to estimate the likely impacts and publish these in a future impact assessment.

## **Impacts on local partners**

126. Probation plays a key role in working with other local partners to reduce re-offending. We want to support increased decision-making and accountability at a local level and ensure sufficient alignment between probation and its key local partners, which can support the co-commissioning of services where appropriate. This section sets out the potential impacts that we have identified at this stage of our proposals on local partners.

### *Local Authorities*

127. We expect that our proposals will lead to significantly fewer probation trusts in future; however we expect probation delivery structures will continue to be consistent with local authority areas. We are consulting on how we might improve partnership working and local co-commissioning especially if we have fewer, larger Trusts. We do not propose to place any additional duties on local authorities at this time, although we are consulting on whether to extend any further responsibilities for offender management to local authorities in future. We are seeking views on the right balance between commissioning services at local and national levels.

### *Police*

128. Probation works closely with the police and we propose that probation trusts retain their statutory duty as responsible authority on Community Safety Partnerships (CSPs) and Multi-Agency Public Protection Panels (MAPPA) of which the police are also a responsible authority. We do not expect our proposals to place any additional duties on the police. We expect to see Trusts put in place arrangements to ensure effective partnership working and co-commissioning with bodies like the police, and we are explicitly consulting on how this can be achieved.
129. We want to strengthen local arrangements such as Integrated Offender Management (IOM) which are critical to the reducing reoffending effort. We are consulting on how we can best ensure that greater competition enhances local partnership arrangements such as IOM.

### *Police and Crime Commissioners*

130. Police and Crime Commissioners (PCCs) are due to be introduced across England and Wales from November 2012. They will be required to hold Chief Constables to account for the operational delivery of policing and have a statutory duty to cooperate with local criminal justice partners. We want to ensure there is an effective, locally determined, relationship between PCCs and probation trusts. This could include the co-commissioning of services at police force level where it makes sense.
131. We do not envisage our proposals placing any further duties on Police and Crime Commissioners. We propose, through their contractual arrangements with NOMS, to make Probation Trusts accountable for working with Police and Crime Commissioners. The consultation seeks views on the potential for PCCs to become more accountable for the delivery of probation services over time.

### *Crown Prosecution Service*

132. We do not expect our proposals to place any additional duties on the Crown Prosecution Service.

### *Health*

133. As with local authorities and Police and Crime Commissioners, it is important that probation services are aligned with health commissioning structures. The new NHS Commissioning Board will be responsible for commissioning health services for services or facilities for people who are detained in prison, or other accommodation of a prescribed nature. All commissioning responsibilities of Clinical Commissioning Groups will be applicable for offenders in contact with, but not detained by, the CJS and we want to ensure that the right arrangements are in place to support aligned commissioning of some services with probation where appropriate. We do not expect our proposals to place any additional duties on health commissioners. We are seeking views on how we might improve partnership working and local co-commissioning.