

# ALTERNATIVES TO PRISON IN EUROPE

## United Kingdom

*Catherine Heard, Matt Ford*

European Prison Observatory. Alternatives to detention



With financial support from the  
Criminal Justice Programme of  
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Catherine Heard, Matt Ford  
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## THE EUROPEAN PRISON OBSERVATORY

The European Prison Observatory is a project coordinated by the Italian Ngo Antigone, and developed with financial support from the Criminal Justice Programme of the European Union.

The partner organizations are:

Università degli Studi di Padova - Italy

Observatoire international des prisons - section française - France

Special Account of Democritus University of Thrace Department of Social Administration (EL DUTH) - Greece

Latvian Centre for Human Rights - Latvia

Helsinki Foundation for Human Rights - Poland

ISCTE - Instituto Universitário de Lisboa - Portugal

Observatory of the Penal System and Human Rights - Universidad de Barcelona - Spain

Centre for Crime and Justice Studies – United Kingdom

The European Prison Observatory studies, through quantitative and qualitative analysis, the condition of the national prison systems and the related systems of alternatives to detention, comparing these conditions to the international norms and standards relevant for the protections of detainees' fundamental rights.

The European Prison Observatory highlights to European experts and practitioners 'good practices' existing in the different countries, both for prison management and for the protection of prisoners' fundamental rights.

Finally it promotes the adoption of the CPT standards and of the other international legal instruments on detention as a fundamental reference for the activities of the available national monitoring bodies.

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## ALTERNATIVES TO DETENTION IN EUROPE

Various international recommendations on community sanctions and measures promote the use of alternatives to imprisonment in order to reduce recidivism and the prison population. At the same time, legislators, academics and public administration members within the EU know that imprisonment is not the only way to balance security needs and social justice, and every Member State has implemented alternatives to imprisonment systems, with their own rules, organisational set-up and procedures.

The “European Observatory on Alternatives to Imprisonment” project aims to create a functional network of partner countries, in order to reduce the disharmony and gaps among the systems.

The main goal of the project is to provide, in a comparative way, a comprehensive picture of alternatives to detention in force within each partner country. These pictures would enable us to identify those alternative measures to detention that have led to:

- a decrease in detention rates
- the application of rehabilitative programs

To do so, starting from historical analysis, the project's objective is to compare the legal framework of the systems, their goals, the contents of the measures and their impact on the penitentiary system as a whole.





## PART ONE. GENERAL DATA

This report provides information on the three separate jurisdictions in the United Kingdom, wherever this can usefully be done. While there are similarities between the systems, policies and practices around alternatives to custody in England and Wales, Scotland and Northern Ireland, there are a number of important differences.

### Quantitative data about prison populations and those subject to alternatives to prison

Overall, the quantitative data reveal a growth in prison sentence length and an increased use of longer term prison sentences. These trends arise from changes to sentencing legislation. Reforms to community sentencing are unlikely to address this: changes to policy and law on the whole sentencing (and criminal justice) framework are necessary. Figures on the total numbers subject to prison and its alternatives, for the period 2000-2014 (where data are available) are presented at the end of this section.

### Imprisonment and alternatives to custody: an overview

#### Political climate regarding prison numbers since 2000

Since 2000, the number of people in prison following conviction for a criminal offence in England, Wales, Northern Ireland and Scotland has increased sharply. There is no discernible government policy or strategy to reduce prison numbers and the use of custody overall, as distinct from simply controlling future growth in numbers. This is despite regular reports that UK prisons are overcrowded and conditions poor. Government data suggests that reoffending rates for those leaving custody are higher than those dealt with by alternatives like fines or supervision. In policy terms, the emphasis since 2000 has been on reducing reoffending (including in particular by looking for alternatives to short-term prison sentences), rather than cutting prisoner numbers overall.

This period has, though, seen a shift towards greater use of community sanctions in the UK. These have frequently been presented as making the offender 'pay back', or undergo treatment or deprivation of freedom of movement, sometimes combined with probation.

Regarding alternatives to custody in the UK since 2000, there are four notable trends.

- 1) Requirements imposed with alternative sanctions have become more onerous (e.g. the maximum length of time a curfew can be imposed has been extended from 12 to 16 hours a day).
- 2) The punishment element is more visible (e.g. bright orange jackets saying 'Community Payback', public nomination of projects, and statutory requirement for the Community Order to contain at least one punitive element). This has led some to comment that

community sentences have become more 'prison like', moving away from the rehabilitative model.

- 3) There is a growing role for the private sector, with financial incentives to reduce reconviction rates under a 'payment by results' system (in E&W).
- 4) There is greater use of electronic monitoring both as a requirement to a Community Order (curfew requirement) and as a post-prison control (home detention curfew, in E&W and S).

There is little evidence that any of these trends will reduce the UK's high prison numbers or help to divert offenders from custody. In the case of some, it is too early to tell.

### England and Wales

Prison populations rose steadily under the two (Labour) governments that held power for the first two thirds of the period under review in this project. They have continued to rise since, under the (Conservative-Liberal Democrat) coalition government in power for the five years to May 2015. Throughout this period there was no clear government policy or strategy to reduce overall numbers of offenders in custody.

In July 2009 the Ministry of Justice published an analysis of factors behind the 66% growth in the England and Wales prison population from 1995 to 2009.<sup>1</sup> It found two factors driving the increase: more people sentenced to immediate custody (as a result of tougher sentencing laws) and more people recalled to prison for breaking release conditions. A smaller factor identified was the rise in numbers of people imprisoned for breaching non-custodial sentences. The analysis found that since 2000 the average time spent in prison had increased by 14%. There had also been a rapid increase in this period in the number of breach cases resulting in prison, reflecting legislation introduced in 2003 to toughen enforcement.

In November 2014 the Ministry of Justice accompanied a release of sentencing statistics with a statement welcoming the steady increase in the average prison sentence handed down in the period since 2010 when the coalition government took power. The statement pointed to the government's record in taking 'major steps to toughen sentencing' and linked this to continued falls in crime rates. On sentencing, the government had led legislation extending mandatory life sentences for certain serious offences and imposing longer prison sentences for the most serious driving offences.

These most recent examples of government policy illustrate the degree to which any policy aiming to 'reduce prison numbers' is avoided. Reforms to the systems of community sanctions and post-prison probation are widely seen as ideologically driven attempts to open up criminal justice processes and interventions to the private sector. It remains to be seen what impact they will have on prison numbers or reconviction rates.

Although there have been several parliamentary and NGO reports pointing to the need to cut overall prisoner numbers, none has had any detectable effect on government policy. For example, over recent years the House of Commons Justice Select Committee (JSC) has emphasised the dangers of allowing the prison population to escalate and consume resources that could be better spent on preventing crime, for example, by dealing with drug and alcohol addiction and expanding early intervention and diversion programmes. In its report published in March 2015 the Committee identified a 'need to re-evaluate how custody, and alternatives to it, are used in a cost-effective way which best promotes the safety of the public and reduces future crime'.<sup>2</sup> The Chair

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<sup>1</sup> Story of the Prison Population: 1995 – 2009 England and Wales, July 2009, Ministry of Justice

<sup>2</sup> *Prisons: planning and policies*, HC 309, 18 March 2015

of the Committee said the country needed to ‘get away from arguments about which party is hard or soft on crime’ and instead foster a debate on effective practices informed by evidence. These observations echo those contained in a British Academy report published in July 2014<sup>3</sup> which called for a deeper re-examination of penal policy, located outside of politics. The report noted as a key contributing factor to prison growth the increased use of prison for breach of release conditions and community sentences.

### Scotland

In July 2008, the Scottish Prisons Commission published a report<sup>4</sup> advocating limiting the use of custody to cases where the moral seriousness of the offence, coupled with public safety grounds, warranted nothing less. It recommended a significant reduction in the prison population by avoiding the unnecessary use of short sentences and making more use of ‘community payback’ sanctions in their place. Emphasis was placed on the reparative aim of justice, making good to the victim or the community, for example, by unpaid work, paying a fine or compensation, engaging in rehabilitation or a combination of these. Rehabilitative effort was recast as something done by the offender, not change coerced by the state; this made it a form of reparation – paying back for offending by turning one’s life around.

The report led to a reform programme by the Scottish government. In the years since devolution, Scotland has built on its community punishment regime to help reduce overcrowding in prisons. There is a now statutory presumption against short prison sentences.<sup>5</sup> Anyone who would previously have received a short prison sentence is now more likely to get a community sentence. Figures on sentencing published in 2014 suggest this has reduced the number of short sentences passed. The proportion of people receiving a sentence of up to 3 months has fallen from 53% of custodial sentences in 2006–07 to 29% in 2012–13.<sup>6</sup>

In its latest justice strategy programme,<sup>7</sup> a priority of reducing reoffending (as distinct from cutting prisoner numbers) is highlighted. A central part of this involves community sentencing and we return to this subject in Section 2. The report also referred to wider social problems – notably poverty – giving rise to crime, problems whose solutions lay beyond the criminal justice system (CJS). It emphasised the need for non-CJS agencies to be mobilised to tackle these problems.

Overall, while the political debate on prison numbers in recent years in Scotland has appeared more progressive than the debate in Westminster, it is unclear whether the country has yet taken a truly different path towards reducing the use of custody. Recent trends on the use of custodial sentences and average sentence lengths are not reassuring. In 2012–13, 15% of people found guilty of an offence were given a custodial sentence, the highest proportion in the previous 10 years.<sup>8</sup> The average length of a custodial sentence was 283 days, 51 days longer than in 2006–07. The number of those recalled to prison for breach of licence conditions increased by 1,000% in just a decade.

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<sup>3</sup> *A presumption against imprisonment: social order and social values*, the British Academy, July 2014

<sup>4</sup> *Scotland’s Choice: Report of the Scottish Prisons Commission*, July 2008

<sup>5</sup> Criminal Justice and Licensing (Scotland) Act 2010

<sup>6</sup> Howard League Scotland, website, *Trends*, 31 October 2014

<sup>7</sup> *Strategy for Justice in Scotland*, 13 September 2012

<sup>8</sup> Howard League Scotland, October 2014 (above)

## Northern Ireland

An independent review of prisons was launched in 2010 following an unprecedented rise in the prison population. The resulting report<sup>9</sup> published in October 2011 found that the rise in numbers resulted from a 'continuing failure to get to grips with longstanding population drivers, such as the numbers of remand prisoners and fine defaulters, together with a new driver, the number of prisoners recalled' under legislation enacted in 2008.<sup>10</sup> The report discussed a 'culture of denial and compromise' before devolution of powers which had led to wasted public money and failures to deliver a safer society. To put this right a complete transformation was required, rather than mere incremental change. The authors rejected a market-based approach to prisons in favour of a political approach to resolving dysfunction in the prison service. A Prison Reform Oversight Group with official, professional and civil society input was set up in December 2011 to work towards reform. Following this, the DOJ launched a consultation on community sentences to encourage their greater use as an alternative to short sentences, resulting in draft legislation not yet enacted.<sup>11</sup> The bill contains provisions for low level offences to be dealt with by fines rather than court prosecution.

The initiatives developed following this review aimed to move the prison system away from its historic role (criticised as simply 'warehousing' political prisoners), towards a more conventional correctional model. As a result of the various reviews and initiatives, an effort was made to combine prison reform, community justice and other areas into one overarching *Strategic Framework for Reducing Reoffending*, published in May 2013. However, plans to follow Scotland in introducing a statutory presumption against shorter prison sentences did not result in legislation. The promised reforms of the prison system have also not progressed.

## Reforms to alternatives to detention since 2000

In E&W, Suspended Sentence Orders were reshaped under 2003 legislation. This saw the introduction of the high tariff community sentence which was intended to replace short term prison sentences and was implemented in 2005. Supervision can be added as a requirement. (See first and last in the CCJS community sentences reports series for an overview of their use.) Unfortunately, the SSO appears to have displaced lower tariff community based sentences, rather than been a direct replacement for short term prison sentences (Justice Select Committee report in 2008, criminal justice statistics). Recent reforms have extended the use of SSOs to prison sentences of up to two years.

Also in E&W, there have been several reforms designed to make community based sentences more onerous. Now they must contain a punitive element; there is no similar rehabilitative requirement for community sentences, although rehabilitation is among the statutory purposes of sentencing. Community Payback, involving unpaid work, is the most common requirement of a wide range of potential requirements. Other possible requirements include probation, tagging and curfews. The punishments are more visible to the public and thus may help persuade people that these are not 'soft' alternatives and/or that they are about returning something to the community (unpaid work on clean-up and similar projects, which can be nominated by members of the public). In terms of impact in actually reducing prison numbers, or reconviction rates, the

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<sup>9</sup> Review of the Northern Ireland Prison Service (Owers, Leighton, McGrory, McNeill, Whetley), October 2011

<sup>10</sup> Criminal Justice (Northern Ireland) Order 2008

<sup>11</sup> Faster, Fairer Justice; NIA Bill 37/11-15

evidence does not show any real improvement from these reforms. Some experts argue that the reverse effects have been caused.

Women's Centres have been established in all three jurisdictions. These provide interventions for female offenders, which may include probation and other community sentencing options, as well as other services that recognise that women offenders are more likely than male ones to have multiple, complex needs, which influence their offending behaviour. Frequently, trauma such as sexual violence or domestic abuse, mental health problems, substance issues and financial difficulties – or a combination of these - can underlie their offending. When effectively resourced, the centres can strengthen the work of probation and help divert women from prosecution and from prison.

We provide more detail on the above reforms and measures, in part 2.

The tables below show the quantitative data.

**Total prison population (flow and daily rate) between 2000 – 2014: England and Wales<sup>16</sup>**

Total population	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010 <sup>12</sup>	2011	2012	2013	2014
Flow rate <sup>13 14</sup>	128,866	130,934	135,820	135,042	132,961	132,058	128,986	125,881	134,148	125,877	-	120,760	112,772	107,318	103,892
Daily rate <sup>15</sup>	-	-	71,218	73,657	74,488	76,190	77,982	79,734	83,194	83,391	85,002	85,374	86,048	83,842	85,509

**Total prison population (flow and daily rate) between 2000 – 2014: Scotland<sup>17 18</sup>**

Total pop	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Flow rate <sup>19</sup>	35,012	34,082	36,120	39,783	39,076	38,347	38,746	43,506	40,450	38,986	36,521	36,012	37,002
Daily rate <sup>20</sup>	5,975	5,869	6,182	6,453	6,606	6,776	6,856	7,187	7,376	7,826	7,963	7,853	8,178

**Total prison population (flow and daily rate) between 2000 – 2014: Northern Ireland<sup>21</sup>**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Flow rate <sup>1</sup>	5,186	4,416	4,865	5,309	5,455	5,912	6,472	6,061	6,185	6,087	7,016	7,816	8,004	5,361
Daily rate <sup>1</sup>	1,068	910	1,026	1,160	1,274	1,301	1,433	1,466	1,490	1,470	1,465	1,682	1,774	1,826

<sup>12</sup> Data for 2010 is unavailable.

<sup>13</sup> Counted as first receptions into penal establishments. A person received into prison to serve a sentence may previously have been received on remand after conviction prior to sentence and before that as a remand prisoner awaiting trial. First receptions will count that prisoner only once in the relevant period in which they were first received.

<sup>14</sup> Data for 2000 to 2002 taken from Offender Management caseload statistics 2009 statistics bulletin. 2003 onwards from Offender Management statistics 2013 annual tables.

<sup>15</sup> Figures are at 30th June each year. Data prior to 2002 is not available. Due to the introduction of a new IT system in 2010 prison population data from 2009 onwards is taken from a different source and this affects the consistency of the time series.

<sup>16</sup> All data taken from 'Offender Management Statistics', annual editions, Ministry of Justice.

<sup>17</sup> All figures taken from *Prison statistics and population projections Scotland: 2011/12* and *Prison statistics Scotland*, various years, Scottish Govt.

<sup>18</sup> Scotland found large errors when processing their prison data for 2012/13 and have delayed publication. Statistics for 2012/13 and 2013/14 will be published alongside each other in summer 2015.

<sup>19</sup> Figures are for financial years, eg. 2003 = fiscal year 2002/03.

<sup>20</sup> Figures are average daily population for financial years.

<sup>21</sup> Data taken from *The Northern Ireland prison population*, various years, Department of Justice Northern Ireland.

Prison population rate per 100,000 population; number of pre-trial detainees<sup>22</sup> and as a percentage of the prison population; number and proportion of the total prison population by length of sentence (e.g. less than 6 months; 6 months to less than 12 months; 12 months to less than four years; 4 years plus; other). (Data based on the daily rate prison population 2000 – 2014): England and Wales<sup>23</sup>

		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>Prison population rate per 100,000 population<sup>24</sup></b>		135	139	140	142	145	147	152	151	153	152	152	147	-
<b>Pre-trial detainees</b>	<b>Number</b>	7,877	7,896	7,716	8,084	8,064	8,387	8,750	8,730	8,487	8,299	7,671	7,743	8,618
	<b>Percentage</b>	11.1	10.7	10.4	10.6	10.3	10.5	10.5	10.5	10.0	9.7	8.9		
<b>&lt;/= 6 month</b>	<b>Number</b>	5,447	5,969	5,751	6,009	5,959	5,165	5,873	5,131	5,343	5,441	5,003		
	<b>Percentage</b>	7.6	8.1	7.7	7.9	7.6	6.5	7.1	6.2	6.3	6.4	5.8		
<b>&gt; 6 to &lt; 12 months</b>	<b>Number</b>	2,349	2,209	2,306	2,225	2,525	2,462	2,866	2,433	2,502	2,373	2,473		
	<b>Percentage</b>	3.3	3.0	3.1	2.9	3.2	3.1	3.4	2.9	2.9	2.8	2.9		
<b>12 month to &lt; 4 years</b>	<b>Number</b>	21,858	21,378	21,436	21,628	21,619	22,840	23,632	20,362	20,857	20,392	21,304		
	<b>Percentage</b>	30.7	29.0	28.8	28.4	27.7	28.6	28.4	24.4	24.5	23.9	24.8		
<b>=/&gt; 4 years<sup>25</sup></b>	<b>Number</b>	27,618	29,835	31,431	32,317	33,301	35,067	35,753	34,577	36,819	37,983	39,238		
	<b>Percentage</b>	38.8	40.5	42.2	42.4	42.7	44.0	43.0	41.5	43.3	44.5	45.6		
<b>Recalls<sup>26</sup></b>	<b>Number</b>								5,958	5,350	5,646	5,417		
	<b>Percentage</b>								7.1	6.3	6.6	6.3		
<b>Non-criminal prisoners<sup>27</sup></b>	<b>Number</b>	831	1,145	1,017	1,069	1,422	1,289	1,520	1,555	998	946	1,162		
	<b>Percentage</b>	1.2	1.6	1.4	1.4	1.8	1.6	1.8	1.9	1.2	1.1	1.4		
<b>Fine defaulters</b>	<b>Number</b>	34	46	52	78	89	68	110	99	129	129	127		
	<b>Percentage</b>	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.1		
<b>Convicted un-sentenced</b>	<b>Number</b>	5,204	5,177	4,779	4,780	5,003	4,457	4,690	4,546	4,517	4,165	3,653		
	<b>Percentage</b>	7.3	7.0	6.4	6.3	6.4	5.6	5.6	5.5	5.3	4.9	4.2		

<sup>22</sup> In this grid, the term “pre-trial” refers to those awaiting for the first instance.

<sup>23</sup> All data taken from ‘Offender Management Statistics’, annual editions, Ministry of Justice.

<sup>24</sup> Calculated using Office for National Statistics (ONS) population estimates at 30th June each year.

<sup>25</sup> Includes indeterminate sentences.

<sup>26</sup> Due to the introduction of a new prison IT system in 2010, prison population data after 2009 is taken from a different source and recalls are shown separately (they were previously included in the relevant sentence length band).

<sup>27</sup> Non-criminals are those imprisoned for civil, rather than criminal, offences. As result of data quality work from April 2013, around 300 prisoners who had previously been recorded as sentenced prisoners are now recorded as non-criminals.

Prison population rate per 100,000 population; number of pre-trial detainees<sup>28</sup> and as a percentage of the prison population; number and proportion of the total prison population by length of sentence (e.g. less than 6 months; 6 months to less than 12 months; 12 months to less than four years; 4 years plus; other). (Data based on the daily rate prison population 2000 – 2014): Scotland<sup>29 30</sup>

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>Prison population per 100,000 population<sup>31</sup></b>		118	116	122	127	130	133	134	139	142	150	151	148	154
<b>Pre-trial detainees</b>	<b>Number</b>	873	768	862	1,055	1,075	1,036	1,032	1,329	1,306	1,415	1,170	1,112	1,237
	<b>Percentage</b>	14.6	13.1	13.9	16.3	16.3	15.3	15.1	18.5	17.7	18.1	14.7	14.2	15.1
<b>&lt; 6 months</b>	<b>Number</b>	520	491	523	521	471	531	543	568	542	501	439	426	433
	<b>Percentage</b>	8.7	8.4	8.5	8.1	7.1	7.8	7.9	7.9	7.3	6.4	5.5	5.4	5.3
<b>6 months to &lt; 2 years</b>	<b>Number</b>	1,105	1,060	1,187	1,176	1,163	1,161	1,214	1,159	1,226	1,567	1,767	1,682	1,822
	<b>Percentage</b>	18.5	18.1	19.2	18.2	17.6	17.1	17.7	16.1	16.6	20.0	22.2	21.4	22.3
<b>2 years to &lt; 4 years</b>	<b>Number</b>	778	776	780	814	857	884	913	959	1,058	1,099	1,211	1,183	1,172
	<b>Percentage</b>	13.0	13.2	12.6	12.6	13.0	13.0	13.3	13.3	14.3	14.0	15.2	15.1	14.3
<b>=/&gt; 4 years<sup>32</sup></b>	<b>Number</b>	2,409	2,392	2,408	2,437	2,522	2,568	2,490	2,368	2,350	2,369	2,394	2,396	2,439
	<b>Percentage</b>	40.3	40.8	39.0	37.8	38.2	37.9	36.3	32.9	31.9	30.3	30.1	30.5	29.8
<b>Persons recalled from supervision</b>	<b>Number</b>	100	164	195	235	293	351	397	514	610	599	621	681	701
	<b>Percentage</b>	1.7	2.8	3.2	3.6	4.4	5.2	5.8	7.2	8.3	7.7	7.8	8.7	8.6
<b>Convicted awaiting sentence</b>	<b>Number</b>	103	122	134	152	163	188	218	243	255	264	352	362	363
	<b>Percentage</b>	1.7	2.1	2.2	2.4	2.5	2.8	3.2	3.4	3.5	3.4	4.4	4.6	4.4
<b>Fine default</b>	<b>number</b>	56	57	54	56	55	51	47	46	28	11	9	9	9
	<b>Percentage</b>	0.9	1.0	0.9	0.9	0.8	0.8	0.7	0.6	0.4	0.1	0.1	0.1	0.1
<b>Others</b>	<b>Number</b>	28	35	36	6	7	5	1	-	-	-	-	-	-
	<b>Percentage</b>	0.5	0.6	0.6	0.1	0.1	0.1	0.0	-	-	-	-	-	-

<sup>28</sup> In this grid, the term “pre-trial” refers to those awaiting for the first instance.

<sup>29</sup> All figures taken from *Prison statistics and population projections Scotland: 2011/12* and *Prison statistics Scotland*, various years, Scottish Govt.

<sup>30</sup> Scotland found large errors when processing their prison data for 2012/13 and have delayed publication. Statistics for 2012/13 and 2013/14 will be published alongside each other in summer 2015.

<sup>31</sup> Calculated using ONS population estimates at 30th June each year.

<sup>32</sup> Includes life.



Prison population rate per 100,000 population; number of pre-trial detainees<sup>33</sup> and as a percentage of the prison population; number and proportion of the total prison population by length of sentence (e.g. less than 6 months; 6 months to less than 12 months; 12 months to less than four years; 4 years plus; other). (Data based on the daily rate prison population 2000 – 2014): Northern Ireland<sup>34</sup>

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>Prison population per 100,000 population<sup>35</sup></b>		63	54	60	68	74	75	82	83	84	82	81	93	97	100
<b>Pre-trial detainees<sup>36</sup></b>	<b>Number</b>	311	266	341	385	446	444	529	525	507	504	508	590	545	492
	<b>%</b>	29.1	29.2	33.2	33.2	35.0	34.1	36.9	35.8	34.0	34.3	34.7	35.1	30.7	26.9
<b>&lt;/= 6 month population</b>	<b>Number</b>	59	47	55	52	59	56	58	67	81	81	87	106	103	113
	<b>%</b>	5.5	5.2	5.4	4.5	4.6	4.3	4.0	4.6	5.4	5.5	5.9	6.3	5.8	6.2
<b>&gt;6 to &lt;/= 12 months population</b>	<b>Number</b>	88	69	74	93	93	87	100	93	95	95	93	101	117	138
	<b>%</b>	8.2	7.6	7.2	8.0	7.3	6.7	7.0	6.3	6.4	6.5	6.3	6.0	6.6	7.6
<b>&gt;12 months to &lt;/= 5 years population</b>	<b>Number</b>	286	258	268	312	324	329	330	321	319	291	276	363	458	555
	<b>%</b>	26.8	28.4	26.1	26.9	25.4	25.3	23.0	21.9	21.4	19.8	18.8	21.6	25.8	30.4
<b>&gt; 5 years (inc. life) population</b>	<b>Number</b>	295	243	265	290	318	355	386	430	459	464	458	478	496	524
	<b>%</b>	27.6	26.7	25.8	25.0	25.0	27.3	26.9	29.3	30.8	31.6	31.3	28.4	28.0	28.7
<b>Fine defaulters</b>	<b>Number</b>	22	22	17	20	24	25	29	26	21	23	30	33	35	4
	<b>%</b>	2.1	2.4	1.7	1.7	1.9	1.9	2.0	1.8	1.4	1.6	2.0	2.0	2.0	0.0
<b>Non-criminal prisoners</b>	<b>Number</b>	6	6	6	8	10	6	2	6	6	6	2	2	1	1
	<b>%</b>	0.6	0.7	0.6	0.7	0.8	0.5	0.1	0.4	0.4	0.4	0.1	0.1	0.1	0.1
<b>(missing data)</b>		-	-	-	-	-	-	-	-	-	7	11	9	19	-

<sup>33</sup> In this grid, the term “pre-trial” refers to those awaiting for the first instance.

<sup>34</sup> Data taken from *The Northern Ireland prison population*, various years, Department of Justice Northern Ireland.

<sup>35</sup> Calculated using ONS mid-year population estimates.

<sup>36</sup> Northern Ireland does not break down the remand population any further. Remand prisoners include those charged with an offence and whom the courts have ruled should be detained in custody pending trial; those whom the courts have permitted to be released on bail pending trial but have not as yet met the conditions (usually financial) of the bail; those who had been released on bail but have subsequently been re-admitted to prison because they breached a condition of bail; and those who have been found guilty by the court but have been ordered to be detained in custody pending sentence.

## Probation practices

This section begins with some background information on the functions of probation supervision in the UK.

### Background

Across the UK, probation can take place after a person's conviction for an offence, either: (1) as an alternative sanction (when ordered as a requirement of a community sentence or a suspended sentence); (2) after a prison sentence when a person is released on licence or on parole or because a period of probation is compulsory as part of the court's original sentence.

Mandatory supervision cannot be imposed on un-convicted persons, although probation workers have roles prior to conviction and sentence. Pre-trial, they assist with decisions to grant or refuse bail, check compliance with bail conditions, and help with bail condition monitoring and enforcement. After conviction but before sentencing, they provide information to aid the court in sentencing. After sentencing, the probation service not only provides supervision if ordered in the court's sentence, but also helps to give effect to other requirements imposed, enforces supervision compliance and makes decisions about how non-compliance should be handled.

Finally, after a person's release from prison there will often be a period of supervision. The probation service is involved in parole applications, resettlement support, the monitoring of licence conditions and decisions about whether a breach of conditions should lead to recall to prison.

### Do alternatives to detention develop skills and social inclusion of the offenders?

While some alternatives to custody (such as unpaid work and tagging) are designed principally to punish and control, probation supervision in the UK aims to offer the support necessary to prevent reoffending. Part of this is helping people to access opportunities to develop skills and social inclusion. In practice, the availability of these benefits to people under supervision is not guaranteed and will depend on several factors.

One key factor is the early establishment of a good relationship with a dedicated and skilled probation officer who meets the offender regularly as part of a planned supervision process. Under the new system in E&W much of the standard work of supervising people subject to probation is now being carried out by CRCs. It remains to be seen whether they are as well-placed as former probation trusts to equip offenders with necessary skills to obtain work and the support needed to improve social inclusion.

Assisting with literacy and numeracy skills and helping probationers complete job applications and prepare for job interviews are services commonly offered by CRCs. Another example is the Women's Programme run by London CRC, designed to help women convicted of certain offences to develop personal skills to turn their lives around. This CRC also offers a 'Thinking Skills Programme' to help frequent offenders develop patterns of thought to help them desist, and

‘Steer Clear’, a drink-drive programme focusing on the impact of alcohol on offending behaviour.<sup>37</sup> Other programmes are designed to help offenders tackle aggression, problems around abusive relationships, and difficulties in building and maintaining personal relationships. These programmes have the capacity to help restore social inclusion and develop skills. Their success will depend on the availability of places on the programmes and on their quality.

The UK systems also require probation staff to perform other functions including enforcing the court’s sentence (or conditions imposed on release) and managing perceived risks of harm to victims and wider society. These functions can sometimes impede probation work designed to develop skills and independence, especially in a time of reduced resources.

UK probation professionals consider that the social inclusion of offenders is aided by effective interaction with probation officers – ideally, regular contact with the same probation officer, who supports the person through any necessary programmes and ensures any adaptations are made where helpful.

In NI and S, probation staff and CJSW staff work with voluntary sector programme providers, using similar approaches to help those under supervision develop their social inclusion skills, although the delivery methods differ from E&W and there is no payment-by-results system. Here, too it is accepted that a high quality relationship with a trained supervisor is as important as accessing accredited programmes if the supervision is to respond to the person’s individual needs.

### Are alternative measures free of stigmatizing features?

There are two potentially stigmatizing features to consider here: unpaid work under community payback orders, and the requirement to wear a tag and submit to a curfew.

**Unpaid work:** The requirement to complete unpaid work as part of a ‘community payback’ order is a frequent feature of sentencing in England and Wales as we describe in more detail in Section 2. Work must be ‘challenging and demanding’ and ‘must be seen to be putting something back into the community’.<sup>38</sup> It typically involves offenders carrying out work seen to benefit the local community, done at weekends, under supervision.

Those performing unpaid work must wear high visibility orange ‘tabards’ or jackets bearing the words ‘community payback’. This is a mandatory requirement<sup>39</sup> but the practice has been in place since shortly after the payback scheme was launched in 2005. The rules state that the jackets’ purpose ‘is not to stigmatize or humiliate offenders’, but to comply with health and safety requirements and to ensure the work is visible to the public, providing evidence that community sentences are being enforced and thereby improving public confidence in such sentences.

Projects often involve cleaning or removing rubbish, perhaps the results of other criminal or anti-social behaviour such as graffiti or discarded drug-use items. Some may argue that this activity is of minimal rehabilitative value and carries disproportionate stigma.

Examples of other kinds of activity that have (less commonly) been ordered as community payback, which may have greater socialising and rehabilitative value, include work with charities

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<sup>37</sup> London Community Rehabilitation Company website: ‘Offending behaviour programmes’

<http://www.londoncrc.org.uk/what-we-do/offending-behaviour-programmes/>

<sup>38</sup> London Community Rehabilitation Company website

<sup>39</sup> NOMS, ‘Community payback high visibility tabards’, PI 12/2014

helping to grow food and deliver it to local care homes, and working in stables to enable disabled children to take part in horse-riding.

**Tagging:** Electronic monitoring and the requirement to wear a tag is punishment and control with no rehabilitative value (except to the limited extent that it may reduce non-compliance with supervision or programme attendance). It has been argued that it stigmatizes, particularly in view of the need to wear a large black plastic device around one ankle at all times. Changes in dress and restrictions on the ability to engage in sports are among the potentially stigmatizing effects, as are the effects that seeing the ankle tag may have on the person's children or intimate partners.

### Are probation programmes individualised?

**At the sentencing stage.** As discussed in Part 2, sentencers have a range of alternative options if a case does not meet the threshold for immediate custody. If the court orders participation in a programme or imposes some other requirement, that should reflect a thorough assessment by the court, aided by probation, of the offender's individual needs and history. Individualised requirements with a therapeutic and/or treatment content, often in combination with supervision, can be imposed by sentencers, but are less frequently used in E&W than unpaid work and electronic monitoring.

In practice the degree of individualisation will depend on whether the court is provided with the information needed to make a proper assessment. The key tool is the pre-sentencing report prepared by probation together with any information on available programmes or treatment places. Advice to the court on sentencing has traditionally been a key part of the probation officer's role but recent changes to the system in E&W could result in the body responsible for this work (the National Probation Service) having less time to prepare the report. Future streamlining of court processes could result in the reports being dispensed with altogether at some hearings.<sup>40</sup>

**After sentence.** The degree of individualisation depends on the nature of the measure the court has imposed.

In **E&W** unpaid work is not individualised but based on what programmes are available: the selection is carried out by the local CRC, sometimes from among work programmes nominated by the public in the local area. There is also no individual variation of tagging regimes to suit individuals: once subject to a tagging order, people under this form of surveillance are treated in exactly the same way. It has been shown that sentencers imposing a non-custodial sentence more frequently impose community payback and supervision than a treatment order or programme requirement. This trend may be increased as a result of the statutory rule introduced in 2013 that every community order must contain a punitive element (discussed later).

A supervision requirement does allow for greater individualisation according to the offender's needs and circumstances. Once the probation order has been made, the offender manager will use the computerised OASys assessment tool (see further below), which offers a degree of individualisation to meet the needs of the offender, and which results in a detailed sentence plan including how the need will be addressed. Categories of need listed in OASys correspond to factors thought to increase the risk of offending or reoffending. They include accommodation, alcohol or

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<sup>40</sup> *Review of efficiency in criminal proceedings*, Rt Hon Sir Brian Leveson (January 2015) <https://www.judiciary.gov.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf>

drug issues, lifestyle, behaviour and relationship problems. Plans or interventions to address these needs are also entered into OASys, for example, treatment programmes, training or counselling. Detailed compulsory rules are in place for both prisons and probation to follow around sentence planning.<sup>41</sup>

Other individual assessment tools can also be used to ensure the programme is properly adapted to the offender's needs. An important example is the Maturity Assessment Tool for young adults, discussed later.

Whether these tools and other available resources are used effectively to produce a responsive supervision plan will depend largely on the skill of the probation officer in building a relationship with the offender. The use of professional judgment and discretion is important. As we explain later, much work has been done in the UK to produce national standards and rules aimed at bringing about strong relationships and ensuring offender engagement, in recognition that this approach is better at promoting desistance.

Even where no tailored requirements (such as taking part in a work skills programme or relationship building programme) have been ordered at the sentencing stage, there is also an opportunity during supervision process for the probation officer to refer people to such programmes, if likely to benefit them. Probation officers often refer individuals under their supervision to take part in therapy or treatment as part of a probation plan. Many probation officers, however, have complained of the lack of available places on such treatment programmes, long waiting lists, and a reluctance on the part of mental health practitioners to provide services to those referred by probation officers.<sup>42</sup>

Similarly there is the opportunity for prisoners at parole hearings to have tailored programmes suggested and supported by probation officers.

Some fear that the TR reforms will result in probation officers playing less of a role in individualised programmes designed to help offenders, for example if privatisation results in staff cuts and lower professional standards. Some, though, have pointed to the potential of the TR reforms to introduce a greater degree of personalisation into probation and other criminal justice functions.<sup>43</sup>

In **NI** pre-sentence reports are prepared by the Probation Board and fulfil similar purposes as in E&W. They are prepared according to Core Standards on the quality of probation work. A shorter report known as a Specific Sentence Report is also used in some cases. Its purpose is to provide information to sentencers to help them decide whether a community service order or probation supervision is appropriate. Less information is needed for such reports and their use has recently increased.<sup>44</sup>

In **S**, CJSW staff have an important role in advising and assisting the court before sentence is passed. In recent years it has taken a more directive role than probation in E&W or NI take in that it seeks to influence the sentence rather than merely provide information. This follows the clear policy aim that court reports should influence sentencers towards a non-custodial sentence, now

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<sup>41</sup> *Sentence Planning*, October 2014, PSI 14/2012 PI 9/2012

<sup>42</sup> *The Community Order and the Suspended Sentence Order three years on*, G Mair and H Mills, Centre for Crime and Justice Studies, 2009. (CCJS 09)

<sup>43</sup> Policy Briefing by Criminal Justice Alliance, 'Personalisation in the criminal justice system' 2013 [http://criminaljusticealliance.org/wp-content/uploads/2015/02/Personalisation\\_in\\_the\\_CJS.pdf](http://criminaljusticealliance.org/wp-content/uploads/2015/02/Personalisation_in_the_CJS.pdf)

<sup>44</sup> This followed a recommendation for their greater use in the PBNI Inspection Report 2011.

strengthened by legislation recently passed to the effect that whenever custodial sentences of less than three months are being considered, a presumption exists in favour of awarding a community order instead.

### **Is the progress of the offender evaluated in the course of the measure's implementation?**

In **E&W** it is a compulsory requirement on probation and prison staff to produce an assessment of 'risks and needs' and a sentence plan and to review this plan throughout the sentence.<sup>45</sup> Assessments and plans must be reviewed during the course of, and at the end of, the sentence whenever there is a significant change that impacts on the risk of re-offending and/or serious harm posed by the offender, which may include where a transfer has taken place, the offender has been released from custody, and/or one or more objectives in the sentence plan has been achieved. The key tool for this work is the OASys system.

In **NI** the probation board uses a system developed in E&W in the mid-1990s (since replaced by OASys), known as the Assessment, Case Management and Evaluation System. This is designed to facilitate structured assessments at all stages of supervision, focusing on the offender's needs (dynamic and criminogenic) and also motivation levels and likely responses. It involves a systematic recording process and permits the measurement of progress through all stages.

In **S**, guidance on sentence planning, delivery and monitoring is contained in National Objectives and Standards for CJSW.

### **Is the plan of work reviewed according to this evaluation?**

Yes: see answers above. However there may be scope for improvement, by conducting a formal review of progress shortly after the first assessment when a community order has been made. A recent MOJ research paper on reoffending rates of those issued with community orders suggested that a formal review by Offender Managers of the initial offender assessment in the first months (when the risk of re-offending is highest), could ensure implementation of sentences is tailored to the changing attitudes and needs of the offender. For example, such a review might suggest a need for additional support requirements and/or sentence flexibility.

### **Are there possibilities to change its content in the process of implementation?**

Yes, see answers above.

### **Is a final evaluation carried out at the end of the supervision period?**

Yes, national standards require this.

### **Do workers in alternatives to detention have the same rights and safeguards as other workers?**

As discussed in Part 2, unpaid work (known as Community Payback) is frequently ordered as an alternative sanction. The rights of those undertaking such work do not extend as far as those

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<sup>45</sup> *Sentence Planning* (above)

enjoyed under UK legislation by employees, for example, there is no right to payment of a minimum wage or not to be unfairly dismissed. However, equality and health and safety legislation must be observed.

There are rules and safeguards in place explaining to providers what they must do to respect the equality, diversity and safety of those undertaking unpaid work. A Community Payback Operating Manual contains rules about the work placements to be provided, including that equipment and transport are provided and maintained safely, that work sites are overseen, that needs of offenders, including their personal safety, are identified and matched to suitable work placements. The manual states that 'where practicable', a sole female should not be placed in a work group of male offenders and a male supervisor, that work should not interfere with the offender's other work/training commitments, caring responsibilities or religious observance. The manual also provides (but as an option rather than a national requirement) that a work placement can 'maximize opportunities for the development and accreditation of skills to meet the needs of offenders with an identified employment need'.

### Supervision model adopted in alternative measures (e.g. control-oriented, assistance-oriented...)

Supervision is not used in all community sentence measures in the UK; sometimes a fine, unpaid work or tagging is all that the court orders. But supervision can be required as an alternative to custody, either as a standalone requirement, or in conjunction with another requirement, such as participation in a rehabilitation programme.

Typically, supervision in the UK entails a combination of control (because of the functions of enforcement of court sentence, and of public protection) and assistance. The degree of assistance will depend on many factors: how well the individual's needs are understood, how strong the personal relationship is with the supervisor, the availability and effectiveness of programmes offered. These, among other, factors will influence how helpful the supervision is.

The supervision model in each jurisdiction is discussed below.

#### **England and Wales**

England and Wales has more than a century's history of probation work. In recent decades probation has become less traditionally rehabilitative or social-welfarist, and more control-based and punitive. From the mid-1990s greater emphasis has been placed on the demonstration of effectiveness of supervision, measured by reference to compliance with programmes and probation plans (and reconvictions). As part of this, more use has been made of risk assessment models, accredited programmes and performance targets. The amount of staff discretion involved has been reduced.

Another major change in the role of the probation service in recent years has been the increasing priority given to public protection and the management of dangerous offenders. Each local area has a system known as MAPPA (Multi Agency Public Protection Arrangements) to ensure that police, probation and other agencies share information and agree strategies to reduce the likelihood of those under supervision committing serious offences.

There has been a large increase in the number of people under pre- and post-release supervision since 2000. In part this is due to increased use of community sentencing. But the bulk of the increase is due to: (1) rising numbers being sentenced to 12 months or more, for whom supervision on release from custody has been a statutory requirement for several years; and (2) to

changes in sentencing laws, leading to more people spending longer periods on supervised licence following release.

The model for supervision in England and Wales is the National Offender Management Model, a universally applicable probation model whereby a single offender manager sets a supervision plan and others are responsible for delivery of its specific elements.<sup>46</sup> Having a single offender manager (OM) with overall responsibility was a policy based on research into effective probation work, which stressed continuity of personnel as a key benefit and its absence as a factor leading to poor probation outcomes. The OM is responsible for the overall management of the offender and discharges this responsibility by; determining and implementing the sentence plan and liaising with all agencies involved in delivering the requirements of the sentence to ensure it is delivered effectively and public protection is maximised.

Under this model, the nature and intensity of the supervision applied to an individual is based on four tiers aligned with perceived dangerousness and the risk of reoffending: tier 1 - punish, tier 2 - help, tier 3 - change, and tier 4 - control. The allocated tier will determine the resource allocation: the greatest resource is allocated to those considered most dangerous or prolific, under tier 4 (representing the smallest number under supervision, who need not only punishment but also help, change programmes, and control measures).

Assessing the risk of harm and the individual's needs has now become a central part of probation's role. All probation staff use the OASys risk and needs assessment tool, which is intended to account for factors that contributed to offending behaviour such as employment history, living conditions, substance abuse, to measure threats and risks. OASys is intended to:

- help assess the likelihood of reconviction
- identify and prioritise offending related needs
- help assess risk of serious harm
- help manage the risk of serious harm
- facilitate sentence planning
- measure change during supervision.

An additional assessment tool has been introduced for the NPS, designed to assess the Risk of Harm. One probation workers' union has complained that the time taken to complete the necessary form has greatly increased staff workloads.

Separately probation officers should assess the maturity of those in the 'young adult' category (18 to 24). Sentencing Council guidelines state that consideration should be given to 'lack of maturity' as a potential mitigating factor in sentencing decisions for young adults. In 2013 a guide to assessing maturity was developed for probation workers and others in the justice system, based on evidence from neuroscience, psychology and sociology showing that young people mature at different rates and are often not fully mature until their mid-twenties.<sup>47</sup> The maturity assessment guide is intended to help ensure that probation or community justice interventions aimed at supporting desistance are informed by young adults' potential immaturity and take account of the capacity for further development. Probation approaches could, for example, focus on enabling positive involvement in family and social relationships, including community service or voluntary work. Proper maturity assessment processes would also help to shed light on the contexts in

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<sup>46</sup> See also National Offender Management Standards described in Pt 1 s.3, Procedural safeguards, below.

<sup>47</sup> *Taking account of maturity, a practice guide for probation*, July 2013, University of Birmingham and the Transition to Adulthood Alliance



which offending occurs. The guide covers how to carry out the assessment of maturity, how to cover it in PSRs, and how to develop appropriate supervision plans. OASys is the system by which information relating to maturity is captured and the guide offers advice on how to do this.

### **Recent changes to probation in E&W – ‘Transforming Rehabilitation’**

When it came to power in 2010 the coalition government promised a ‘rehabilitation revolution’. This led to unprecedented legislative changes in 2014-15 and a complete restructuring of probation services, which have been opened up to independent providers from both the private and the voluntary sectors under a new ‘payment by results’ system of funding.

The 35 regional probation trusts that previously ran all probation services have been broken up. The bulk of probation work is now done by 21 Community Rehabilitation Companies (CRCs). These regional entities, usually partnerships between large corporates such as Sodexo, and NGOs, employ thousands of former probation trust staff. They supervise around 200,000 low and medium-risk offenders a year.

Alongside the CRCs, a new public sector body known as the National Probation Service (NPS) has been created. The NPS supervises the remaining approximately 31,000 high-risk offenders. The NPS’ responsibilities are:

- preparing pre-sentence reports for courts, to help them select the most appropriate sentence
- managing approved premises for people with a residence requirement in their sentence
- assessing those in prison to prepare for release on licence to the community, when they will come under our supervision
- helping those serving sentences in the community to meet the requirements ordered by the courts
- communicating and liaising with victims of serious sexual and violent offences, after a prison sentence of 12 months or more has been ordered (or the person is detained for mental health reasons).

The other key feature of the recent reforms is that more offenders on short custodial sentences will receive supervision after their release. This group of offenders had the highest reoffending rates. Whether the CRCs will succeed in reducing the reconviction rates of this group will be the main official measure the impact of these reforms. Changes have also been made to arrangements in the prison estate aimed at ensuring all prisoners spend a period in a resettlement prison before their release.

The stated aim of these changes, branded ‘Transforming Rehabilitation’ (**TR**) by the government, was to bring down reconviction rates. There is a wide divergence of opinion on whether they will succeed in this aim: fears are widespread among probation professionals about the negative impacts the reforms could have on standards and traditional values. One key issue will be the degree to which private companies’ activities in performing public services in probation work can be effectively scrutinised and held to account. Freedom of information laws are a crucial check on the power of the executive and it may be necessary to extend their scope to breach this accountability gap.

### **Northern Ireland**

In comparison to E&W the Northern Ireland probation system has seen less upheaval in the years since 2000, although legislation in 2007 introduced some changes which brought the systems of NI

and E&W closer.<sup>48</sup> For example, enforcement and risk management have now become more prominent aspects of practice, as in E&W. In some respects the system resembles that which was in place in E&W prior to the 2014-15 restructurings described above. But there are some unique aspects to the roles of probation staff. For example, the prosecution can ask an officer of the Probation Board for a report to help it decide whether to prosecute. There is no equivalent in E&W to this notable use of probation expertise at the point of potential diversion away from the criminal justice system (but see Scotland's similar approach, below).

Responsibilities for policing and justice were only devolved from the Westminster government in 2010, several years after the devolved NI Assembly was established. Probation was an exception to the politicisation of criminal justice during the period of civil conflict that marked policing and prisons.<sup>49</sup> In the mid-1970s probation staff voted not to carry out mandatory probation work with 'politically motivated offenders' in protest at legislation imposing this form of sentence. Since then probation has been characterised by political neutrality which many practitioners believe helped probation staff to achieve hands-on involvement in communities and a more social work-driven focus.

For those remanded in custody, the probation service has a social work role, for example, helping communication with family members. After a prison sentence, the role of probation officers has changed in recent years as a result of new sentence structures for those considered more dangerous. These sentences apply to serious sexual and violent offences and involve greater public protection roles for the probation service once the prison term has been served, requiring probation supervision of up to ten years.

### Scotland

There has been no national probation service in Scotland since 1968. Equivalent roles are carried out by criminal justice social workers (CJSW), who are part of local authorities' social work departments. The CJSW staff give information to criminal courts to assist in decisions on bail and on sentencing, including a social enquiry report. They also provide reports to prosecutors during the pre-trial stage to help decide whether there is scope to divert the person away from the prosecution altogether (a power widely used for younger people).

CJSW provide supervision support to offenders subject to measures intended to divert them from the criminal justice process. They also provide supervision for offenders under community sentences (for example, Supervised Attendance Orders and Drug Treatment Orders) and prisoners released on licence. They help with risk assessment and risk management planning for high risk offenders subject to monitoring in the community under multi-agency public protection (MAPPA) arrangements. CJSW also have a legal duty to provide 'voluntary throughcare' to those released from prison and their families, after short term (up to four years) sentences, if this service is requested. National and local NGOs also help provide support

Scotland has not followed England and Wales in introducing privatisation and payment by results in the probation service. Instead there has been a drive to coordinate delivery through public sector, local government and voluntary institutions. This is part of Scotland's unique Community Planning process of decision-making which aims to help public agencies collaborate with

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<sup>48</sup> B Stout, 'Should Northern Irish probation learn from NOMS?', *Irish Probation Journal*, 4(1), 25 – 31, 2007

<sup>49</sup> 'Legitimacy Through Neutrality: Probation and Conflict in Northern Ireland', N Carr and S Maruna, *Howard Journal of Criminal Justice*, 474-487, 2012

communities to deliver better services in line with national priorities. There is private sector involvement in electronic monitoring.

### Does the probation system offer aftercare services?

In all three jurisdictions, probation services play a role in delivering post-release supervision, which has become increasingly geared towards risk control and public protection in recent years. All three countries have chosen to focus policy and resources on preventing reoffending and managing risk, rather than achieving social reintegration or offering a fuller range of personal support. This emphasis is clear in the content of post-sentence supervision requirements laid down in guidance and regulations.

#### England and Wales

Several studies and reports have highlighted the importance of access to education, training and employment, for the successful resettlement of those who leave custody.<sup>50</sup> Another important factor identified is rebuilding relationships with family, friends and others who can offer support such as former employers.

Inspection reports in the mid-2000s regularly criticised prisons' and probation services for failing to provide the necessary planning, support or access to facilities. Causes identified were high prisoner numbers, poor information sharing, bad sentence planning and staff shortages.<sup>51</sup> The most recent inspection report, from 2014, found that supervision and resettlement work in prison had had little impact in helping with employment, education and training, or accommodation assistance. This was partly due to weak sentence planning and poor information-sharing across prison departments, particularly with shorter sentenced prisoners.

Since the commencement of the new legal regime under TR in early 2015, every offender sentenced to less than 2 years is released half way through the sentence and subject to a licence period for the balance of the sentence period (during which supervision will occur), followed by up to 12 months of compulsory supervision (during which it will continue). Those given short sentences will spend longer under post-sentence supervision; those given longer ones will spend longer on licence and less time under supervision. Offenders serving short sentences and those with less than three months to serve should be held in 'resettlement prisons' in the area in which they will be released. Resettlement services should be organized on a 'through the gate' basis, making greater use of mentors and with some of the payment to providers (CRCs) geared towards the outcomes they achieve in reducing reoffending.

Post-sentence supervision is covered in a specific instruction.<sup>52</sup> This explains that the requirements that can be imposed for the supervision period after expiry of the licence period are more limited than those in a licence (where conditions are laid down, breach of which results in recall). This leaves more scope for OMs to decide on the best approach to rehabilitation. Requirements are imposed by prison governors but proposed and implemented by probation staff. They include good behaviour and residence requirements, keeping in touch with and receiving visits from the

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<sup>50</sup> Examples include *Through the Prison Gate. A Joint Report by HM Inspectorates of Prisons and Probation*, HMI Prisons and HMI Probation (2001); the *Surveying Prisoner Crime Reduction* survey, MOJ (2012), and the *Joint Inspection Report on Resettlement*, HMI Prisons and HMI Probation (September 2014)

<sup>51</sup> See, for example, HM Chief Inspector of Prisons annual report for 2005-6, and *What works in resettlement – findings from seven pathfinders for short term prisoners in England and Wales*, Lewis and Ors, *Criminology and Criminal Justice*, Vol 7, No 1, Feb 2007

<sup>52</sup> *Post-sentence supervision requirements*, PI 29/2014

probation supervisor, not travelling without permission, not working without approval and taking part in activities as instructed by the supervisor. The activity requirements can include one-to-one work, restorative justice, or other programmes likely to enhance rehabilitation. Drug supervision can also be requested by supervisors which can be backed up by drug-testing requirements.

The relationship between prisons and probation services is key to improving the life chances of ex-prisoners. It will also be important that the new CRCs harness the involvement of other public bodies (health, education and employment ministries and their agencies) and of voluntary sector organizations. The latter can be effective partners of prisons and probation services, in ensuring the opportunities for change and desistance are maximized on release.

In addition to post-release supervision, CRCs in the prisoner's home area are required to provide a basic resettlement service to every prisoner before release. Where they consider it necessary a CRC can call on the prison service to provide some rehabilitative support (eg a drug treatment programme) before release. Probation officers are responsible for carrying out assessments via OASys at this stage but, due to staffing pressures, this is not done in all cases.<sup>53</sup> A March 2015 report<sup>54</sup> highlighted a risk that under-resourcing in prisons would hamper the CRCs in providing aftercare.

### Scotland

In 2003 the prison service began a scheme of contractual management of its public sector prisons and the contracts require that resettlement activities are measured. This includes risk and needs assessments, programme participation, providing training and qualifications for employment, and securing accommodation. Help from other statutory agencies, including benefits and housing, is provided in prison to cut out delays in prisoners and their families accessing money and housing, where needed.

### Northern Ireland

The PBNi provides probation services to prisons to ensure social welfare duties are met and assistance is given to governors to set the licence conditions. Several of the accredited programmes offered by PBNi were developed by NOMS for use in E&W (eg thinking skills and aggression management programmes). An inspection report from 2007<sup>55</sup> noted that little or no resettlement service was in place for short-term prisoners. It found a heavy reliance on voluntary and community sector bodies for delivery of necessary services, pointing to the underfunding of such bodies as a potential weakness in the system. It also criticised the absence of a personal resettlement officer scheme which would help to improve services and outcomes. The report emphasised the need to hold women prisoners separately in the interests of good resettlement practice.

### Do foreigners have any limits to serve alternatives to detention? Are there specific provisions for them?

The answer depends on the nature of the measure being considered, and on the immigration status of the foreign national. The Equality Act 2010 would prevent any unlawful discrimination by

<sup>53</sup> *Prisons: planning and policies*, HC 309, 18 March 2015

<sup>54</sup> *Prisons: planning and policies*

<sup>55</sup> *An inspection of the Northern Ireland Resettlement Strategy* (2007). <http://www.cjini.org/CJNI/files/5c/5ccaff46-66ac-4add-a705-db5d5ac4ce67.pdf> Thematic inspections of resettlement in prisons had also taken place in 2005 and 2006.

government bodies, probation services or CRCs on grounds of race (defined as including colour, nationality (including citizenship) ethnic or national origin). There are no explicit sentencing restrictions on foreign nationals.

Citizens of European Economic Area (EEA) countries may be termed foreign nationals, but are exercising treaty rights by being in the UK. For nationals from states outside of the EEA, eligibility for some measures will depend on whether there is a legal right to remain in the UK and what that right derives from. Undocumented migrants, illegal entrants and over-stayers face far greater barriers than EEA citizens.

In practice, access to effective rehabilitation is more difficult for foreign nationals. Immigration status will dictate a person's entitlement to public services crucial for rehabilitation such as accommodation, health, benefits and employment. Difficulties in communicating in English and accessing information and support could increase the risks for a foreign national's chances of rehabilitation and desistance. In view of the statistical over-representation of non-nationals in UK prisons<sup>56</sup> questions arise as to whether this is due to the greater prevalence of offending or re-offending serious enough to warrant custody, or to a greater propensity to arrest and prosecute non-nationals or to sentence them to custody instead of an alternative. There is no statistical data to assess this.<sup>57</sup>

### Pre-trial

Eligibility for bail is likely to be influenced by nationality and immigration status. Courts can refuse bail on the basis of a risk of absconding. When there is insufficient information or evidence against which to assess this risk, the default option will sometimes be to refuse bail, effectively placing a heavy burden on defendants to prove that they will not abscond.

### Alternative sanctions

However, courts themselves are not bound by equality laws in sentencing offenders. There are no express provisions or criteria applicable to the consideration whether non-national defendants should be given an SSO or CO with a probation element, or a prison sentence: this decision should be made based on the same considerations as for any defendant.

The pre-sentence report is an important aid to the court in deciding on custody or a community sentence but the law does not require PSRs in all cases where a foreign national is being sentenced. In practice, whether a report is requested will come down to the court's culture and how pro-active the probation service is in seeking to persuade the court of the need for one. This, in turn, will be influenced by how suitable the person is for a community sentence. It has been suggested<sup>58</sup> that courts are less likely to consider non-nationals as suitable. Reasons may include: irregular immigration status precluding access to benefits or work; perceived risk of absconding before finishing the sentence; or to facilitate deportation after completing the sentence. Evidence cited in a recent article suggests reluctance to recommend some community penalties for foreign nationals – supervision, attendance on programmes – compared to nationals. Possible explanations offered are perceived difficulties in giving full effect to the sanctions, and lack of skills

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<sup>56</sup> The Government publishes data on prison populations by nationality.

<sup>57</sup> As is made clear in, for example, Banks, J. (2011) 'Foreign National Prisoners in the UK: Explanations and Implications', *Howard Journal* 50(2): 184 - 198

<sup>58</sup> 'Foreigners to Justice? Irregular migrants and foreign national offenders in England & Wales.' Canton, Hammond, *European Journal of Probation* Vol. 4, No 3, 2012, p 12, referring to data gathered by London Probation Trust, which had a high proportion of non-national offenders.

and awareness on the part of probation staff leading to cultural stereotyping. The evidence suggests that both probation staff and sentencers favour community payback over supervision for both foreign nationals and irregular migrants.<sup>59</sup>

### Post-custody

There are no rules restricting access of foreign national prisoners to resettlement or rehabilitation services or programmes. However, access to pre-release services will be less useful in practice where the prisoner is to be deported as opposed to being resettled in the UK.

As for eligibility for parole or licence and the availability of probation as a condition thereof, different rules apply to non-national offenders. Those who are subject to a criminal court recommendation for deportation can be detained at specific stages of the deportation procedure, pending their removal. Foreign nationals who have served prison sentences of 12 months or longer are subject to the automatic deportation provisions of the UK Borders Act 2007. They can be held in immigration detention pending deportation. Such people will have contact with probation services while in prison, and again after their release from immigration removal centres on immigration bail while under licence. Where a foreign national held in immigration detention remains under licence, they must notify probation of their proposed bail address and get this approved, before applying for release.

A recent Probation Instruction<sup>60</sup> sets out guidance for staff assessing applications by those under licence to relocate to a non-UK jurisdiction. It sets out requirements for close family or residential ties or other reasons such as compassionate grounds to agree to the request. Regard must be had to the nature of the index offence, and whether connected with overseas activities such as frauds involving an overseas company, extremism with international dimensions etc.

In response to the reforms introduced by the TR system questions were raised by the NGO Detention Advice Service (DAS).<sup>61</sup> DAS asked how foreign national offenders would be included in the planned probation and rehabilitation reforms. The response was to confirm such offenders would be removed 'at the earliest opportunity' but would still benefit from 'a range of activities to support their eventual release into society' while serving their sentences. It was not explained whether this referred only to prison-based activities or also to probation supervision in the community.

Bail for Immigration Detainees or BID, an NGO, has argued that foreign national offenders in immigration detention are a 'low priority among probation staff', who often assume the person will be deported when this may not in fact be the case: 40% of deportation orders are successfully appealed and many who are ultimately deported will spend months or years on immigration bail in the community before this. They should not therefore be ignored or refused probation assistance.<sup>62</sup> BID has urged the MOJ to consider the needs of foreign nationals in the future provision of rehabilitative services.

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<sup>59</sup> 'Foreigners to Justice?', above, p 13

<sup>60</sup> NOMS, *Permanent resettlement outside England and Wales of offenders subject to post-release supervision* PSI 08/2015; PI 07/2015. <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2015/psi-08-2015-pi-07-2015-permanent-resettlement-outside-england-and-wales-of-offenders.pdf>

<sup>61</sup> Website of Detention Advice Service (DAS), an organisation providing immigration advice, information and support to those detained, or threatened with detention, under immigration powers

<sup>62</sup> Article on BID website: <http://www.biduk.org/842/news/totally-ignored-foreign-national-offenders-and-the-introduction-of-a-payment-by-results-system-for-rehabilitation-work.html>

## Are there any gender specific programmes?

There is no specific sentencing regime applicable to female offenders in the UK jurisdictions. However, gender should be taken into account by OMs when considering the support to be offered.<sup>63</sup> In some areas, schemes and programmes designed to provide for women offenders' needs are available, as set out below.

### England and Wales

A 2014 report found that most female prisoners are serving short-term sentences for non-violent, low-level offending. Two-thirds are serving sentences of six months or less.<sup>64</sup> The average sentence length for women has been increasing and was 2.7 months longer in 2013 than in 2002. The average cost of a woman's prison place is £56,415; almost three times the cost of an intensive community order at £10,000-£15,000. Many female prisoners experience high rates of mental health disorders, have been victims of sexual and domestic violence, and suffer from substance addictions. Often, women serving short sentences are reconvicted: 54% of women leaving prison are reconvicted within one year; for those serving less than 12 months this increases to 64%. The report argues that the Sentencing Council should review sentencing guidelines to address these issues, but there has been no move in this direction to date.

Following campaigns for better provision for women, the government added a clause into the Offender Rehabilitation Bill 2014, placing a duty on the Justice Secretary to ensure that contracts with the new probation providers consider and identify the particular needs of female offenders. This could help to ensure that consideration of the need to provide gender-specific services for female offenders informs future commissioning decisions.

Aiming to address some of the issues faced by women passing through the criminal justice system, Women's Centres have been set up throughout the UK. These are discussed in Part 2 section 2. There are also NGOs actively campaigning for reduced use of custody for women and greater use of alternatives. For example, Women in Prison has called for better rehabilitation services and stronger accommodation support (in addition to a reduction in the use of custody for women).

There are also programmes specifically for men. These, for example, provide support to young fathers, or men who want to address domestic violence or relationship problems. These programmes are usually offered by charities as accredited programmes and supported by probation. Such charities include, for example, Safe Ground and Bandofbrothers.<sup>65</sup>

In March 2013 the government published Strategic Objectives for Female Offenders.<sup>66</sup> An advisory board meets four times a year to discuss progress on these. The focus is on preventing reoffending. The objectives of the strategy tie in with the policies of the TR programme. The board is tasked with working with sentencers in promoting the better use of alternatives and it held regular meetings in 2013 and 2014.

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<sup>63</sup> For example, under the service level agreement between the NPS and NOMS, para 3.1.5

<sup>64</sup> 'Women in Prison: is the penal system fit for purpose?' (p 43ff) Halsbury's Law Exchange. F Gerry, L Harris, October 2014

<sup>65</sup> Full details are on the Clinks website <http://www.clinks.org/directory/28643>

<sup>66</sup> Available here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/177038/strategic-objectives-female-offenders.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/177038/strategic-objectives-female-offenders.pdf) - minutes of the meetings have also been provided in response to our request.

## Northern Ireland

The Northern Ireland Executive published a three-year strategy on 29 October 2010, entitled 'A Strategy to Manage Women Offenders and those Vulnerable to Offending Behaviour'. A key aim of the strategy is to reduce the number of women entering the criminal justice system in Northern Ireland. To achieve this, it focused on four areas:

- providing alternatives to prosecution and custody;
- reducing women's offending;
- gender-specific community supervision and interventions; and
- developing a gender-specific approach to custody.

This was followed by a 2013-16 update report,<sup>67</sup> noting areas of progress including use of fixed penalty notices in place of prosecution, supervised activity orders and fines in place of custody, reducing the use of custody for non-payment of fines, and developing models for better resettlement support and rehabilitation. The report called for further progress on diverting women and girls from prosecution and offending through targeted early intervention work. It noted Scotland's progress in this area.

## Scotland

Following the doubling of Scotland's female prison population in a decade, the Scottish Commission on Women Offenders was asked in 2011 to report on how to reverse this trend. It reported in 2012 and its recommendations included: supporting a range of reoffending reduction projects, including the provision of mentoring support by public social partnerships; and piloting a multi-agency approach to diversion from prosecution. The Scottish Government accepted the recommendations and took action to implement almost all of them, including by making funding available.<sup>68</sup>

## Are the victims of crime involved in the alternatives to detention programmes? If yes, which is their role in these programmes?

Victims' interests are reflected through the following processes at the point of sentence and subsequently:

### Victim Personal Statements (VPS)

In **E&W**, police will refer the victim to support organisations when the offence is first reported. Police also ask victims if they want to provide a VPS explaining how the crime has affected them or other family members. The police ask whether the victim would like this read out in court if the suspected perpetrator is convicted. If the court so chooses, the VPS is read out after the verdict is given and before final sentence. The court considers the VPS before sentencing and it is common for judges to refer to these in published 'sentencing remarks' released after trial (short statements which explain how the sentence takes account of the harm that the offence caused).

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<sup>67</sup> *Reducing Offending Among Women, 2013-2016*, DOJNI 2013

<http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/community-safety/reducing-offending/reducing-offending-among-women-2013-2016.pdf>

<sup>68</sup> Scottish Government's Response to the Commission on Women Offenders, June 2012, <http://www.gov.scot/Resource/0039/00395683.pdf>



In **S**, Victim Statements were piloted in 2003 and then introduced in 2009 for victims of certain higher tariff offences. Changes were made by the Victims and Witnesses (Scotland) Act 2014. In **NI**, there are victim information schemes and liaison services similar in some respects to those in E&W. Victims can make Victim Impact Statements which the prosecutor draws to the court's attention, although research<sup>69</sup> has suggested these are mainly restricted in to cases of sexual or violent offences.

### Duties to inform and liaise with victims

Probation staff have various statutory responsibilities to contact victims after sentencing to ensure they are informed of the measures imposed.

**E&W** After sentencing, police or prosecution service staff in court Witness Care Units (WCU) explain to the victim the meaning and effect of the sentence and, if the victim is eligible for Victim CS, must refer the victim's details to the VLU no later than twenty working days after the court notifies the WCU of the sentence. The VLU must then contact the victim and ensure the necessary information and support is provided in accordance with the scheme (see below).

The NPS has a statutory responsibility to contact victims of serious sexual and violent offences within 40 working days of the sentence where the offender receives a minimum of 12 months imprisonment or certain disposals under mental health legislation. These offenders are subject to a period of supervision on licence, monitored by the probation service. They must adhere to specified conditions and victims can request extra conditions that relate specifically to them, such as a non-contact order or an exclusion zone from a particular area during the supervision period.

Other duties to inform arise before the offender is released from custody. There are several key stages when the victim liaison officer (VLO) must inform the victim about the progress of the sentence and planned release process. These include when the offender applies for early or temporary release on licence and when the Parole Board is making an assessment. Victims can provide separate statements on impact and their concerns about release at this point. Victims can also apply to attend parole hearings. Victims are given an opportunity to make representations at various stages and the VLO and probation staff must facilitate this. However, victims' views are at this stage of little direct influence on the decision as other factors are more central to the release decision: see Section 2(3).

NOMS has issued a manual for those working in probation explaining all aspects of victim contact scheme.<sup>70</sup> This explains all the obligations and expected standards of performance, from the first contact between victim and probation to the final stage of supervision after custody, and under ongoing licence conditions and public protection requirements. This manual also explains how to ensure that any disclosure of information to victims by probation staff is necessary and proportionate.

In **NI** there are various statutory requirements in place and a Victims Policy and Victims Code of Practice have been issued.<sup>71</sup> Since 2005, legislation<sup>72</sup> has required the PBNI to make information

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<sup>69</sup> Victim Impact Statements, NIAR 952-11, here <http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/justice/2012.pdf>

<sup>70</sup> Victim Contact Scheme Guidance, PI 11/2013

<sup>71</sup> PBNI Victims Policy, approved 2011; here <http://www.pbni.org.uk/wp-content/uploads/2015/02/Victims-Policy-1-0-2011-23.05.11.pdf>

<sup>72</sup> The Criminal Justice (NI) Order

available to victims about the nature and duration of supervision orders and other requirements of the sentence imposed on their perpetrator and in relation to releases on licence.

### Restorative justice

This process is sometimes offered to the victim if the service is available in their area. (See separate question below for more detail.)

### Compensation orders

All three jurisdictions feature the power of sentencers to order the defendant to pay compensation to the victim. This can be ordered where the offence has caused personal injury, loss or damage. Compensation orders are not available in all cases and the rules and procedures vary between the jurisdictions.

### Do probation services offer, directly or indirectly, support council or information to families of offenders?

There are schemes and programmes that work in various ways with the families of offenders under probation supervision. The 'Children of Offenders' Review in 2007 recommended better joint working among agencies to support offenders' families and criticised the absence of coordinated support of family need. As a result, local partnerships have been established by local authorities, involving probation, prisons and the voluntary sector, to work together to support offenders' families. The organisations involved vary from region to region, but include charities providing childcare and other kinds of family support to enable parents to undergo probation supervision, and the assessment of suitability for community orders being carried out in children's centres. An example is POPS (Providing Support to Families of Offenders) which operates in parts of the north of England. This charity has Family Support Workers attached to prisons and probation providers and aims to 'empower families through the provision of timely information and targeted support' when a family member is involved in the criminal justice system.

Family interventions of various kinds have been presented as ways of enabling probation staff to build stronger relationships with individuals. Researchers in the northwest of England have conducted a thematic review of several such interventions in their area. The work explores the benefits of such practices but also their inherent tensions in view of the additional pressures that probation involvement can bring into family environments.<sup>73</sup>

There are also programmes that focus on helping individuals build their parenting skills as a means of helping to desist from crime. The charity Safe Ground offers a number of these programmes, both to prisoners preparing for release, and to people given community orders.

One of the main findings of a 2014 inspection report on resettlement was that too little attention had been paid to the importance of the family's role in effective resettlement. It called for a determined strategic effort and national guidance to put this right. There is now an instruction on rehabilitation for those in resettlement prison (discussed earlier). Key tasks include facilitating links with families and providing help with parenting and relationship skills, and offering through-the-gate support and mentoring.

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<sup>73</sup> Clarke, B., Kinsella, R. and Fletcher, C. (2014) *Reflections of practitioners doing 'family work' in the Criminal Justice System*. Hallam Centre for Community Justice.

In **NI**, the PBNi contributes funding to a service Family Links managed by Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) to assist families to reduce the impact of the imprisonment of a member. Such responses to relieving stress and loss implicated in a state judicial sentence are justified as a response to acute needs. In **S**, the charity Families Outside offers support and information to families affected by imprisonment.

### Are there specific restorative justice (RJ) programmes?

Yes, all three jurisdictions have operated RJ for some years.

In **E&W**, the Ministry of Justice has expressed strong commitment to using RJ at every stage of the criminal process. It launched an action plan and a steering group in 2012 with a view to achieving this. Legislation in 2014 amended sentencing laws to enable courts to defer sentencing to give time for a RJ requirement to be carried out.<sup>74</sup> RJ activity is only permitted where both offender and victim consent. Minimum standards have been developed for RJ practitioners.

RJ can be used for any type of crime and at any stage of the criminal justice system, including alongside a prison sentence or community measure. The offender must have admitted the crime, and both victim and offender must be willing to participate. Practices can include meetings facilitated by a practitioner as well as other communication methods such as letters or recorded interviews.

Coordination of RJ work by probation is aided by the Restorative Justice Council. Since the TR restructuring, RJ is being piloted by CRCs in some areas. In London, it is delivered as a specified activity requirement of community sentences and suspended sentences. Elsewhere, it is provided as part of the victim liaison service for victims of people sentenced to more than 12 months in custody. RJ programmes in prisons have grown significantly since 2000. Most do not involve meetings between victims and offenders, but focus on developing offenders' awareness of harms to victims and family members.

Best practice standards are set by the RJC and NOS are also available on key performance criteria. A diploma qualification is available. Questions have been raised about claims that RJ represents an alternative to imprisonment and can help reduce imprisonment.<sup>75</sup> It is argued that RJ has been mainstreamed to become another element of formal criminal justice practice and sanctions, rather than a real alternative.

### Does the probation service give a systematic feedback about the effectiveness of the alternatives to prison to the general public? How is the information shared?

Information on alternatives to prison is not provided by probation services in a manner capable of informing the general public about their effectiveness. NOMS as commissioning body for probation services receives and publishes performance data.<sup>76</sup> The Ministry of Justice publishes statistics on the number and types of alternatives and sometimes commissions and publishes research on effectiveness, in terms of outcomes. Where such research is conducted, the measure of effectiveness is focused on reconviction rates.

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<sup>74</sup> Crime and Courts Act 2014

<sup>75</sup> 'Why restorative justice will not reduce incarceration', W Wood, *Br J Criminol* (2015). For a different view see 'Restorative justice: changing the paradigm', G Daniels, 2013, *Probation Journal* vol 60 no. 3 302-315

<sup>76</sup> Publicly available on the NOMS performance hub

However, looking at effectiveness purely on the basis of reconvictions omits much of the positive impact that good supervision (and the effective use of alternatives to custody more broadly) can have for individuals, families and wider society. It fails to recognise the distance travelled by individuals who have been involved in the criminal justice system but have benefited from an alternative to custody. Such benefits can include better employment prospects and improved health. Measures that focus only on reconviction rates fail to reflect the fact that some offenders may offend far less frequently, or commit far less serious offences, than if they had been sentenced to immediate custody.

Reports by the Probation Inspectorate and the Prisons and Probation Ombudsman are a means for the public to see information on the standards of probation services and the results of complaints and audits.

### Are there systematic research projects concerning the alternatives to imprisonment and, if so, who carries them out?

Most research projects on probation and the effects of community sentencing are government-funded and commissioned. They are often carried out by Ministry of Justice or NOMS analytical teams in conjunction with independent research bodies and/or academics. These studies frequently make use of the statistical data published by government departments and agencies. The focus tends to be on reconviction patterns and assessing effective means of preventing reoffending including through delivery of community sentences and probation supervision. The NOMS Offender Engagement Programme commissioned a review of available research on desistance, published in March 2010.<sup>77</sup>

OASys and other criminal justice databases, such as the Police National Computer, offer large volumes of data, with details of hundreds of thousands of offenders and risk assessments. Though limited in scope, such data can be used for research on effective types of sentence and methods of supervision. OASys analysts working in NOMS carry out regular research to assist government in policy formulation around probation and alternative sanctions.

There is a lot of research on desistance theory including studies of individuals over long periods of time to assess what has been effective or ineffective in leading them to desist. One research programme has included surveys by questionnaire of practitioners and probationers.<sup>78</sup> The independent statutory body, the Economic and Social Research Council, has also funded research projects and practitioner events on effective desistance practice. Research is often directed at new programmes or initiatives in offender management, for example, on the uses of cognitive behavioural therapy and thinking skills programmes or anger management programmes.

Overarching literature analyses are also undertaken to bring together and report on all existing research into a given area, such as quality in probation practices, or effective desistance practice, some providing comparative information on different countries' approaches.<sup>79</sup>

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<sup>77</sup> *Changing Lives? Desistance research and Offender Management. A literature review*, 2010. McNeill, F. and Weaver, B. (2010), SCCJR Project Report; No.03/2010

<sup>78</sup> The NOMS Offender Engagement Project research programme

<sup>79</sup> For example, the National Audit Office report, *A synthesis of literature on effectiveness of community orders 2008*, (Davis, Rubin et al); and 'The quality of probation supervision - a literature review', November

The government also commissions studies on reoffending outcomes for groups of individuals given community orders.<sup>80</sup> The resulting reports contain sections on implications for probation practice, for example, that fewer but longer meetings with offender managers are more effective, and that better interim reviews are required to assess whether changes are needed to the plan or the sentence itself.

There is some independently funded research by NGOs and academics. Examples include research on the effects of E&W's shift towards greater use of community sentencing and suspended sentences.<sup>81</sup> There is a small amount of practitioner-led research, for example, that conducted under the Griffins Society model (the Society funds research by practitioners who seek to bring about change in the treatment of women and girls who offend and those at risk of offending). There are also several economic analyses of the relative costs and benefits of prison and alternatives.<sup>82</sup>

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2012, Sheffield University

[https://www.shef.ac.uk/polopoly\\_fs/1.159010!/file/QualityofProbationSupervision.pdf](https://www.shef.ac.uk/polopoly_fs/1.159010!/file/QualityofProbationSupervision.pdf)

NB These and many of the other sources are listed here: <http://www.probationchiefs.org/wp-content/uploads/2012/02/PCA-Stats-Review-Feb-2012.pdf>

<sup>80</sup> Re-offending by offenders on Community Orders: Results from the Offender Management Community Cohort Study

<sup>81</sup> 'The community order in England and Wales: Policy and practice' G Mair (2011); 'Community Sentences: a solution to penal excess?' H Mills (2011)

<sup>82</sup> For example, 'The economic case for and against prison' Matrix (2007)

**Probation: total budget in 2014 and the historical series since 2000****Probation resources: England and Wales**

	2001/2	2002/3	2003/4	2004/5	2005/6	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Annual cash terms budget (£000s)</b> <sup>83 84</sup> <sub>85 86</sub>	596,395	609,976	810,827	881,071	821,024	827,300	845,000	897,000	899,000	875,000	821,000	853,000	864,211
<b>Annual real terms budget (£000s)</b> <sup>87</sup>	799,189	796,428	1,037,553	1,092,977	990,809	972,025	964,601	998,886	975,880	924,253	851,960	871,110	864,211

**Probation resources: Scotland**

	2011/12	2012/13	2013/14
<b>Expenditure (£m)</b> <sup>88 89 90 91</sup>	116.35	-	108.9

**Probation resources: Northern Ireland**

	2004/5	2005/6	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Annual cash terms budget (£000s)</b> <sup>92</sup>	15,106	17,105	17,711	17,768	18,918	20,911	14,993	21,421	23,020	22,908
<b>Annual real terms budget (£000s)</b> <sup>93</sup>	18,739	20,642	20,809	20,283	21,067	22,699	15,837	22,229	23,509	22,908

<sup>83</sup> Figures for 2001/02 to 2006/07 taken from 'Probation resources, staffing and workloads 2001-2008' by M Oldfield, and R Grimshaw

<sup>84</sup> Figures for 2007/08 to 2011/12 taken from written question to the Secretary of State for Justice by Sadiq Khan on 23<sup>rd</sup> January 2013: <http://www.theyworkforyou.com/wrans/?id=2013-01-23d.136548.h>

<sup>85</sup> Figures for 2012/13 taken from National Audit Office (2014) 'Probation Landscape Review'

<sup>86</sup> Figure for 2013/14 calculated from individual Probation Trust annual reports and accounts: <https://www.gov.uk/government/publications/probation-trust-annual-report-and-accounts-2013-2014>

<sup>87</sup> Calculated using HM Treasury GDP deflators at market prices and money GDP, last updated 23<sup>rd</sup> December 2014

<sup>88</sup> Refers to cost of Criminal Justice Social Work Service

<sup>89</sup> Expenditure is in cash terms

<sup>90</sup> Figure is made up of the Criminal Justice Social Work Service expenditure in each Community Justice Authority, and offender services expenditure shown in the Scottish Government Consolidated Accounts

<sup>91</sup> Figures taken from Scottish Government (2014 and 2015) *Cost of the criminal justice system in Scotland* dataset, Table One

<sup>92</sup> Figures taken from Probation Board for Northern Ireland annual reports and accounts 2005/06 to 2013/14. Figures prior to this are not available.

<sup>93</sup> Calculated using HM Treasury GDP deflators at market prices and money GDP, last updated 23<sup>rd</sup> December 2014.

## Procedural guarantees

### Do probation agencies respect the human rights of offenders without discrimination (sexual, religious, racial, political, etc.)? Do they keep in regard offenders' dignity, health, safety and well-being in their interventions?

The Human Rights Act 1998 requires all UK legislation to be framed and interpreted compatibly with the ECHR, with proceedings possible in domestic courts to challenge compatibility. The ECHR guarantees are also given effect in specific domestic law. For example, Article 5 is implemented through the law and procedure relating to sentencing, probation instructions and parole board rules. Serious disruption to private and family life, and to the right to freedom of association, due to electronic monitoring, curfews and similar restrictions could amount to a breach of rights enshrined in the ECHR. But in the criminal justice context it is very rare for ECHR rights to found successful challenges to probation requirements (or sentencing procedure or practice).

The state is entitled to interfere with Article 8 rights in pursuance of legitimate aims, but only if the interference is reasonable and proportionate to those aims. Challenges usually fail when the court decides that the interference is necessary and proportionate in the interests of national security, public safety, the prevention of disorder or crime or the protection of the rights of others. The Human Rights Act 1998 requires probation officers and parole boards to act compatibly with the subject's rights under the ECHR. Damages can be awarded under the Act where loss or damage is incurred as a result of a decision taken which is incompatible.

A recent English case involved a successful challenge by a prisoner to a decision by probation to insist that the manager of the accommodation where he would be living when released should be informed of his conviction for murder. The court held this was disproportionate under Art 8, on the facts of the case and in light of the risks of reoffending as perceived by the probation officers involved.<sup>94</sup>

Licence conditions are not designed to be punitive, but to manage risk and protect the public.<sup>95</sup> To be lawful they must be both necessary and proportionate to the needs of protecting the public of prevent re-offending. 'Necessary' means that no other means of managing a particular risk is available or appropriate. 'Proportionate' means that the restriction on liberty is the minimum required to manage the risk. Conditions may infringe a person's right to a private and family life under Article 8. They can be challenged by judicial review to test their necessity and proportionality.<sup>96</sup> The same applies to any challenge to supervision requirements: legal aid is available for such reviews, subject to merits and means tests. But recent changes to judicial review and legal aid entitlements could severely limit this as a route to challenging supervision on human rights grounds.

CRCs will be bound by human rights obligations in the same way as the previous public bodies that performed probation work. Therefore, when private contractors provide services that are public in nature under the new arrangements, they will be obliged to act in a way that is compatible with

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<sup>94</sup> R v NPS [2003] EWHC 2910

<sup>95</sup> R (on the Application of Carman) -v- Secretary of State for the Home Department [2004] EWHC 2400 (Admin)

<sup>96</sup> R (on the application of Ahmed) v National Probation Service and another. The court held that judicial review provided a suitable opportunity to challenge an offender's licence conditions.

ECHR rights. This will include acts necessary for the core function of supervising offenders in the community.

Probation instructions contain detailed requirements on health and safety, diversity and dignity at work.

In **NI** and **S**, legislation has also been passed to give direct effect to the ECHR rights and provide remedies to those affected by incompatible systems or decisions.

### Cases of discrimination

As stated above, equality legislation requires probation and prison law and procedure to comply with ECHR requirements, including the guarantee of non-discrimination. Prison and probation instructions, national standards and practices have for several years contained references to the need to respect diversity and to work without discrimination.

Nevertheless, it has been argued<sup>97</sup> that rehabilitation is, in practice, applied differently for foreign nationals. No formal requirements exist for sentencers or probation workers to ensure their decisions take account of the potential disadvantages facing foreign nationals. As a matter of policy, political imperatives to deport foreign offenders after sentences have been served consistently overshadow any principled approach to ensure effective rehabilitation of these offenders. This can be seen in, for example, the UK Borders Authority Strategy's commitment to 'Considering with partners, including the Crown Prosecution Service, the most effective use of out-of-court disposals such as cautions together with immigration powers, to remove low level foreign national offenders as an alternative to prosecution.'<sup>98</sup>

Research from **NI** suggests difficulties for probation in engaging effectively with those in the Irish Traveler community.<sup>99</sup> Similarly certain types of order such as a curfew with electronic tagging may be insufficiently flexibly applied to allow those wishing to worship regularly outside the home to do so without breaching the order.

The government publishes statistics on offender equalities showing, for example, proportions - broken down by characteristics including race, faith, gender and age - of offenders in custody, supervised in the community, released on licence or HDC, or completing orders or programmes.<sup>100</sup>

### Do probation agencies always seek the offenders cooperation and collect their informed consent?

As explained earlier, probation rules contain a sentence planning process and a requirement that offender engagement is prioritized. This means clear information being provided at the start of the supervision process and regular meetings to assess the degree of cooperation and whether any adjustments are needed to enable compliance. In practice, when a good personal relationship is built up between supervisor and supervisee, any programme or activity requirement proposed by the supervisor will be one that has been selected with the individual's needs in mind, and is imposed with their informed agreement.

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<sup>97</sup> 'Foreigners to Justice? Irregular migrants and foreign national offenders in England & Wales.' Hammond, with Rob Canton, *European Journal of Probation* Vol. 4, No 3, 2012:

<sup>98</sup> UK Border Agency 2010: *Protecting our border, protecting the public: The UK Border Agency's five year strategy for enforcing our immigration rules and addressing immigration and cross border crime.*

<sup>99</sup> 'Probation practice with travellers in the Republic of Ireland', D Bracken, *Irish Probation Journal*, Vol 11, Oct 2014

<sup>100</sup> See for example NOMS equalities annual reports available on NOMS website.



When a prisoner is released, the licence document will often contain a probation requirement, to take effect after early release. There is no requirement for the person to sign it: if they refuse to do so the governor can sign it instead and confirm that its terms have been read out to the prisoner. Thus it can take effect without the person's signature to confirm consent to the terms. As the consequence of breach is recall to prison, compliance with licence requirements will in practice be a matter of necessity rather than choice for many.

In **S** (unlike the other UK countries) when a Probation Order is imposed by the court, it must be with the offender's formal consent, which is recorded as accepted *instead of sentence*, and requires the offender to express his willingness to comply with all the requirements, which must be explained by the court in ordinary language. Successful completion of the order means that the probationer receives no sentence for the original offence; non-completion means the person can be sentenced for the offence. Previously, consent was required for all community-based disposals imposed by the courts and this is still the case for a Probation Order (with or without conditions), a Community Service Order, and Drug Treatment and Testing Orders. However in recent years some orders have not required the offender's consent including Community Reparation Orders, Supervised Attendance Orders, and Restriction of Liberty Orders. Breaches of orders are themselves criminal offences with the consequence of further sentencing.

**If probation agencies carry out interventions before the establishment of the offender's guilt, do they require the offender's informed consent? Are their interventions without prejudice to the presumption of innocence?**

In the UK, courts cannot impose supervision interventions before a person's final conviction. It is only after conviction when the person is sentenced, that the court can impose supervision, treatment programmes, activity requirements, unpaid work or similar. The only interventions possible before conviction are those that can be imposed pre-trial in accordance with bail law. These entail restrictions on liberty ranging from electronic monitoring, reporting to the police, travel bans and exclusion orders. There is no requirement of consent, but the restrictions must be imposed through a fair and transparent judicial process; procedural challenges by the defence are possible. In principle this approach is seen as sufficient to protect the presumption of innocence.

**Are the task and responsibility of the probation agencies and their relations with the public authorities and other bodies defined by any national law?**

In **E&W** the duties and activities of probation agencies are largely contained in the Offender Management Act 2007. This Act confers power on the Justice Secretary to issue guidelines and standards for the work of probation agencies, which take the form of Probation Instructions containing detailed mandatory rules for the delivery of probation services nationally. Since the TR restructuring, the requirements on CRCs to provide the bulk of probation services are also defined in contractual service level agreements enforceable by NOMS.

In addition, National Offender Management Standards made under the 2007 Act have statutory force. The latest version was introduced in February 2015 to take account of recent changes

including compulsory supervision for all short-sentenced offenders.<sup>101</sup> They comprise twelve high-level standards for all probation work, covering:

- 1) **Record keeping** – recording of contacts with offender, ensuring safe storing of, and necessary access to, data
- 2) **Court services** – giving necessary information and reports to court to help decision making; communicating sentence as necessary
- 3) **Allocation of cases** to appropriate probation service provider; clear identification of responsible supervising probation worker; system of induction for every offender with clear explanation of commitments and what happens if fail to comply.
- 4) **Planning** – preparation of a plan covering risk of harm, how it will be managed, what the offender's needs are for sentence to be delivered, and likelihood of reoffending. This is prepared after sentence (community or suspended sentences) and up to 12 weeks before release (offenders in custody)
- 5) **Plan implementation** – face-to-face appointment within five days of case allocation (or within one day of release from custody, with 'purposeful contact' occurring at pre-release stage, and maintained after release); updating of plan as needed; facilitating offender's engagement with community resources; transferring offender between probation providers 'to maintain continuity and effective management of the offender and delivery of the sentence'.
- 6) **Risk management** – assessing and managing offender's risk of causing 'serious harm' and taking appropriate action to manage any immediate risk of serious harm to public, known victims or others.
- 7) **Victims** – statutory duties to provide information and liaison services.
- 8) **Premises** – residence planning where appropriate
- 9) **Enforcement of sentence** – issuing warnings in cases of non-compliance, and in case of licence breaches where no acceptable explanation is provided, taking action which can include seeking recall to prison.
- 10) **Review of plan** – where new information indicates significant change in offender's circumstances
- 11) **Completion of sentence** - evaluation of extent to which its objectives were achieved
- 12) **Delivering sentence requirements** – preparing offenders to undertake the activity set out in plan in order to meet requirements of sentence or post-release licence.

An independent association of probation professionals, the Probation Institute, has published a Code of Ethics for its members. This sets out high level professional values confirming, for example, members' belief in offenders' ability to change, in the inherent worth and dignity of the individual, and stating commitment to promoting diversity and human rights.<sup>102</sup>

Multi Agency Public Protection Arrangements (MAPPA) provide a statutory framework to manage violent and sexual offenders. MAPPA guidance issued by the Ministry of Justice provides a mechanism through which police, prisons and probation agencies work together in their local geographical area, sharing information and assessing risks and needs. The guidance covers the monitoring of offenders released on licence. It explains when information about the person's previous convictions should be disclosed to others, where a serious risk of harm exists.

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<sup>101</sup> *National Standards for the Management of Offenders, applicable from 1 February 2015*. Available here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/405590/National\\_Standards\\_Jan\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405590/National_Standards_Jan_2015.pdf)

<sup>102</sup> Probation Institute *Code of Ethics, core values and ethical principles* (2015)

In **NI**, as in E&W, any new laws and statutory rules governing probation work are now tested for human rights compliance. Probation standards have recently been updated on the basis of a review of international best practice including the European Probation Rules. The Probation Board of Northern Ireland publishes professional rules, protocols and policy documents, including a Best Practice Framework and the Northern Ireland Standards for probation. The PBNI also publishes a statement of values including respect for human dignity, recognising the capacity for change, commitment to diversity, victim awareness, professionalism and integrity.

In **S**, the Management of Offenders (Scotland) Act 2005 contains the statutory framework for the operation of Community Justice Authorities, which fund and oversee the provision of probation services. The legislation identifies probation as a social work provision and part of local authorities' duties towards ensuring community safety. National Objectives and Standards for Social Work Services in the Criminal Justice System (NOS) set professional standards and benchmarks for probation services. These include reducing the use of custody and promoting alternatives in the community.<sup>103</sup>

### How is the offenders' privacy guaranteed? How is the data protection of case records guaranteed to the offenders?

Throughout the UK probation providers have duties with regard to offender data, under the Data Protection Act 1998. They are responsible for deciding what personal information is to be processed and how that should take place. Other statutory guidance states that information about an offender should not be released unless the release is 'adequate, relevant and not excessive'.

NOMS has issued guidance for those working in probation, explaining the obligations and how to ensure that any disclosure of information to victims by probation staff is necessary and proportionate under Art 8 ECHR, for example, by barring disclosure of information regarding the offender's planned address, about any medical or other treatment programmes that will be undertaken. Similar guidance is published by the Scottish government and the PBNI.

### Are there accessible, impartial and effective complaint procedures regarding probation practice?

In **E&W**, if a prisoner wants to challenge the probation conditions imposed in a licence, or complain about the necessity or proportionality of additional licence conditions imposed, the complaint can be considered by the Prison and Probation Ombudsman (PPO). The PPO is independent of the MOJ, NOMS and the probation service providers.

Complaints to the PPO can be referred by offenders serving community sentences under probation supervision and by any person who has had a report about them written by probation, including prisoners wishing to apply for early release under licence, home detention curfew or parole.

Annual reports are published by the PPO summarising complaints referred and the outcomes. Data are also provided on the number of complaints received and the number investigated and upheld. Recent complaints have included: failures by offender managers to have any contact with

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<sup>103</sup> National Outcomes and Standards for Social Work Services in the Criminal Justice System (2010), Scottish Govt.

the complainant; inappropriate disclosure of information about the offender; and incorrect assessments of the risks posed by offenders.

If the complainant is not satisfied with the way their complaint is dealt with by the PPO, they can refer the case to the Parliamentary and Health Service (PHS) Ombudsman. The PHS Ombudsman investigates complaints from members of the public about some public bodies, including probation providers. Cases can only be referred to the PHS Ombudsman by a person's Member of Parliament. It will normally only investigate a complaint about a probation provider after the complainant has tried to resolve the complaint with the probation agency, on the basis that they should be given a chance to respond and, where appropriate, try to make amends, before the Ombudsman becomes involved.

There is a Probation Instruction on complaints processes to be followed by NPS and CRCs.<sup>104</sup>

Several witnesses to a recent parliamentary enquiry described delays in responses to complaints to the PPO, partly caused by a recent legislative change removing legal aid from many areas of prisoner issues.<sup>105</sup>

In **NI** similar procedures apply as those in E&W: information is available on the PBNI website.

In **S**, local authorities must provide complaints procedures and appeal mechanisms. If the individual is not satisfied with the initial CJSW response, there is a statutory right to refer the complaint to a Complaints Review Committee, made up of locally elected politicians. Both the Social Work Department and the complainant are represented at a Review Committee. If the case is not resolved, it can be referred to the Local Authority Ombudsman for consideration.

### Are the probation agencies subjected to regular government inspection and/or independent bodies monitoring?

There are independent inspectorates in each UK jurisdiction. In **E&W** Her Majesty's Inspectorate of Probation reports directly to the Justice Secretary on the quality of the assessment, planning and implementation of work with offenders and those at risk of offending. It carries out inspections examining a representative sample of offender cases, to assess whether probation work has been conducted to a satisfactory standard. Findings are supported by commentary by the Inspectorate based on its discussions with offender managers. The Inspectorate also obtains the views of sentenced individuals, victims and sentencers through questionnaires included in the reports, which are publicly available.

In addition to the external inspection of probation services, NOMS carries out performance assessment. Prior to the TR restructuring, the Probation Trust Rating System assessed the performance of the 35 probation trusts against 12 indicators for 2012-13 (reduced to seven indicators for 2013-14), falling under three areas: public protection; reducing reoffending; and sentence delivery. Performance is graded from 'exceptional' to 'serious concerns' and, again, the results are publicly available.

In **NI**, performance data is provided in the PBNI annual reports. Independent inspections are carried out by the Criminal Justice Inspectorate of Northern Ireland. This published a positive inspection report on NI's probation service in May 2014.<sup>106</sup>

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<sup>104</sup> See [51/2014 NOMS Probation Standard Complaints Procedure](#)

<sup>105</sup> Paras 158 and 162, *Prisons, planning* HC March 2015 (cited above)

In S, the Social Work Inspection Agency (SWIA) is responsible for inspecting all social work services within local authorities. It publishes reports on specific authorities and occasional 'thematic' reports. Also the performance of local staff and the implementation of National Objectives and Standards are subject to ongoing monitoring by local authority management and the SWIA. The Scottish Social Services Council registers all social workers and promotes Codes of Practice for social work services staff and other service providers.

## Staff

### Organisation of probation staff

**E&W** Before the restructuring of the probation service in 2014-15 under TR, all supervision work was carried out by 35 government-funded probation trusts. These had replaced previous bodies known as 'probation boards' following legislation in 2007 (Offender Management Act or OMA) which opened the way for private sector providers to compete for a share of the market for probation services. The area in which private sector providers have been most active is in electronic monitoring, but after TR they will be active in other areas of community justice provision, including community payback and accredited rehabilitation programmes.

OMA removed responsibility from probation boards to arrange for the provision of probation services and transferred it the Ministry of Justice, which (through NOMS) commissioned probation services from newly created probation trusts as well as from providers from the private and voluntary sectors.

Following TR, there are now two main employing bodies: (1) the National Probation Service (NPS), the public body responsible for assessing the risk of harm posed by every offender, advising courts and parole boards, handling most breach cases, and directly managing offenders presenting high risk of harm including those subject to MAPPA; and (2) the entities forming the partnerships constituting the 21 regional Community Rehabilitation Companies (CRCs). These include private sector firms like Sodexo, large rehabilitation charities like Nacro, smaller voluntary sector bodies, and mutuals run by former probation trust staff.

The main grades for probation workers are probation officers (POs), who are qualified, and probation service officers (PSOs), who do not need to be. The statutory 'offender manager' role is not defined by grade but POs generally manage tier 3 and 4 cases, and PSOs tier 1 and 2 cases. (Tiers were explained above.) Offender manager roles are defined in the OMA and regulations made under it. They include Responsible Officers, Supervisors and Supervising Officers. Statutory instructions introduced under TR contain requirements for both the NPS and CRCs to ensure probation staff have the necessary authorisation to perform the functions of probation.<sup>107</sup>

The NPS has seven divisional areas across E&W. It works in partnership with the 21 CRCs in aspects of the management of lower risk offenders. It also works with courts, police, and private and voluntary sector bodies to manage higher risk offenders. Each NPS division and CRC is subject to an individual service level agreement between it and the commissioning department, NOMS. This

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<sup>106</sup> *An inspection of community supervision by the Probation Board of Northern Ireland*, May 2013. See <http://www.cjini.org/CJNI/files/78/78040759-0c4f-449b-b36b-647dd986eb51.pdf>

<sup>107</sup> PI 31/2014, AI 27/2014, Authorisation as 'officer of a provider of probation services' (NOMS). [31/2014 – AI 27/2014 - Authorisation as officer of a provider of probation services](#)

agreement contains details of the minimum service requirements for delivering court sentences, protecting the public and reducing reoffending. Services in supporting these outcomes cover: supporting victims, delivering court services, managing risk, managing offenders and interfacing with other system participants (including courts, police, prisons and other organizations).

Arrangements in **NI** are simpler. All aspects of adult probation work are delivered by a single statutory body, the PBNI, throughout the country. The work is either done by employed probation staff or by community service and voluntary groups. The PBNI is independent of government, but since 2010 has delivered its services under the authority of the NI Justice Department, following the devolution of policing and justice powers from the Westminster parliament to the Northern Ireland Assembly. It has grant-making powers and close links with local community agencies and other statutory bodies. PBNI has highly levels of partnership and co-operation with other support agencies and wider civil society bodies.

In **S**, probation has been provided by Criminal Justice Social Work Services (CJSW) since the late 1960s, and forms part of the wider work of the 32 local authorities. CJSW teams consist of professionally qualified social workers supervised by specialist team leaders responsible for a range of criminal justice social work provision in a geographical area. In addition, there are approximately 22,100 voluntary sector organisations operating within the justice sector. 40% of these work in the social care field. Volunteers have no responsibility for supervision of offenders but can support of the efforts of professional CJSWs. Volunteers undertake tasks to support the reintegration of offenders including mentoring, alcohol counselling, restorative justice, and education and training. A private sector company, Reliance Security Group, carries out monitoring (electronic tagging and monitoring, and custodial transport services).

Quantitative data on staff numbers and caseloads are provided at the end of this section.

### Recruitment procedures

In **E&W** vacancies in probation work are advertised by the CRCs, NPS and NOMS. Specialist recruitment agencies also advertise roles on their behalf, including for probation officers, probation service officers, senior probation officers, community payback and accredited programme facilitators.

In **NI** vacancies are advertised in much the same way, either by the probation service direct, or by employment agencies that specialise in community justice work.

In **S** each local authority recruits its own staff and voluntary organisations also hire their own staff. Most vacancies are advertised by recruitment agencies on behalf of local authorities.

### Initial qualification requirements

#### **England and Wales**

Before 1998, training for probation officers was through a social work qualification. This was replaced by the Diploma in Probation Studies, to accompany the 'punishment in the community' agenda and provide a specific criminal justice-based training. There was a greater focus on risk assessment and public protection.

Since 2010, the main route to qualify as a PO is the Probation Qualifying Framework, which combines educational learning with on-the-job experience as a 'PSO Learner'. The time taken to

qualify will depend on previous academic achievement: usually 15 months to three years. The qualifications are provided by three universities under a NOMS-awarded contract, which is currently being reviewed. The existing qualification framework ends in 2016.<sup>108</sup>

The PQF allows staff to progress through ascending levels of qualification whilst in employment. It also introduced qualifications for PSOs, who work with lower risk offenders, a new qualification for Probation Case Administrators and an updated more flexible qualifications leading to eligibility for Probation Officer posts.

Unlike for most professions, E&W has no register of qualified probation practitioners or any requirement to sign up to a code of ethics or continuing professional development rules. The Probation Institute, a voluntary membership professional standards body set up in 2014, will offer professional development opportunities and has published a code of ethics for its members. The Institute is an independent organisation aiming to become a recognised centre of excellence for probation practice and to develop a strong probation profession across private, public and voluntary sectors in the wake of the TR reforms.

Since TR came into force, MOJ has introduced guidelines describing the qualifications, training and experience required of officers of probation service providers in the NPS.<sup>109</sup> Staff undertaking probation work in CRCs 'must be competent and suitably trained, and providers must be able to evidence this. This can be evidenced through use of the PQF or an equivalent qualification or an accredited training programme. Any equivalent qualification or training programme should relate to the National Occupational Standards (NOS) for Probation.' The NOS highlight the knowledge and skills needed for probation work, reflecting changes in policy around offender engagement, desistance, rehabilitation, protection of the public, prison work, and restorative justice.

NOS set standards and define key performance criteria across several practice areas in probation, such as the planning, reviewing and enforcement of sentences served in the community, and the provision of information needed at court hearings. NOS are also used in recruitment, and awarding promotions.

NOS also cover work with victims and witnesses, guiding practitioners on their work in providing information or advice, counselling and helping with health, safety and protection as well as keeping victims abreast of offenders' progress through the custodial or community justice sentence. There are also several NOS on restorative justice practices.

It is important that the skills of probation officers are maintained and supported by the new CRCs' recruitment and professional development systems. To ensure high standards are not compromised by competitive business practices the CRCs will need to recruit, develop and maintain suitably qualified and remunerated probation staff.<sup>110</sup>

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<sup>108</sup> Probation Qualifications Framework 2010, Probation Qualifications Regulatory Manual November 2013 <http://www.sfjuk.com/wp-content/uploads/2013/04/PQF-Regulatory-Framework.-November-2013.pdf>

<sup>109</sup> *A competent workforce to transform rehabilitation*, MOJ, NOMS. Effective from Feb 2015. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/405593/A\\_Compentent\\_Workforce\\_to\\_Transform\\_Rehabilitation\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405593/A_Compentent_Workforce_to_Transform_Rehabilitation_2015.pdf)

<sup>110</sup> For a discussion of the challenges and risks for training presented by the TR reforms, see 'Changes in probation training in England and Wales: The probation qualification framework three years on', C Skinner, R Goldhill, *European Journal of Probation*, 5(3) 2013, 41 – 55. [http://www.ejprob.ro/uploads\\_ro/805/changes\\_in\\_probation.pdf](http://www.ejprob.ro/uploads_ro/805/changes_in_probation.pdf)

## Scotland

Qualified social work staff need a university degree in social work or its equivalent. All social workers, including CJSWs, must register with the Scottish Social Services Council (SSSC) which provides educational and continuing professional development. The social work degree is a 'general practice' award and prepares staff for work in a range of social work settings including child, adult and public care and protection services. For new recruits, induction training is provided by the local authority.

## Northern Ireland

Those who deliver the core professional services (probation officers and psychologists) are professionally qualified under relevant accredited occupational standards. A degree in Social Work is now the recognised professional qualification for probation officers in NI. It offers an integrated programme covering a range of practice including family and childcare, mental health and criminal justice. The qualification is both an academic award and a professional qualification, and is delivered through a partnership between probation agencies and universities. New graduates must then undergo a further Assessed Year in Employment before achieving a fully recognised qualification, which involves evaluation by a panel of probation professionals of their work. Unlike probation officers, PSOs do not need a social work or other academic qualification, but are expected to obtain a national vocational qualification on offending behaviour within two years of recruitment.

## Ongoing training

Skills for Justice, a training standards body for the justice sector for the whole of the UK is developing a range of vocational qualifications in criminal justice work for staff who are not required to be professionally qualified social workers but who are essential staff in the provision of probation services.

In **E&W**, following the restructuring of the probation service some aspects of training are only offered via e-learning, including one compulsory course for those applying to the NPS, on bail procedures.

In **S**, various post-qualification and advanced level awards are available for those wishing to obtain higher qualifications. There are no formal qualification requirements for volunteers in CJSW although vocational qualifications are available. Minimum training is usually provided by agencies. For **NI** probation officers, several further development opportunities are provided if the person wishes to obtain a post-qualification award and progress to area management level in the service.

## Relationship between the probation service and the prison service

**E&W** Until the 1960s there was no relationship: aftercare was provided by a prisoners' aid charity. Subsequently there was greater interaction between probation and prisons around licence and aftercare, but they remained entirely separate. Until 2000, the country's 54 probation areas had more autonomy from central government than prisons. This changed in 2000 when the service was reorganised into 42 Probation Boards covering the same areas as local police forces. In 2003 a review recommended linking prisons and probation to end the fragmentation and duplication caused by two separate systems and their inability to link effectively to reduce reoffending.



NOMS was created as a result, in 2004, with the aim of creating a seamless transition of offenders from prison to the community. NOMS is an executive agency sponsored by the MOJ. It is responsible for prisons (managing public sector prisons and accountable also for those in private ownership by managing the contracts for these). It also oversees probation delivery and rehabilitation for prisoners and those being released.

Problems were encountered in the implementation of this reorganisation, as several joint inspection reports revealed.<sup>111</sup> These included an absence of offender managers for many prisoners, and the lack of sentence plans or support with reintegration after release. It was also felt that some offender managers gave prisoners less priority than those they supervised in the community. Three further restructurings have taken place since NOMS was created but the organisation is still jointly responsible for prisons and probation.

In **NI**, PBNI staff work alongside prison staff in prison Offender Management Units, focusing on a shared plan towards the prisoner's release. The Owers report cited earlier (fn 9) called for closer joint working between the institutions.

In **S**, a national advisory body for offender management sets out a long term strategy and framework for local authorities (responsible for CJSW and therefore probation delivery) to collaborate with the prison service and other partners such as police and prosecution services. The eight Community Justice Authorities created under 2005 legislation are tasked with working with the prison service, local authorities and other agencies, to ensure plans are created at local level to create effective joint working between the agencies, distribute funds for probation work in prisons and the community, and share information and good practice between them.

### **Relationship between the probation service and the judiciary**

As explained elsewhere, probation serves an important purpose in providing courts with information needed about the individual, prior to bail or sentencing decisions being taken, and in relation to enforcement and breach of orders and requirements set by the court. Throughout the UK, legislation and guidance regulate the circumstances in which reports and other information are provided by probation to the courts. The effectiveness of these elements of probation's work are regularly subject to internal performance monitoring and external inspection; courts generally give strong support for the work of probation.

Following the TR restructuring in E&W, the NPS will perform all the court-facing roles of probation. Whether sufficiently high standards are maintained will depend on the quality of information they are able to provide on a timely basis to the court. In part this will depend on caseloads and staffing and other resources. A further key factor will be the quality and timeliness of information they receive from the CRCs about offenders and the availability of programmes and support in the local area.

### **Relationship between the probation service and the general social services**

See answers above (Organisation of probation services) and in Part 1 section 2 (Probation practices).

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<sup>111</sup> For example, 'A report on Offender Management arrangements in Custodial Institutions in London, a Joint Inspection by HM Inspectorates of Prison and Probation, 2008'

In **E&W**, before TR, the 35 national probation trusts were key members of local partnerships in the criminal justice system and the wider community that aimed to protect the public and reduce reoffending. Each trust worked closely with local and national statutory and voluntary organisations, including those providing housing, education and mentoring services for the benefit of offenders, and support services for victims. For the TR reforms to succeed, it is vital that CRCs work closely with these services

### Is the number and the remuneration of probation officers adequate to their tasks?

**E&W** As at 31 March 2013, the 35 probation trusts employed 18,282 staff in total. Frontline probation staff accounted for around 60% of those employed. Trusts then reduced overall staff numbers by around 1,600, most of them administrative roles. Most of the annual budget for spending by probation trusts in the final two years of their existence was allocated to staff costs: £639m out of a total of £853m in 2012-13 and £646m out of a total of £867m in 2011-12.<sup>112</sup>

In terms of the proportion of spending relating to the core functions of probation: in 2012-13, 50% was spent supervising community orders and suspended sentences; 14% on supervising offenders on licence after their release from custody; 13% managing the sentence before release from custody; 13% on court work including bail services and pre-sentencing reports; 9% on managing approved premises for those under supervision and required to stay at bail hostels; and 1% on victim liaison. Figures have recently begun to be published by NOMS on the costs of some of the key functions of probation based on staff time spent on them. Average costs of producing a pre-sentence report were £210; supervision of an offender released on licence, £2,620; and supervision of a community order or suspended sentence, £5,860. (The average annual cost of a prison place, by contrast, is around £36,000.)<sup>113</sup>

It is difficult to provide equivalent information for the present and immediate future, due to the shift to private sector delivery of most offender supervision across E&W. The 21 contracts awarded to CRCs were said to be worth £450m, with further funding to be provided to the NPS for the highest risk offender management work, court services and enforcement procedures.

Commercial secrecy in the running of private companies providing public services makes it difficult to know whether budgets allocated will be sufficient. The companies are not bound by the same rules on freedom of information as public sector bodies, putting financial and performance information beyond the reach of NGOs and others interested in scrutinising them. The House of Commons Public Accounts Committee<sup>114</sup> has criticised government practices in managing contracts outsourcing former public services. It has called for greater transparency.

<sup>112</sup> Data from National Audit Office's *Probation: a Landscape Review*, March 2013 which in turn used data published by the MOJ and NOMS.

<sup>113</sup> Ministry of Justice, *Costs per place and costs per prisoner* (Data for 2013-2014, October 2014). [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf)

<sup>114</sup> House of Commons Committee of Public Accounts (2014), *Contracting out public services to the private sector: forty-seventh report of session 2013-14*, London: House of Commons.

## Is the expertise and experience of probation agencies used in developing crime reduction strategies?

### England and Wales

Crime Reduction Boards, Local Criminal Justice Boards, and Community Safety Partnerships are all statutory bodies that have to some extent enabled probation to provide expertise for crime reduction. In London since 2010 a Crime Reduction Board has met quarterly to share information and work on crime reduction with probation staff, local council officers, health workers, the police, and other bodies. These bodies share information with each other in order to assess local crime priorities. They work with probation and other public bodies to develop approaches in tackling crime and reoffending. The Probation Chiefs Association (prior to being disbanded) issued a position statement confirming the importance of probation supporting these crime reduction partnerships to help stop reoffending.<sup>115</sup>

The MAPPA system is also designed to prevent serious harm by ex-offenders.

### Scotland

The eight Community Justice Authorities are led by a Chief Officer who is responsible to a Board of local politicians drawn from constituent local authorities (each of which has a director of social work). They are responsible for regional strategic planning. There are 32 local authorities and each has its own organisational arrangements for delivering criminal justice services including crime prevention within the terms of the community justice strategy.

The Scottish government produces three-year Criminal Justice Strategy plans.<sup>116</sup> These outline the government's strategies to address crime prevention and offender management.

### Northern Ireland

The PBNI is one of seven criminal justice agencies alongside police, courts and the prosecution service among others, the directors of which meet regularly as the Criminal Justice Board for the whole of NI. This body has an important function in shaping strategy around crime prevention particularly in the context of preventing re-offending. The PBNI also contributes to local Community Safety Partnerships organised by district, which form and deliver action plans alongside police, housing, voluntary and community sectors. Experts on probation in NI have noted that overstretched probation teams find it difficult to service this work.

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<sup>115</sup> Probation Chiefs Association position statement, September 2011, available here:

<http://probationchiefs.org/wp-content/uploads/2011/10/PCA-Community-Safety-Partnership-Position-Statement-Sept-2011-GF-Final2.pdf>

<sup>116</sup> The current Strategy for Justice in Scotland, published September 2012, can be viewed on the Scottish government website, here: <http://www.gov.scot/Publications/2012/09/5924>

**Number of probation officers in 2014 and historical series since 2000****England and Wales**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>Frontline staff</b> <sup>117 118 119 120</sup> 121	8,457	9,594	10,515	13,017	13,322	14,470	14,654	12,824	12,097	-	10,235	9,787	8,944	8,775	8,482

**Scotland**

	2002/3	2003/4	2004/5	2005/6	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Frontline staff</b> <sup>122 123</sup>	1,310	1,452	1,549	1,694	1,681	1,766	1,840	1,808	1,796	2,000	2,070	2,100

**Northern Ireland**

	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Frontline staff</b> <sup>124 125</sup>	234	243	255	280	292	276	290	301

<sup>117</sup> Includes Senior Practitioners, Probation Officers, Probation Service Officers, Trainee Probation Officers (certainly for 2007-2013) employed by the probation service as at 31<sup>st</sup> December each year (end of quarter 3).

<sup>118</sup> From 2000-2008 the number of frontline staff is probably slightly overestimated. This is because the workforce reports did not break the job groups down into job functions, meaning a very small number of staff who work in 'corporate services' are included in the figures for those years (overestimated by approx. 80 people).

<sup>119</sup> For 2014 this is calculated as staff in pay band 5, pay band 4 (PQF and non-PQF qualified) and pay band 3 (PSO and non-PSO) working in 'offender management', 'interventions' and 'other agencies/services' functions within Community Rehabilitation Companies, in addition to Probation Officer grade staff working in the National Probation Service (both as at 31<sup>st</sup> December 2014).

<sup>120</sup> Workforce data for 2009 is not available.

<sup>121</sup> Staff numbers for 2010 to 2013 taken from 'Probation Service Quarterly Reports', Q. 3 of each year. Figures from 2000 to 2008 taken from 'Prison and Probation Expenditure', by Mills, H., Silvestri, A. and Grimshaw, R. Figures for 2014 taken from 'National Offender Management Service workforce statistics: December 2014' (Table 3), and 'Community Rehabilitation Company Workforce Information Summary Report: Quarter 3 2014/15'.

<sup>122</sup> Figures until 2010 relate to Scottish Social Work Services criminal justice staff. Figures from 2011 relate to Fieldwork Services (Offenders) staff (Table 1 of SSSC, 2011 and 2012). Due to the change in collection date of local authority social work services data (the ownership and publishing of local authority social work services staffing information has been transferred from the Scottish Government to the Scottish Social Services Council), figures from 2011 are not comparable with the earlier figures. Even before 2011, figures may not be strictly comparable between years due to recording changes.

<sup>123</sup> Figures for 2002/03 to 2009/10 taken from 'Staff of Scottish Local Authority Social Work Service 2010' (Annex A, Table 1). Data after this taken from 'Scottish Social Services Sector: Report on Workforce Data', 2011-2013.

<sup>124</sup> Includes probation management but not administrative staff.

<sup>125</sup> Figures for 2006/07 to 2010/11 taken from Probation Board of Northern Ireland annual reports and accounts (2006/07 to 2010/11). Figures after this taken from Freedom of Information responses from the Probation Board of Northern Ireland, FOI references: 023.36.12; 023.47.13; and 023.60.14.

**Number of cases followed by each probation agent****England and Wales**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>Caseload</b> <sup>126 127 128</sup> 129 130	-	-	19.0	16.0	16.4	16.3	16.7	19.5	20.7	-	23.8	24.4	25.6	25.5	25.9

**Scotland**

	2002/3	2003/4	2004/5	2005/6	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Caseload</b> <sup>131</sup> 132						15.1	14.9	14.5	13.5	13.1	12.7	13.1

**Northern Ireland**

	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Caseload</b> <sup>133</sup> 134	16	16	16	15	15	16	15	15

<sup>126</sup> Calculated from total court order and pre- and post-release supervision cases supervised by the probation service at 31<sup>st</sup> December each year.

<sup>127</sup> Reliable information on the probation caseload is only available from 2002 onwards.

<sup>128</sup> Caseload for 2014 is calculated as the number of people under probation supervision on 30<sup>th</sup> September 2014 - data up to December was unavailable. This figure counts an individual only once even if the person is under multiple types of supervision, so the caseload for 2014 is probably marginally higher than this table suggests.

<sup>129</sup> Calculated using frontline staff figures shown above.

<sup>130</sup> Number of cases supervised taken from Freedom of Information Response (2014) from the Ministry of Justice, FOI reference 94398. For 2014 taken from *Offender Management Statistics Quarterly*.

<sup>131</sup> Total number of cases calculated by adding up case commencements of diversion from prosecution, bail supervision, community payback orders, community service orders, probation orders, supervised attendance orders, drug treatment and testing orders, statutory throughcare in custody and the community, and voluntary throughcare. It therefore excludes people whose supervision began in a previous year but is still in operation in a following year. The caseload figure is therefore probably an underestimation.

<sup>132</sup> Figures taken from *Criminal justice social work statistics 2013-14*, Excel tables, Table 1.

<sup>133</sup> Calculated from the number of offenders supervised at the end of the financial year, taken from *PBNI Caseload Statistics 2013/14*.

## PART TWO. SPECIFIC PROGRAMMES

### Alternatives to pre-trial detention

#### Alternative measures to pre-trial detention and judicial authority responsible for the establishment of the measures

##### Release pending trial ('bail')

In the UK, the alternative to detention pre-trial is release, which may be ordered by the court with or without specific conditions attached. This pre-trial release is known as 'bail' – a person is remanded on bail (in contrast to being remanded in custody, being 'on remand'). There can be no supervision or other community measure imposed, until conviction for an offence.

In E&W and S, the bail system is statutory and in NI, it is based on common law. All systems are based on the same presumption, that a person not yet convicted of any offence should be released until trial. However, in E&W, there is no presumption in favour of bail where the defendant is charged with murder, manslaughter, rape, attempted murder or attempted rape. In such cases bail can only be given in exceptional circumstances and reasons must be given for any grant of bail. In S, bail cannot be granted where the charge is murder or treason. In NI bail can be granted on any charge including murder.

#### Total number of people serving a pre-trial alternative to detention in 2014 and historical series since 2000

See tables below.

#### Alternative measures in detail

##### Release pending trial ('bail')

##### England and Wales

The law on bail granted by courts is contained largely in legislation. There are statutory exceptions to the right to bail. It must not be granted where the court is satisfied:

- 1) that the defendant, if released would:
  1. fail to surrender to custody;
  2. commit an offence while on bail; or
  3. interfere with witnesses or otherwise obstruct justice; or
- 2) that the defendant should be kept in custody for his own protection.

The law lists factors to be taken into account when the court decides whether to release, including

- the nature and seriousness of the offence;

- the defendant's social background, paying regard to the defendant's character, previous criminal record, community links etc;
- the defendant's previous history of compliance with bail conditions ; and
- the strength of the evidence against the defendant.

No conditions should be imposed on release pending trial unless necessary to ensure the defendant surrenders to custody in future, or to prevent the commission of an offence while on bail, or the interference with witnesses or obstruction of justice. In such cases, the court can impose conditions, including that the person must:

- inform the police of any change of residence;
- not go to certain places;
- remain at a specified place during specified times;
- not leave the UK;
- report at specified times to the police or other authority;
- avoid contact with specific persons;
- provide a security or surety to the court;
- undergo therapeutic treatment or treatment for addiction;
- wear an electronic tag; and
- surrender passport and not apply for any international travel documents.

As of December 2012, legislation restricts the use of remand in custody for offenders who would be unlikely to receive a custodial sentence on conviction.<sup>135</sup> It is too early to tell whether this will result in a decrease of people remanded in custody.

**Police bail:** In addition to the formal court-ordered bail system, in E&W and NI, it is also possible for a suspect to be bailed by the police, either before a charging decision, or after charge and before court. As at October 2014, over 70,000 people were on pre-charge bail from 40 police forces in the UK.<sup>136</sup> There has been a growing trend for police to impose stringent conditions, such as obliging people to return to a police station regularly or surrender travel documents. Police bail practices have drawn criticism from NGOs due to the excessively long periods for which pre-charge bail can last.

**Electronic monitoring:** Before the court can impose this, it must be satisfied that without it, the defendant would not be granted bail. This is intended to ensure that tagging is only used where necessary and to support the proper use of public funds. In practice, its use as a bail condition has increased significantly.

### Northern Ireland

The law on bail is non-statutory. A presumption exists in favour of bail. Conditions often imposed include electronic monitoring, curfews, exclusion or abstinence orders. Grounds for refusal are similar to those outlined above for E&W. However there are procedural differences between the two systems and the number of remand prisoners in NI prisons and the length of time they spend awaiting trial have been criticised.<sup>137</sup>

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<sup>135</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012

<sup>136</sup> BBC News UK, Law Society calls for 28 day limit on police bail, L Harmes, May 2013  
<http://www.bbc.co.uk/news/uk-22624648>

<sup>137</sup> Review of the Northern Ireland Prison Service (Owers, Leighton, McGrory, McNeill, Whetley), October 2011

A recent report on bail in NI recommended placing the law and procedure on a statutory footing for greater clarity and rights protection.<sup>138</sup> A public consultation followed but progress in implementing the reforms has been delayed due to other priorities and is unlikely to be brought forward until the next Assembly mandate following elections in 2016.

### Scotland

The law on bail is based on statutory and common law provisions. Bail must be granted in any case where not opposed by the prosecution. Prosecutors are required to oppose bail based on factors such as: the accused's previous criminal record; a history of offending on bail; likelihood of re-offending; lack of a fixed address; flight risk; danger to the public; risk to witnesses; and risk to national security. Even if opposed, bail must be granted in all cases except those where there is a good reason to remand in custody based on public interest and the interests of justice. Guidelines from case law provide examples for courts to assist them in this decision. The guidelines refer, for example, to the risks of witness intimidation or failing to attend trial.

If bail is granted this must be subject to standard bail conditions. These relate to the need to attend future hearings, not commit further offences, not interfere with witnesses and being available for enquires or reports. The court also has discretion to impose additional conditions to ensure the standard ones are complied with. These are not laid down by the law but common examples are that the accused not approach the victim; adhere to a nightly curfew; or reside in a bail hostel.

### Purpose or official goal of the measure

The bail system is designed to provide a framework striking a proper balance between right to liberty of the un-convicted defendant and the public interest in crime prevention and the administration of justice.

Under ECHR Article 5 a person can only be deprived of his liberty on the grounds specified, including for the purpose of bringing him before the competent legal authority on a reasonable suspicion of having committed an offence or when it is considered reasonably necessary to prevent his committing an offence or fleeing. The presumption under the Convention, therefore, is that bail should be granted and denial of bail should be justified by relevant and sufficient reasons, such as:

- a risk that the defendant will fail to appear at trial;
- a risk that he may interfere with evidence or witnesses or otherwise obstruct the course of justice;
- the risk that he will commit a further offence while on bail;
- a disturbance to public order would result; or
- that the defendant would be at risk of harm against which he would be inadequately protected.

All three UK legal systems contain provisions based around the ECHR structure and are capable, if applied correctly, of meeting the above purposes.

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<sup>138</sup> Northern Ireland Law Commission, Report on Bail in Criminal Proceedings, 2012. <http://www.nilawcommission.gov.uk/32432 - bail report nilc14 2012 .pdf>



In terms of public protection, it has been recognised that bail law and practice must have public confidence and be transparent and consistent. When offences are committed on bail or individuals flee justice while on bail, media coverage usually questions the right to bail and criticises the courts who granted it.<sup>139</sup>

## Relations between the public and the private sector in managing the measures

### England and Wales

Magistrates and crown courts decide on bail. The National Offender Management Service (NOMS) is responsible for commissioning and delivering adult offender management services, in custody and in the community. This involves managing the Bail Accommodation and Support Service (BASS) and arranging tagging and monitoring with private sector providers, to enforce compliance with curfew and residence orders. The BASS is aimed at those aged over 18 who would have a strong likelihood of being remanded in custody due to a lack of suitable accommodation and support. The accommodation, known as 'bail hostels', is managed by privately contracted providers commissioned by NOMS. Referral and other support services are provided mainly by the National Probation Service.

### Northern Ireland

The bail decision is made by the court but a police bail system also exists. Probation plays a role similar to that in E&W in providing advice to the court on suitability, available support and accommodation. It also liaises with providers of bail accommodation and electronic monitoring where these conditions are imposed with the grant of bail.

### Scotland

Only a court can authorise a grant of bail. Criminal Justice Social Workers provide services to courts geared towards reducing the number of vulnerable groups and females remanded in custody. Schemes exist to offer additional support to - or supervision of - people on bail. The availability of such schemes can influence a decision to grant bail. A common example is a "bail information" scheme whereby information on employment, health, and community/family support is gathered and verified by social workers. It helps the court decide whether to grant bail. Research has shown judges and others approve of the scheme but complain of its under-resourcing. In larger cities voluntary sector bodies play a role in monitoring curfews, supervision and bail accommodation, as well as providing counselling on problems such as addiction.<sup>140</sup>

## Budget allocated and its suitability

Budget information is limited: what is available is provided in tables at the end of this section.

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<sup>139</sup> Daily Express, *EXCLUSIVE: 94,000 cases of rape and murder are committed by suspects freed on bail*, M Giannangeli, 20 Oct 2013 <http://www.express.co.uk/news/uk/437944/EXCLUSIVE-94-000-cases-of-rape-and-murder-are-committed-by-suspects-freed-on-bail>

<sup>140</sup> 'A preliminary analysis of the bail/custody decision in relation to female accused', K Brown, P Duff, F Leverick, March 2004. Scottish Govt, <http://www.scotland.gov.uk/Publications/2004/03/18803/32226>

## Impact of the measures:

### on the pre-trial prison population

Effective use of pre-trial bail reduces the prison population by controlling numbers remanded in custody. However, prison places are sometimes required where serious breaches of bail conditions occur for which bail is revoked.

### on the lives of the subjects involved (work, physical/psychological wellbeing, family and social relationships, goals and life perspectives)

The impact will depend on the conditions, if any, that the grant of bail is subject to in individual cases. Generally it is accepted that being at liberty compared to being in custody pending trial offers greater protection of the suspect's fundamental and social rights: employment, housing, family life, presumption of innocence, fair trial rights and effective trial preparation. However, the imposition of electronic monitoring has impacts on individuals and family members and curtails aspects of normal family and private life. Other restrictions such as residing in a bail hostel, avoiding certain places, giving up travel documents can restrict normal relationships and affect wellbeing. This is all the more so if the restriction is imposed for excessive periods.

If compared to awaiting trial in custody, release pending trial is a more satisfactory solution for the suspect, family, the wider economy and society. Even if remand prisoners were able to enjoy a regime compliant with international standards, the disadvantages of imprisoning un-convicted persons are the costs of doing so (prison place costs, micro and macro-economic impacts) and the undue infringement of rights to liberty and a fair trial. But recent reports have shown that in fact in the UK remand prisoners experience a regime less compliant with international standards than that afforded to convicted prisoners. Bail impacts are therefore less severe in the UK than being held on remand. If no conditions (or at least no intrusive or restrictive conditions) are imposed, the individual's work, home and private life should be largely unaffected and the presumption of innocence and fair trial rights will be better protected.

**Total number of people serving a pre-trial alternative to detention in 2014 and historical series since 2000****England and Wales**

		2004	2005	2006	2007	2008-2012	2013		2011	2012	2013	2014
<b>Number remanded on bail by courts</b> <sup>141 142 143 144</sup> <sup>145 146 147</sup>	<b>Total</b>	498,612	448,453	444,883	433,010	-	351,991	<b>Failures to appear</b> <sup>148</sup>	50,700	41,600	61,900	21,400
	<b>Males</b>	429,946	386,824	383,769	372,702	-	298,523					
	<b>Females</b>	68,666	61,629	61,114	60,308	-	53,468					

**Scotland**

		2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
<b>Bail orders made</b> <sup>149</sup> <sup>150 151 152 153</sup>	<b>Total</b>	52,884	56,260	62,294	60,362	52,593	47,922	46,221	47,606	44,039	47,196
	<b>Males</b>	-	-	-	-	-	40,468	39,019	39,981	36,782	39,490
	<b>Females</b>	-	-	-	-	-	7,448	7,201	7,620	7,254	7,703

	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Failures to appear</b> <sup>154 155 156</sup>	9,174	8,046	8,105	8,208	7,305	7,123

<sup>141</sup> Defendants proceeded against at magistrates' courts and tried at the Crown Court who were remanded on bail by magistrates or a Judge before conviction or acquittal

<sup>142</sup> Includes those who failed to appear on bail

<sup>143</sup> Figures presented may be slightly inaccurate because they do not include defendants remanded in custody at some other point during the relevant period. Published figures cover the periods pre-conviction and post-conviction, whereas these figures only cover pre-conviction.

<sup>144</sup> Covers the 12 months ending in June each year.

<sup>145</sup> It is not possible to separate pre- and post-conviction bail between 2008 and 2012 because data for these years follow a different methodology that does not allow for that separation.

<sup>146</sup> Defendants may appear in both magistrates' court and Crown Court counting. This is because some defendants will have been released on bail at magistrates' courts before being committed to the Crown Court for trial, where they may also have been released on bail.

<sup>147</sup> Figures taken from Freedom of Information response from the Ministry of Justice, FOI reference 112-15 FOI 96049.

<sup>148</sup> 12 months ending June each year for magistrates' and Crown courts. Sourced from *Criminal Justice Statistics Quarterly*, June editions, 2011-2014. Ministry of Justice.

<sup>149</sup> Excludes modifications to existing bail orders. People counted once only where more than one bail order made on same day.

<sup>150</sup> Totals include cases where bail was granted following the lodging of an appeal.

<sup>151</sup> The recording of bail orders has improved over time so some caution is needed when comparing changes from earlier years.

<sup>152</sup> Bail orders granted by all court types.

<sup>153</sup> Figures taken from *Criminal Proceedings in Scotland 2013-14*, Excel tables.

## Northern Ireland

		2007	2008	2009	2010	2011	2012	2013	2014
<b>Numbers granted court-ordered pre-trial bail<sup>157</sup></b>	<b>Total</b>	9,393	9,332	10,292	10,665	11,523	11,369	10,517	9,512
	<b>Males</b>	8,330	8,274	9,081	9,397	10,072	9,793	9,056	8,221
	<b>Females</b>	1,053	1,054	1,200	1,263	1,439	1,571	1,457	1,288
	<b>unknown</b>	10	4	11	5	12	5	4	3

	2007	2008	2009	2010	2011	2012	2013	2014
<b>Defendants found guilty of at least one charge relating to breach of bail<sup>158</sup></b>	118	135	118	115	77	94	77	62

**Total number and rate per 10,000 population of people in pre-trial detention in 2014 and the historical series since 2000<sup>159</sup>**

England and Wales<sup>160</sup>

		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>Pre-trial detainees</b>	<b>Number<sup>161</sup></b>	7,877	7,896	7,716	8,084	8,064	8,387	8,750	8,730	8,487	8,299	7,671	7,743	8,618
	<b>Per 100,000 population</b>	15.0	14.9	14.5	15.1	14.9	15.4	16.0	15.8	15.2	14.8	13.6	13.6	-

<sup>154</sup> Figures refer to the number of people who have received a warrant for failure to appear while subject to a bail order in each financial year (in Sherriff and Justice of the Peace Courts only).

<sup>155</sup> A new criminal case management system was introduced in 2006/07 so the first year with full information available is 2008/09.

<sup>156</sup> Figures taken from Freedom of Information Response from Scottish Court Service. Reference: RW/FOI201529.

<sup>157</sup> Figures taken from Freedom of Information Response from the Northern Ireland Courts and Tribunals Service. Reference: FOI044/15.

<sup>158</sup> Figures taken from Freedom of Information Response from the Northern Ireland Courts and Tribunals Service. Reference: FOI046/15.

<sup>159</sup> All rates calculated using the Office for National Statistics 'Population Estimates for UK, England and Wales, Scotland and Northern Ireland' (mid-year estimates, 30<sup>th</sup> June each year), reference tables. Available at: <http://ons.gov.uk/ons/rel/pop-estimate/population-estimates-for-uk--england-and-wales--scotland-and-northern-ireland/index.html>

<sup>160</sup> Pre-trial detainee figures taken from *National Offender Management Statistics: 2013 Annual Tables*, Table A1.1. Ministry of Justice.

<sup>161</sup> Figures as at 30<sup>th</sup> June each year. Data prior to 2002 is not available. Due to the introduction of a new IT system in 2010, prison population data from 2009 onwards is taken from a different source, which affects the consistency of the time series.

Scotland<sup>164</sup>

		1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Pre-trial detainees	Number <sup>162 163</sup>	873	768	862	1,055	1,075	1,036	1,032	1,329	1,306	1,415	1,170	1,112	1,237
	Per 100,000 population	17.2	15.2	17.0	20.8	21.1	20.3	20.1	25.7	25.1	27.0	22.2	21.0	23.3

Northern Ireland<sup>165</sup>

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Remand detainees <sup>166</sup>	Number <sup>167</sup>	311	266	341	385	446	444	529	525	507	504	508	590	545	492
	Per 100,000 population	18.5	15.8	20.1	22.6	26.0	25.7	30.3	29.8	28.5	28.1	28.1	32.5	29.9	26.9

Budget allocated and its suitabilityScotland<sup>168</sup>

Services/Disposals	Volume	Total Expenditure	Unit Cost <sup>169</sup>
Bail Supervision	413 Cases commenced	£1,239,906	£3,002

## Northern Ireland, England and Wales

Specific data on costs of bail system not published.

<sup>162</sup> Figures are average daily population for financial years.

<sup>163</sup> Large errors were found when processing prison data for 2012/13 and so Scotland has delayed publication. Statistics for 2012/13 and 2013/14 will be published alongside each other later in 2015.

<sup>164</sup> Pre-trial detainee figures taken from *Prison statistics and population projections: 2011/12*; *Prison statistics Scotland: 2009/10*; and *Prison statistics Scotland: 2008/09*, Scottish Govt.

<sup>165</sup> Pre-trial detainee figures taken from 'The Northern Ireland prison population in 2009'; 'The Northern Ireland prison population in 2012'; 'The Northern Ireland prison population in 2013', Department of Justice Northern Ireland.

<sup>166</sup> Northern Ireland does not break down the remand population any further. Remand prisoners include those charged with an offence and whom the courts have ruled should be detained in custody pending trial; those whom the courts have permitted to be released on bail pending trial but have not as yet met the conditions (usually financial) of the bail; those who had been released on bail but have subsequently been re-admitted to prison because they breached a condition of bail; and those who have been found guilty by the court but have been ordered to be detained pending sentence.

<sup>167</sup> Average daily population

<sup>168</sup> Refers to unit cost figures from 2013/14 taken from 'Cost of the criminal justice system in Scotland dataset', Scottish Govt.

<sup>169</sup> The unit cost is calculated by dividing total recorded expenditure on bail supervision across the eight Community Justice Authorities by the volume of bail supervision cases commenced.

## Alternatives sanctions<sup>170</sup>

### Overview

Courts in the UK have 4 types of sentence available: custodial sentences; community sentences; fines; and discharges. Discharges are used for very minor offences when the court decides not to impose a punishment because the experience of coming to court has been punishment enough (along with the criminal record resulting from conviction).

Custodial sentences may be ordered to have immediate effect or be suspended, i.e. not come into effect unless and until, for example, a further offence is committed. Courts can also make ancillary orders when sentencing, such as compensation orders (discussed in Pt 1 Section 2) or driving disqualifications. Sentencing law and the range of any custodial sentence that may be imposed are set down in statute, but additional guidance for sentencers is also issued by independent bodies (in E&W, the Sentencing Council).<sup>171</sup>

When deciding on sentence the court must have regard to the purpose of sentencing (as well as to law and guidance specific to the offence and other circumstances). The purpose of sentencing is defined by statute<sup>172</sup> as

- 1) the punishment of offenders,
- 2) the reduction of crime (including through deterrence),
- 3) the reform and rehabilitation of offenders,
- 4) the protection of the public, and
- 5) the making of reparation by offenders to persons affected by their offences.

In **E&W**, guidance states that the court must not pass a custodial sentence unless it is of the opinion that the offence (or combination of offences) is: ‘so serious that neither a fine alone nor a community sentence can be justified’. Other preconditions of a custodial sentence are that (in most cases) a pre-sentence report has been obtained and the defendant is legally represented or has been offered the opportunity to be represented but has refused.<sup>173</sup> The sentence must take into account the seriousness of the offence by reference to factors such as the offender’s culpability, the harm caused, whether the harm was intended or foreseen, and any previous convictions.<sup>174</sup>

There is a statutory requirement on the Sentencing Council to ‘have regard to the cost of different sentences and their relative effectiveness in preventing re-offending’ when exercising its functions, notably when drafting guidelines.<sup>175</sup> Some have called for clearer guidelines to ensure

<sup>170</sup> Those established by the judge as main sanction during the trial

<sup>171</sup> The key sentencing guideline in this context is *Seriousness* (2004), which contains guidance on whether a custodial sentence or a community sentence is merited, or whether a fine or discharge would be more appropriate. For discussion of the role of Sentencing Council and arguments for its greater involvement in strengthening guidance for custody decisions relating to women, see *Women in Prison: is the penal system fit for purpose?* (p 43ff) Halsbury’s Law Exchange. F Gerry, L Harris, October 2014.

<sup>172</sup> See section 142 of the Criminal Justice Act 2003, for E&W. This does not apply to offences where the sentence is fixed by law.

<sup>173</sup> CJA S152, E&W.

<sup>174</sup> CJA s 143, E&W.

<sup>175</sup> Coroners and Justice Act 2009.

that short-term prison sentences are used less, that prison is not seen as a gateway to rehabilitation, and that in relation to women there is less resort to custody.<sup>176</sup>

Pre-sentence reports (PSRs) prepared by probation officers are considered before sentencing, both in cases heard by magistrates (where the maximum sentence is 6 months' imprisonment), and in those heard by judges in the Crown courts (the more serious cases, where juries deliver the verdict and judges pass sentence).

PSRs are designed to give information to the sentencer about the circumstances and context of the offending and the offender's personal situation, including any support available or needed. A PSR should contain a recommendation on the appropriate sentence type which magistrates, in practice, usually follow and sentencing judges sometimes follow. A recent report recommended that PSRs should be dispensed with in some magistrates' courts cases, and replaced by oral reports from probation officers in court, to speed up court processes.<sup>177</sup>

In this part we will focus on three types of alternative sanction currently applied in the UK: community sentences, suspended sentences and (in Scotland only) structured deferred sentences. In addition to these, however, it is important to remember that fines are commonly used in all three jurisdictions.

In common with other countries that have introduced or extended these types of sentence, the UK's aim was to control rising reconviction rates and prison numbers. Several reports have highlighted the effectiveness of non-custodial sentences, for those who would otherwise receive short prison sentences. These draw on data showing the poor cost-benefit ratio of such sentences. Short prison sentences cost much more than (even intensive) supervision; they also lead to higher reconviction rates, with the consequent further costs and other harms.<sup>178</sup>

However, the current system of alternative sanctions has a negative side. Between 1995 and 2009 the number of people imprisoned in E&W for failing to comply with a community sentence grew by 470%.<sup>179</sup>

## Alternative sanctions

### Community sentences (all countries in UK)

In **E&W** these are called Community Orders and involve a 'menu' of possible requirements such as community payback, probation supervision and rehabilitation activities of various kinds. In **S** the alternatives include Community Payback Orders, Drug Treatment and Testing Orders and Restriction of Liberty Orders. In **NI** the alternatives include the Probation Order, Community Service Order, Combination Order, and Supervised Activity Orders.

<sup>176</sup> These calls are usefully summarised in *A presumption against imprisonment: social order and social values*, the British Academy, July 2014

<sup>177</sup> *Review of efficiency in criminal proceedings*, Rt Hon Sir Brian Leveson (January 2015). <https://www.judiciary.gov.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf>

<sup>178</sup> *The case for and against prison*, Matrix 2008; *Scotland's Choice, Report of Scottish Prison Commission*, July 2008; *Managing offenders on short custodial sentences*, National Audit Office, March 2010; *Bromley fact file*, Prison Reform Trust June 2011; and *Community or custody? Which works best? A national enquiry* (Make Justice Work network, September 2011) <http://www.makejusticework.org.uk/wp-content/uploads/National-Enquiry-Final-Report-14th-Sept-1.pdf>

<sup>179</sup> *Story of the prison population: 1995 – 2009 England and Wales*, Ministry of Justice – statistics bulletin and datasets. [http://data.gov.uk/dataset/story\\_of\\_the\\_prison\\_population](http://data.gov.uk/dataset/story_of_the_prison_population)

### Suspended sentences (E&W, NI)

These are custodial sentences served in the community unless the sentence is breached, which can result in recall to custody. In E&W, the Suspended Sentence Order (SSO) can be given for prison sentences of up to two years. The suspension can be for six months to two years. An SSO will generally include one or more of 12 *requirements* (see below) but can be given without any requirements. Sentencing guidance states that because of the threat of custody embodied in the sentence, requirements should be less onerous than those used in a community sentence: if the court wishes to impose a more onerous requirement consideration should be given to a community sentence rather than an SSO.

In NI, determinate prison sentences can also be suspended if the court decides this is appropriate. In such a case the defendant will not go to prison unless convicted of a further offence within the period of suspension.

Scotland did not introduce SSOs, in part because it took into account evidence from E&W that SSOs had replaced community sentences not custody.

### Structured Deferred Sentences (S only)

These orders involve deferring sentence for good behaviour, and are aimed at low-tariff offenders with underlying needs. The aim is to avoid 'up-tariffing' these people to probation or community payback orders, when their needs would, in the past, have been met by criminal justice social work support now only available for higher tariff offenders. Such orders could be a useful way of reducing unnecessary use of prison.

The order allows courts to review progress every 3 to 6 months of a deferment, looking at the person's behaviour and make any appropriate adjustments to the order. (Such progress reviews do not feature in Community Payback Orders.) The value of these orders is to help deal with people who would at some point be classed as a high risk of custody purely due to low level, but high frequency offending, driven by their social needs.<sup>180</sup>

## Quantitative and cost data on alternative sanctions

All available data for the three jurisdictions is provided together, at the end of this section. Within the data tables figures are provided for the numbers subject to each of the measures described below, and all other measures used as alternative sanctions. Where available, information on the costs of the measures is also given.

## Alternative measures in detail

### Community Sentences

#### Content

In **E&W**, where a person aged 18 or over is convicted of an offence, the court can make a Community Order, if satisfied that the offence is serious enough to justify it.<sup>181</sup> As a result of

<sup>180</sup> 'International evidence review of conditional (suspended) sentences', January 2013 (S Armstrong, G Mclvor, F McNeill and P McGuinness, Scottish Centre for Crime and Justice Research. [http://webcache.googleusercontent.com/search?q=cache:GYH7SGix\\_8EJ:https://dspace.stir.ac.uk/bitstream/1893/11364/3/Conditional-Sentences-FINAL-january-2013.pdf.txt+&cd=23&hl=en&ct=clnk&gl=uk](http://webcache.googleusercontent.com/search?q=cache:GYH7SGix_8EJ:https://dspace.stir.ac.uk/bitstream/1893/11364/3/Conditional-Sentences-FINAL-january-2013.pdf.txt+&cd=23&hl=en&ct=clnk&gl=uk)

<sup>181</sup> The requirement of seriousness is set out in the guideline issued by the (then) Sentencing Guidelines Council, 'New Sentences: Criminal Justice Act 2003'. Community sentences in E&W are governed by s 177 CJA 03 but important



recent legislation,<sup>182</sup> a Community Order must now contain at least one punitive element (eg community payback, electronic tagging, or participation in a programme).

A Community Order can last less than a day or as long as three years. It can impose one or more of the following requirements (which also apply to suspended sentence orders, discussed in the next section):

- 1) unpaid work, known as 'community payback'
- 2) rehabilitation activity requirement or 'RAR' (after 1 February 2015 when new law takes effect)
- 3) participation in a programme
- 4) prohibited activity
- 5) curfew (usually enforced by electronic monitoring)
- 6) exclusion (ban from entering a specified place)
- 7) residence at a specified address
- 8) mental health treatment
- 9) drug rehabilitation
- 10) alcohol treatment
- 11) a supervision requirement (if offence pre-Offender Rehabilitation Act 2014)
- 12) if the offender is under 25, an attendance centre requirement
- 13) activity requirement (if offence pre-Offender Rehabilitation Act 2014)
- 14) foreign travel ban

Sentencing guidelines state that for low-level seriousness offences, only one requirement will normally be appropriate but that if more than one is applied, the duration can be shortened. In practice two requirements (community payback and supervision) have made up the vast majority of all community based sentences, with half the possible requirements relatively rarely used. Probation officers guide the court on the suitability or availability of requirements in individual cases.

The most important requirements are described below, in order of frequency of use by the courts.

Community payback requires an offender to work unpaid, for between 40 and 300 hours on a suitable project organised by probation. The number of hours is set by the court. The work is usually done in 8-hour shifts at weekends but if the person is unemployed, it is usually done during normal working hours. The type of work will vary depending on locality and the probation service operating the scheme. Common projects are clearing public areas, painting buildings or removing graffiti. The public can nominate projects. Eligibility criteria are:

- The work must benefit the local community
- The project must not take paid work away from others
- No one must make a profit from the work
- It must be challenging and demanding
- It must be worthwhile and constructive
- Offenders must be seen to be putting something back into the community<sup>183</sup>

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changes took effect in April 2013 under the Crime and Courts Act 2013, including strengthening the punitive element and which had the effect of reducing the scope of fines as an alternative. This is despite other legislation to give magistrates wider fining powers and removing limits on the amount of fines imposed for the most serious offences tried in magistrates' courts (Legal Aid, Sentencing and Punishment of Offenders Act 2012).

<sup>182</sup> Crime and Courts Act 2013

In some probation areas,<sup>184</sup> offenders can enrol on training courses as part of their Community Payback activities and gain qualifications such as the Construction Skills Certificate Scheme, fork-lift truck drivers' licences, painting and decorating, horticulture and health and safety.

**Supervision:** The offender is placed under the supervision of a probation officer for up to three years. The offender must attend appointments with the officer or any other person as directed. The requirement may be imposed for the purpose of 'promoting the offender's rehabilitation'. Supervision orders are available for low, medium or high level of seriousness, but are rarely set as stand-alone requirements. More commonly they are used to support activity or treatment programmes.

**Programmes:** Programme requirements are accredited schemes offering specified activities aiming to help address attitudes and behaviour that contribute to offending. Programmes fall into four categories: general offending, violence, sexual offending and domestic violence. These must be recommended by a probation officer at the point of sentence. They are only offered for medium to high-level seriousness offending. Examples currently on offer include anger management, aggression replacement, education, training and employment, thinking and communication skills, domestic abuse, sexual offending and drink-drive rehabilitation programmes. NOMS works with public health bodies in the commissioning of treatment programmes.

**Curfew:** This can require an offender to be at a fixed address for between 2 and 16 hours during a 24-hour period for up to 12 months. The order can be enforced with electronic tagging. These can only be issued if there is a monitoring system for curfew in their area. Monitoring can be done via spot-check, with private security firm sending employees to check on an offender at home, but more commonly it is done by tagging. The order is often combined with supervision or unpaid work requirements.

**Drug rehabilitation:** this can only be ordered with the person's consent. The shortage of places has been criticized. Legislation in 2012 removed the statutory minimum of six months for DRRs, allowing for greater flexibility in tailoring and delivering treatment and recovery options according to individual need.<sup>185</sup>

**Alcohol treatment programmes:** this can only be ordered with the person's consent. The lack of places has been criticized in view of high proportion of alcohol-related problems among offenders.

**Prohibited activity orders:** these are intended to prevent the offender from committing further offences of the same type he or she has just been convicted of. Often an offender is prohibited from going into a certain area where he or she has caused trouble or from carrying the items used to commit criminal damage.

**Mental health treatment requirement:** the order will only be made if the court is satisfied that the condition is treatable, and with the person's consent. Lack of availability of mental health treatment was also criticized as was the unrealistic threshold for eligibility for treatment and difficulty in getting mental health practitioners to support treatment programmes.

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<sup>183</sup> Information on Community Payback on Serco's website:

[http://www.serco.com/markets/homeaffairs/communityservices/communitypayback.asp?utm\\_source=Community%20Payback&utm\\_medium=redirect&utm\\_campaign=redirect](http://www.serco.com/markets/homeaffairs/communityservices/communitypayback.asp?utm_source=Community%20Payback&utm_medium=redirect&utm_campaign=redirect)

<sup>184</sup> For example, the Greater Manchester and Cheshire CRC offers this.

<sup>185</sup> The Legal Aid, Sentencing and Punishment of Offenders Act 2012

**Attendance centres for those under 25:** Official guidance states that although they are primarily a punishment (restriction of liberty in a controlled environment), the activities and instruction offered are also designed to strengthen desistance factors. The adult centres must include social education and life-skills training to: increase employability; maintain physical and mental health (including being aware of the effects of alcohol and drugs); have successful relationships (including respect for parents/partners; parenting skills and social skills); and deal effectively with high risk situations (including first aid, risks of carrying weapons and 'gang culture').

**Women's attendance centres** have been recognized as having potential to divert women from offending and from custody. For example, a 2007 report on women in the criminal justice system<sup>186</sup> demonstrated that women offenders need specialist support. In E&W, women's centres were placed on a more secure policy footing as a result of this report's recommendation for more of such centres and government funding for their support. Local probation teams have set up arrangements with voluntary sector women's centres and women's community support bodies. Links are offered with specialist organisations and services across a wide field of needs. Programmes offered are designed to tackle the causes of offending including homelessness, reduced access to welfare benefits, domestic or family abuse, family and parenting challenges, health and substance issues. The centres improve women's access to training, volunteering and work placements. Probation teams provide information to courts at the point of sentencing, on activities and support services offered and available places. Residence requirements (eg residing at an approved place such as a probation hostel) are sometimes added to women's centre attendance orders for high risk offenders and include a supervised curfew.

Activity Requirements designed for women are frequently delivered in Women's Centres. An example is 'Wiser', offered by Greater Manchester probation which incorporates ten 75 minute sessions of group work plus one-to-one appointments designed to engage, motivate and help with anger, emotional disturbance and troubled relationships.

A similar centre for women in Scotland is the 218 Centre operated by the charity, Turning Point Scotland. It has a 12-bed residential unit and a day service programme offering a range of group work sessions (sometimes part of community sentence orders), one-to-one support and a clinic helping with mental and physical health issues. As well as dealing with women offenders, it is also designed to offer ways to divert women offenders from prosecution. Access is also available to a clinic which deals with mental and physical health issues.

### Rehabilitation activity requirements

As these are a new kind of order, little information about their value has so far emerged. Some CRCs have welcomed the RAR, noting the greater flexibility provided and suggesting it will enable offender managers to make Community Orders more responsive to individual needs and ensure targeted support is offered for employment, training, education and restorative justice.<sup>187</sup>

### Localised pilots

In some areas, alternatives to custody are piloted locally for specific groups. In parts of the north-west of England, two such schemes have been tested. Intensive Community Order (ICO) was

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<sup>186</sup> *Report of a Review of Women with Particular Vulnerabilities in the Criminal Justice System*, Baroness Jean Corston (Home Office, 2007)

<sup>187</sup> For example, Greater Manchester and Cheshire CRC. Information in *The Spark*, Feb 2015 issue GMCCRC's magazine for probation and legal practitioners: <http://cgm-probation.org.uk/wp-content/uploads/2013/04/The-Spark-February-2015-final.pdf>

launched in June 2014 and is aimed specifically at young, male offenders aged 18 to 25 for whom magistrates, when sentencing, are considering short-term custody. This followed an Intensive Alternative to Custody (IAC) programme launched in 2009, which was said to have delivered up to 10% better outcomes than short-term prison in reducing re-offending. Both schemes are described as blending probation supervision with community payback, as well as offering education, training, employment opportunities, health and wellbeing advice, and other support.

### Supervision model adopted (e.g. control-oriented, rehabilitation-oriented...)

Rehabilitation is one of the statutory purposes of sentencing and, in theory at least, sentencers are supposed to have regard to rehabilitation prospects when passing sentence. Rehabilitation as a concept in the UK has traditionally been associated with reform, personal change and helping people to move away from ways of thinking that, for them as individuals, could lead them to offend. In order for rehabilitation (according to this description) to be possible, an offender must have fair access to the resources and opportunities necessary to desist from offending, for personal change to be possible.<sup>188</sup> Rehabilitation can thus be seen as a *right* of the person who has served a sentence, and as an *obligation* of society and the state which is not *dependent* on personal reform but necessary for its achievement.<sup>189</sup>

In practice, the rehabilitation impact of any community sentence will depend on the requirements selected by the sentencer, their suitability for the person concerned, and how well they are provided during their delivery. Most of the requirements available to courts have some rehabilitative potential. But sentences are often structured to combine this element with one of control or punishment. Control is present even in the purely rehabilitative requirements, to the extent that failure to participate could result in more punitive requirements being imposed, or support being withdrawn. Rehabilitative impact requires probation staff and others working with offenders to achieve their active engagement in the programme or activity and ensure the necessary support is in place.

‘Control’ is not one of the statutory purposes of sentencing, but the functions of ‘punishment’, ‘protection’ and ‘deterrence’ clearly embody control, as do exclusions, prohibitions, supervision and compulsory ‘rehabilitation’ activities. Guidance to sentencers<sup>190</sup> on how to select requirements refers to the statutory purposes of sentencing (set out above) by giving the following indications for each sentence type:

- community payback - *punishment + reparation + rehabilitation*
- activity requirement - *rehabilitation + reparation*
- participation in a programme - *rehabilitation*
- prohibited activity requirement - *punishment + protection*
- curfew (usually enforced by electronic monitoring) - *punishment + protection*
- exclusion - *punishment and protection*
- residence requirement - *rehabilitation + protection*
- mental health treatment - *rehabilitation*

<sup>188</sup> This has been recognised in recent studies such as ‘Why Help Offenders? Arguments for Rehabilitation as a Penal Strategy’. P Raynor and G Robinson (2009), *European Journal of Probation*. 1(1):3-20. [http://www.ejprob.ro/uploads\\_ro/677/PRGR.pdf](http://www.ejprob.ro/uploads_ro/677/PRGR.pdf)

<sup>189</sup> See for example, ‘Probation practice and an end to punishment’, W McWilliams and K Pease (1990), *Howard Journal of Criminal Justice*, Vol 29(1) 14-24

<sup>190</sup> For example, the *London Probation Trust’s Bench Guide to Community Sentences*, Sept 2011, based on Sentencing Guidelines Council’s ‘Seriousness’ guidelines (but pre-dating the TR Programme changes): here, [http://insidetime.org/resources/Probation/Bench-Guide-to-Community-Sentencers\\_Sept2011\\_LPT.pdf](http://insidetime.org/resources/Probation/Bench-Guide-to-Community-Sentencers_Sept2011_LPT.pdf)

- drug rehabilitation - *rehabilitation*
- alcohol treatment - *rehabilitation*
- supervision requirement - *rehabilitation*
- attendance centre requirement – *punishment*

In comparison to the type of community sentences they replaced in 2005 Community Orders were seen as better by probation staff in a survey.<sup>191</sup> Greater flexibility and potential to target to offenders' needs were highlighted. Activity requirements were noted as offering a wide range of activities, from day-centre attendance to education, skills assessment and training, and making reparation to victims or persons affected by the offending.

### Relations between the public and the private sector in managing the measures

This will depend on the kind of requirement imposed. For probation supervision, see the information set out under Part 1.

Private sector providers are increasingly involved in Community Payback and delivering accredited programmes, as well as in electronic monitoring. Some have questioned the wisdom of continuing to commission justice services from Serco, given that in 2013 the company had to repay £68.5 million to the MOJ after overcharging for tagging.

NOMS is the public body which commissions the services of public and private sector providers including CRCs and the third party providers of programmes. There has been controversy over the use of private companies to manage and supervise unpaid work in the community. Questions have been raised by the National Association of Probation Officers union over the claims about savings made by Serco, the first such provider to supervise unpaid work. The union (together with other unions representing probation workers) has also challenged the legality of such work being supervised by private as opposed to public bodies, pointing to provisions against this in the UN's Forced Labour Convention.

For some requirements, such as prohibited activities or exclusion orders, the police will have a role in monitoring the orders. Public health services are involved in the commissioning of substance misuse treatment and testing services required by community sentences.

If Community Orders are not complied with, the CRC may involve the NPS which in turn will take steps towards requiring compliance. (See under part 1 section 2.) Courts and prisons may then become involved.

### Budget allocated and its suitability

Information on the costs of various alternative sanctions is given at the end of this section to the extent available.

Funding provided by the MOJ, through NOMS, has been cut over recent years and has been concentrated on programmes aimed at those seen as 'higher risk'. This has resulted in a large reduction in the number of accredited programmes completed each year since 2009/10.<sup>192</sup> Government funding to Women's Centres is now restricted to programmes for women who have

<sup>191</sup> *Community Order and the Suspended Sentence Order Three Years On: The views and experiences of probation officers and offenders*, Centre for Crime and Justice Studies, March 2009 [http://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Three\\_years\\_on.pdf](http://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Three_years_on.pdf)

<sup>192</sup> NOMS annual report 2013-14, management information addendum. Ministry of Justice, July 2014 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/338945/mi-addendum.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338945/mi-addendum.pdf)

been convicted, aiming to prevent their reoffending. Work with women seen as being *at risk* of offending, while still done by Women's Centres, is no longer funded by government.

### Impact of measures:

#### on the prison population

There is no evidence that the use of community sentences has led to a reduction in the numbers in prison, despite evidence of an increase in their use over recent years. A clue to the reason is contained in a 2010 government report, 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders'.<sup>193</sup> This pointed to a decrease in the use of fines in favour of community sentences and concluded that there had been an 'upwards drift in severity' of sentences for certain types of offence. It found that this could explain why prison numbers were not decreasing. Research by the Centre for Crime and Justice Studies has also highlighted the risk of 'net widening' when community sentences are over-used.<sup>194</sup>

Until recent legislative changes,<sup>195</sup> the sanction for breach of community sentence was imprisonment. Courts now have wider powers to avoid resort to custody for breach, but it is too early to tell whether they will be used effectively. The risk will remain that breach will lead to custody. Because of this, and since community sentences are demanding and punitive, they should not be used where a fine or discharge would be suitable, or for low risk offenders.

Evidence suggests that Women's Attendance Centres are effective at diverting women from offending and from breaching community orders, and more so than short custodial sentences.<sup>196</sup> In E&W, the future of attendance centres and similar initiatives now delivered by the private sector will depend on how the reforms under TR take effect and the extent to which the Centres can prove that their programmes and services can reduce reconvictions.<sup>197</sup>

#### on the lives of the subjects involved (work, physical/psychological wellbeing, family and social relationships, goals and life perspectives, recidivism rate)

Government data suggests that community sentences outperform short spells behind bars in terms of life outcomes and reconviction rates, but the data is limited. The detailed analysis contained in 'cohort studies' focus mainly on reconviction rates for those who have received community orders. It seeks to show which offenders are more likely to reoffend and the factors that might explain this. The findings show that re-offending is greatest in the first months of the Community Order and that offenders often have complex needs, some of which are related to their offending behaviour. The evidence reinforces the importance of a wide range of 'static' factors in predicting future offending, such as gender and index offence. It also shows that early interventions based on the effects of 'dynamic' factors (eg employment, accommodation, relationships) can be effective.

<sup>193</sup> *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, Ministry of Justice (2010) Green Paper Evidence Report

<sup>194</sup> *Community Order and the Suspended Sentence Order Three Years On: The views and experiences of probation officers and offenders*, Centre for Crime and Justice Studies, March 2009

<sup>195</sup> LASPO 2012

<sup>196</sup> *Women in Prison: is the penal system fit for purpose?* (sections 11 and 12) Halsbury's Law Exchange. F Gerry, L Harris, October 2014

<sup>197</sup> National Audit Report: *Funding of Women's Centres in the Community*, May 2013, available here: <http://www.nao.org.uk/wp-content/uploads/2013/05/Funding-of-Womens-Centres-in-the-Community.pdf>

The government also publishes limited data on employment which suggests that people who have completed community orders are twice as likely to be in employment on completing an order, than people on release from prison.<sup>198</sup>

## Variations to practices on community sentences in NI and S

### Northern Ireland

The court can make any of the following orders as alternative sanctions:

- fines
- probation orders
- community service orders requiring an offender to do unpaid work in the community. These can last between 40 hours and 240 hours
- combination orders, combining a probation order and a community service order. The period of supervision can last from 1 to 3 years. The community service part can range from 40 to 100 hours
- other orders (for example, supervision and treatment orders, residence requirements, activity orders, and community responsibility orders)
- curfews, usually monitored by tag.

With the exception of fines, the above orders are all supervised by the NI Probation Board (NIPB). NIPB currently delivers accredited and approved programmes towards helping with offenders' problems. Examples are anger management and cognitive behavioural programmes, domestic abuse and sex offender treatment programmes. Some are complemented by referrals to third sector providers such as Addiction NI, for offenders required to undertake drug or alcohol treatment programmes. Probation staff can also refer offenders to attend these programmes voluntarily. The recent inspection report stressed importance of speedy entry to these programmes and pointed to several cases where immediate places had not been available and the offender was breached or committed a further offence in the interim period.<sup>199</sup> Funding cuts have badly affected many NGOs and voluntary sector bodies providing services and programmes. For example the Inspire Women's Project, set up to provide a comprehensive set of support services for women offenders and those at risk of offending in NI, saw its work suspended in 2015 due to lack of funds, despite positive evaluation reports.

Fine defaulters being sent to prison had been identified as a long-standing factor in rising prison numbers by 2011 in NI. A report on the prison system in 2011 found that in one women's prison, half the inmates were there for fine default.<sup>200</sup> It recommended Supervised Activity Orders as the norm for fine default rather than imprisonment. More broadly, the same report recommended a statutory presumption against custody for those who would face sentences of three months or less, in favour of properly resourced community penalties. This has not been implemented.

### Scotland

Scotland brought the Community Payback Order (CPO) into force in February 2011, to replace Community Service Orders, Probation Orders and Supervised Attendance Orders. The CPO sits alongside other community-based court orders including the Restriction of Liberty Order (requiring the offender to stay at specified place during particular hours, usually enforced by

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<sup>198</sup> NOMS annual report (above)

<sup>199</sup> Paras 4.5-4.8

<sup>200</sup> Owers report (above), p 29

electronic tagging) and the Drug Treatment and Testing Order. It was intended as an aid to rehabilitation and sentencers can select the requirement based on the circumstances of the case. So, in addition to unpaid work, offenders can be ordered to complete a period of intensive supervision or attend alcohol, drug or behaviour programmes.

The Scottish government has identified the reduction of reoffending as a priority including by increased use of community sentences. In its 2012 strategy paper it said it would 'continue to deliver effective community sentencing through the new Community Payback Order which is a crucial alternative to custody'. The Scottish Howard League welcomed this commitment, but questioned how it could be properly funded when 'the total budget for community justice is still only one third that assigned to prisons'; it called for 'a greater shift in resources from custody to community justice.'<sup>201</sup>

### Suspended sentence orders (SSOs)

#### **Content and supervision model adopted (e.g. control-oriented, rehabilitation-oriented...)**

##### **England and Wales**

For decades, courts have had the discretion to suspend sentences of less than 2 years where circumstances justify it.<sup>202</sup> The SSO provides a sentencing option for cases where the crime merits custody and would normally attract a sentence of up to 2 years in prison, but where in the circumstances this sentence should not be served immediately but instead should be suspended for a period. Legislation in 2012 introduced greater flexibility for judges to impose SSOs.<sup>203</sup> There is an option (but no longer a need) for SSOs to contain a community order such as supervision, a curfew (limited to 12 months with permitted hours up to 16 per day), or community payback.

All SSOs (and all Community Orders) must now contain a 'rehabilitation activity requirement' such as going to an attendance centre. The rehabilitation potential of an SSO will usually depend on other factors, including whether it is combined with some other requirement targeted at the specific circumstances of the offender.

However the control element is still in place: for example, an offender subject to a CO or an SSO (even one without a community requirement) is required to seek the permission of the probation officer or the court before changing his place of residence.

A breach occurs when either another offence is committed, or any community order requirement is not complied with. The court must activate the original custodial sentence unless it would be 'unjust' to do so.<sup>204</sup> But whereas before, breach would result in instant custody, or an amendment to a community requirement (eg to increase the punitive or restrictive element) a further option is now available - a fine of up to £2,500.

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<sup>201</sup> Website of Scottish Howard League; News, November 2014

<http://www.howardleaguescotland.org.uk/news/2014/november/scottish-government%E2%80%99s-draft-budget-2015-16>

<sup>202</sup> Under section 22 of the Powers of Criminal Courts Act 1973; the exceptional circumstances test remained until CJA 2003 removed it.

<sup>203</sup> LASPO 2012

<sup>204</sup> Breach leads to various enforcement requirements set out in schedule 12 CJA 2003 (sched 8 for breach of community orders).



Despite official guidance<sup>205</sup> suggesting that more onerous conditions are more appropriate for use in COs than SSOs, it has been argued, in analyses of how conditions within each type of order are used, that SSOs are being used punitively.

### Relations between the public and the private sector in managing the measures

More complex interactions will occur if the SSO also includes a community order requirement, or if one is imposed due to breach of an SSO. If so, the following will be involved: National Probation Service, Community Rehabilitation Companies, Electronic Monitoring contractors, NOMS and other providers of probation services. Certain mandatory actions are required to ensure SSOs (and COs) are enforced. An NPS 'enforcement officer' will be required to take any case of breach to court.<sup>206</sup> If treatment orders are also made, outside agencies working with offenders in, for example, drug or alcohol treatment will be involved and will need to coordinate with probation officers. The latter can then help the offender facing multiple requirements to ensure appointments are kept and necessary support given.

### Impact of the measures:

#### on the prison population

One potential effect is to reduce prison numbers and save money in comparison with prison, particularly in view of the option of combining an SSO with a curfew order. However, there is little evidence of any such effect in practice. Data is limited but leads to the conclusion that SSOs have made no significant contribution to diversion from custody or reducing use of short custodial sentences. Rather, the data suggests that the effect has been for SSOs and COs to replace fines in broadly equivalent cases, and no overall impact on the use of short sentences. NGOs, probation staff and other public sector bodies with expertise have argued that SSOs have not fully achieved their aims since the current form of SSO was implemented in 2005 and have not reduced the use of short term custody, not dealt with up-tariffing and failed to tailor community sentence elements of SSOs to individual offender need.<sup>207</sup>

A 2009 study suggested that over 55% of 2-year SSOs resulted in breach; data was not available to show the number of breach cases that resulted in custody being imposed.

#### on the lives of the subjects involved concerning in particular the following aspects:

##### work

Unpaid work is a requirement that is frequently imposed in conjunction with SSOs (around 22% of cases in the period 2005-2008 and the trend to its use was increasing).<sup>208</sup> But it is unclear to what extent this helps recipients of SSOs to find paid work after the sentence has been completed: specific data is not produced on this to any reliable scale.

##### physical and psychological wellbeing

Again this often depends on the nature of any requirement added onto the SSO. Accredited programmes offer some offenders the chance to take part in cognitive behavioural work seen by some as an effective way to work with offenders. But the general trend is to make SSOs as onerous as COs, with a larger proportion involving punitive requirements, most often unpaid work

<sup>205</sup> Sentencing Guidelines Council cited above, and a Home Office Probation Circular 25/2005

<sup>206</sup> See PI 06/2014, *Enforcement of Community Orders and Suspended Sentence Orders* issued 1 April 2014

<sup>207</sup> See for example, *The Community Order and Suspended Sentence Order Three Years On'* (CCJS 09 above)

<sup>208</sup> CCJS 09 (above)

and probation. Over a period of four years ending 2008 research shows that in no cases where SSOs were ordered had courts also imposed requirements of mental health treatment programmes or attendance centre requirements. Drug or alcohol treatment had been ordered in only a small proportion of SSO cases. The reasons identified included lack of availability and also lack of knowledge and/or innovative thinking on part of probation staff and sentencers, despite fact that officers interviewed mentioned alcohol and mental health requirements being the ones most needed and least available.<sup>209</sup>

### family and social relationships; goals and life perspectives of offender

When compared to the highly adverse impacts of custody on family relationships as well as the ability to achieve personal goals, SSOs are clearly preferable. However, to be given the support necessary to desist from offending and comply with any additional sentence requirements, while also sustaining personal relationships, an offender will often require the targeted help of a probation officer.

A 2009 study found that supervision was applied in conjunction with SSOs in well under half of all cases and that its use decreased by 5% over the four years to 2008.<sup>210</sup>

### recidivism rate

Recent government data suggests that SSOs (and Community Orders) are more effective than short custodial sentences, in reducing reconvictions. SSOs were more effective than COs. The study also suggests that both kinds of order are more effective in reducing reconvictions when combined with a period of supervision.<sup>211</sup>

## Structured Deferred Sentences (SDS) (Scotland only)

### Content and supervision model adopted (e.g. control-oriented, rehabilitation-oriented...)

These enable the court to defer its decision on sentence for 3 months (which can be extended if necessary to 6 or 12 months) in order to assess the offender's needs and progress. They allow time for work to take place with the offender, providing a lower-level alternative to probation. They are often used in conjunction with voluntary undertaking of drug or alcohol treatment programmes. There are two types of SDS:

**Low tariff SDS:** this is normally given when the court believes that an offender needs a high level of support to help deal with the problems which led to the offending.

**High tariff SDS:** offenders will be given this type of sentence if they are at risk of receiving a prison sentence because they have previously not attended other community-based sentences such as supervision or community payback. The court will also impose a bail condition, instructing offenders to co-operate. If offenders do not co-operate or miss their appointments, the court can issue a warrant to arrest them.

Individuals will be offered support to deal with any problems or issues which may have led to them having to go to court. These include:

<sup>209</sup> CCJS 09 above

<sup>210</sup> CCJS 09 above

<sup>211</sup> *The impact of short custodial sentences, community sentences and suspended sentence orders on re-offending*, MOJ, January 2015 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/399389/impact-of-short-custodial-sentences-on-reoffending.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399389/impact-of-short-custodial-sentences-on-reoffending.PDF)

- the impact of their actions on others, including victims
- drugs issues
- alcohol issues
- mental health
- education/training
- benefits and welfare rights
- anger management
- housing
- employment
- using their time in a better way

When individuals have completed the SDS, the court will receive a report written by CJSW staff, about how well they co-operated and what progress has been made. The court will use the information in this report to decide how to deal with the case. How well the individual has co-operated is likely to affect the decision the court makes as well as the nature and circumstances of the offence itself.

SDSs are only available in some areas in Scotland, including the three areas where the scheme was initially piloted, then continued following positive evaluation reviews, plus a further two areas. The scheme was found in a majority of cases to have had positive outcomes, with only one in 16 cases resulting in a more serious sentence outcome.<sup>212</sup>

### **Relations between the public and the private sector in managing the measures**

The SDS involves collaboration between CJSW, court services and the voluntary sector organisations providing treatment and counselling programmes.

### **Impact of measures on the lives of the subjects involved (work, physical/psychological wellbeing, family and social relationships, goals and life perspectives, recidivism rate)**

The SDS aims to use focused supervision to tackle the offender's criminogenic problems capable of being addressed through social work interventions, particularly alcohol and drug misuse. A 2013 study found that evaluation of the SDS (including court reports) indicated that between half and four-fifths of offenders had reduced their alcohol and/or drug use between the date the SDS was imposed and the end of the deferral period.<sup>213</sup> Evaluation also suggested that non-compliance rates were lower than those for community service or probation over similar periods.<sup>214</sup>

Despite the positive results emerging from these reports, since 2005–2006 (when the SDS was first introduced) both the number of deferred sentences and the proportion they represented of all sentences have decreased, at least as regards male offenders. Women have seen a greater proportion of deferred sentences.

<sup>212</sup> Annual report of Northern Community Justice Authority 08-09

<http://www.northerncja.org.uk/images/upload/Annual%20Reports/NCJA-Annual-Report-2008-2009.pdf>

<sup>213</sup> 'Criminal justice responses to drug related crime in Scotland', Malloch M, McIvor G, International Journal of Drug Policy: 2013, 24 p 69-77

[https://dspace.stir.ac.uk/bitstream/1893/11358/1/cj\\_responses\\_to\\_drug\\_related\\_crime%20with%20abstr\\_act.pdf](https://dspace.stir.ac.uk/bitstream/1893/11358/1/cj_responses_to_drug_related_crime%20with%20abstr_act.pdf)

<sup>214</sup> *Evaluation of Structured Deferred Sentence pilots*, Justice Analytical Services, Scottish Government, Research Findings No. 11/2008 <http://www.gov.scot/Resource/Doc/219349/0058865.pdf>

**Total number of people (flow and daily rate) in prison serving a final sentence in 2014 , historical series since 2000 and rate per 100,000 population for this period**

**England and Wales**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>Daily rate</b>	-	-	57,306	59,437	60,976	62,257	63,493	65,602	68,234	68,560	71,000	71,964	73,564	70,913	71481
<b>First receptions</b>	93,671	91,976	94,807	93,495	95,161	92,452	90,038	91,736	100,348	94,964	-	90,955	86,479	82,305	78,488
<b>Daily rate per 100,000</b>	-	-	108.9	112.4	114.7	116.2	117.7	120.6	124.4	124.1	127.5	128.1	130.0	124.5	-

**Scotland**

	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
<b>Daily rate</b>	4968	4940	5147	5239	5361	5546	5604	5614	5814	6146	6441	6377	6576
<b>rate/100,000</b>	98.1	97.5	101.6	103.4	105.4	108.5	109.2	108.6	111.7	117.5	122.4	120.3	123.8
<b>Receptions</b>	20336	19926	20328	20957	20437	19652	19488	20430	18229	16566	15824	14943	15331

**Northern Ireland**

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>Daily rate</b>	767	818	851	902	935	976	960	955	1090	1228	1334
<b>Rate/100,000</b>	45.0	47.7	49.3	51.7	53.1	54.9	53.5	52.9	60.1	67.3	72.9
<b>Receptions</b>	2753	2909	3002	3255	3094	3208	3124	3682	4239	4545	2477

### Numbers serving Community Sentences and other data regarding alternative measures. England and Wales<sup>221</sup>

			2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	
Community order <sup>215 216</sup> 217 218	People serving	Flow	53,248	111,752	117,860	120,743	122,796	118,696	112,571	103,759	99,166	94,878	
		Daily	46,846	93,895	101,858	101,153	97,481	91,776	84,168	76,231	73,567	71,055	
		Rate/100,000	87.4	174.0	187.3	184.4	176.5	164.8	149.8	134.8	129.2	-	
	Males	Flow	45,832	95,111	99,573	101,552	103,074	99,598	94,046	86,708	82,448	78,222	
		Daily	40,356	80,652	86,952	86,066	82,682	78,077	71,243	64,669	62,211	59,962	
	Females	Flow	7,416	16,641	18,287	19,191	19,722	19,098	18,525	17,051	16,718	16,656	
		Daily	6,490	13,243	14,906	15,087	14,799	13,699	12,925	11,562	11,356	11,093	
	Revocations <sup>219</sup> 220	Ran full course			27,525 (39%)	53,107 (47%)	60,961 (49%)	67,877 (52%)	69,151 (53%)	69,178 (55%)	64,282 (55%)	53,165 (54%)	48,912 (55%)
		Good progress			9,175 (13%)	10,895 (10%)	13,685 (11%)	15,664 (12%)	15,657 (12%)	13,836 (11%)	12,856 (11%)	12,799 (13%)	10,672 (12%)
		Failure to comply with requirements			16,938 (24%)	25,007 (22%)	23,638 (19%)	20,885 (16%)	19,571 (15%)	17,609 (14%)	16,363 (14%)	12,799 (13%)	10,672 (12%)
		Conviction of an offence			9,881 (14%)	13,462 (12%)	13,685 (11%)	13,053 (10%)	13,047 (10%)	12,578 (10%)	12,856 (11%)	11,814 (12%)	10,671 (12%)
		Other reasons			7,058 (10%)	11,358 (10%)	12,441 (10%)	13,053 (10%)	13,047 (10%)	12,578 (10%)	10,519 (9%)	7,876 (8%)	7,114 (8%)
		<b>N for revocations (100%)</b>			70,577	113,829	124,411	130,533	130,474	125,778	116,876	98,453	88,930

<sup>215</sup> These community sentences were introduced in 2005.

<sup>216</sup> All flow rates are counted as people starting supervision by the probation service in a given year. The Ministry of Justice informed us that information of the total number of people supervised across a whole year was not held centrally. The total number of people supervised in a year will be higher as it includes people who started a supervision in a previous year but is yet to expire.

<sup>217</sup> All daily rates are counted as people supervised by the probation service as at 31st December each year.

<sup>218</sup> Each person is counted once for each type of supervision received in the period or at 31st December.

<sup>219</sup> These are numbers of revocations occurring over a whole year.

<sup>220</sup> It has only been possible to compare percentages over time from 2008 onwards, as before then not enough time had elapsed for all orders to run their full course. These orders were introduced in April 2005.

<sup>221</sup> All figures from *Offender Management Statistics quarterly. Probation Annual Tables 2013*, Ministry of Justice.

Community Order requirements, England and Wales<sup>222</sup>

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
All Community Orders (100%)	96,133	211,905	223,511	226,234	231,444	223,227	211,335	192,732	173,766	168,909
Unpaid Work	29,947 (31%)	66,937 (32%)	74,779 (33%)	74,629 (33%)	76,699 (33%)	73,797 (33%)	69,674 (33%)	61,639 (32%)	51,130 (29%)	48,683 (29%)
Supervision	34,741 (36%)	76,234 (36%)	78,102 (35%)	77,777 (34%)	77,769 (34%)	72,998 (33%)	67,332 (32%)	61,434 (32%)	57,856 (33%)	55,095 (33%)
Specified Activity	2,638 (3%)	7,706 (4%)	8,763 (4%)	9,639 (4%)	13,476 (6%)	15,189 (7%)	19,663 (9%)	21,421 (11%)	20,441 (12%)	16,500 (10%)
Curfew	3,209 (3%)	9,615 (5%)	12,608 (6%)	15,526 (7%)	16,479 (7%)	17,476 (8%)	17,279 (8%)	14,930 (8%)	12,665 (7%)	16,688 (10%)
Accredited Programme	17,440 (18%)	34,287 (16%)	30,143 (13%)	26,483 (12%)	23,442 (10%)	20,444 (9%)	16,448 (8%)	13,430 (7%)	12,864 (7%)	12,575 (7%)
Drug treatment	5,853 (6%)	11,895 (6%)	12,145 (5%)	13153 (6%)	12087 (5%)	11996 (5%)	9866 (5%)	9290 (5%)	9138 (5%)	8,396 (5%)
Alcohol treatment	1356 (1%)	2439 (1%)	3267 (1%)	4664 (2%)	6485 (3%)	5949 (3%)	5873 (3%)	5971 (3%)	5893 (3%)	5,415 (3%)
Attendance Centre	94 (0%)	287 (0%)	430 (0%)	523 (0%)	787 (0%)	947 (0%)	1367 (1%)	1338 (1%)	1170 (1%)	949 (1%)
Prohibited Activity	130 (0%)	483 (0%)	847 (0%)	1116 (0%)	1376 (1%)	1491 (1%)	1258 (1%)	931 (0%)	762 (0%)	2,036 (1%)
Exclusion	195 (0%)	510 (0%)	845 (0%)	1029 (0%)	1106 (0%)	1135 (1%)	1021 (0%)	962 (0%)	712 (0%)	1,235 (1%)
Residential	268 (0%)	762 (0%)	930 (0%)	956 (0%)	929 (0%)	1062 (0%)	899 (0%)	816 (0%)	522 (0%)	665 (0%)
Mental Health	262 (0%)	750 (0%)	652 (0%)	739 (0%)	809 (0%)	743 (0%)	655 (0%)	570 (0%)	613 (0%)	672 (0%)

<sup>222</sup> Sharp increases from 2005 reflects the fact that these orders were introduced for offences committed after 4<sup>th</sup> April 2005.

**Scotland**<sup>223 224</sup>**Community Payback Orders and legacy orders**<sup>225</sup>

		2012-13	2013-14
<b>Total in existence</b> <sup>226</sup>	Total	23,592	
	male	20,139	
	female	3,453	
<b>Total in force on 31st March 2013</b>	Total	13,738	17,010
	male	11,598	14,344
	female	2,140	2,666

**Commencements**<sup>227</sup>

		2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
<b>Community payback order</b> <sup>228</sup>	Total					-	10,228	16,057	18,599
	male					-	8,826	13,678	15,741
	female					-	1,402	2,379	2,858
<b>Community service orders</b>	Total	5,937	6,202	6,437	6,429	5,940	3,044	693	227
	male	5,334	5,512	5,668	5,502	5,112	2,463	490	-
	female	603	690	769	927	828	581	203	-
<b>Probation orders</b>	Total	8,404	8,706	9,179	8,838	8,136	3,040	514	138
	male	6,903	7,062	7,535	7,170	6,642	2,400	402	-
	female	1,501	1,644	1,644	1,668	1,494	640	112	-
<b>Supervised attendance orders</b>	Total	3,047	4,438	4,306	3,859	3,307	2,877	1,752	779
	male	2,505	3,693	3,650	3,345	2,900	2,531	1,540	-
	female	542	745	656	514	407	346	212	-
<b>Total orders</b>	<b>Total</b>	<b>17,388</b>	<b>19,346</b>	<b>19,922</b>	<b>19,126</b>	<b>17,383</b>	<b>19,189</b>	<b>19,016</b>	<b>19,743</b>
	<b>male</b>	<b>14,742</b>	<b>16,267</b>	<b>16,853</b>	<b>16,017</b>	<b>14,654</b>	<b>16,220</b>	<b>16,110</b>	<b>-</b>
	<b>female</b>	<b>2,646</b>	<b>3,079</b>	<b>3,069</b>	<b>3,109</b>	<b>2,729</b>	<b>2,969</b>	<b>2,906</b>	<b>-</b>

<sup>223</sup> All figures are for financial years.<sup>224</sup> Data on cases of different orders sourced from *Criminal Justice Social Work Statistics*, Scottish Govt. Data on costs sourced from *Cost of the criminal justice system in Scotland*, Scottish Govt.<sup>225</sup> Community Payback Orders replaced community service orders, probation orders and supervised attendance orders for offences committed after 1 February 2011.<sup>226</sup> This information can be obtained from the unit level returns that Scottish Justice Analytical Services received from local authorities for the first time in 2012-13. This constitutes a proper flow rate.<sup>227</sup> Counts orders commenced so will double count individuals subject to more than one type of order in a given year.<sup>228</sup> Information on orders commenced was collected from local authorities from 2011-12 onward. Figures from the Scottish Court Service suggest around 300 community payback orders were imposed in 2010-11.

## Revocations

	Reason	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Community payback orders	Order successfully completed/early discharge						1801 (68.9%)	6844 (68.6%)	11,062 (72.2%)
	Revoked due to review						104 (4%)	518 (5.2%)	766 (5%)
	Revoked due to breach						436 (16.7%)	1758 (17.6%)	2,468 (16.1%)
	Transfer out of area						112 (4.3%)	381 (3.8%)	524 (3.4%)
	Death						31 (1.2%)	77 (0.8%)	99 (0.6%)
	Other						132 (5%)	405 (4.1%)	408 (2.7%)
Community service orders	Order successfully completed/early discharge	3569 (65.7%)	3762 (64.6%)	4375 (63.6%)	4690 (69.6%)	4499 (74%)	3503 (74.4%)	1448 (71%)	-
	Revoked due to review	353 (6.5%)	271 (4.7%)	258 (3.7%)	340 (5%)	196 (3.2%)	181 (3.8%)	129 (6.3%)	-
	Revoked due to breach	1036 (19.1%)	1346 (23.1%)	1537 (22.3%)	1239 (18.4%)	909 (14.9%)	722 (15.3%)	331 (16.2%)	-
	Transfer out of area	285 (5.2%)	244 (4.2%)	288 (4.2%)	223 (3.3%)	196 (3.2%)	133 (2.8%)	53 (2.6%)	-
	Death	30 (0.6%)	23 (0.4%)	38 (0.6%)	34 (0.5%)	26 (0.4%)	16 (0.3%)	12 (0.6%)	-
	Other	159 (2.9%)	179 (3.1%)	387 (5.6%)	211 (3.1%)	256 (4.2%)	151 (3.2%)	64 (3.1%)	-
Probation orders	Order successfully completed/early discharge	4065 (60.2%)	3998 (58.4%)	4236 (56.6%)	4302 (57%)	4716 (59.8%)	4442 (67.1%)	2499 (74.8%)	-
	Breach – non-compliance	940 (13.9%)	1098 (16%)	1110 (14.8%)	1026 (13.6%)	891 (11.3%)	594 (9%)	345 (10.3%)	-
	Breach - further offence	735 (10.9%)	699 (10.2%)	884 (11.8%)	894 (11.8%)	783 (9.9%)	565 (8.5%)	170 (5.1%)	-
	Breach - non-compliance and further offence	134 (2%)	149 (2.2%)	199 (2.7%)	134 (1.8%)	168 (2.1%)	106 (1.6%)	51 (1.5%)	-
	Transfer out of area	325 (4.8%)	293 (4.3%)	335 (4.5%)	331 (4.4%)	363 (4.6%)	191 (2.9%)	98 (2.9%)	-
	Death	106 (1.6%)	86 (1.3%)	111 (1.5%)	93 (1.2%)	106 (1.3%)	74 (1.1%)	28 (0.8%)	-
	Other	450 (6.7%)	526 (7.7%)	613 (8.2%)	771 (10.2%)	856 (10.9%)	647 (9.8%)	148 (4.4%)	-
Supervised attendance orders	Order successfully completed	1661 (61%)	1685 (56.7%)	2410 (60.6%)	2182 (63.9%)	1951 (60.1%)	1719 (65.1%)	1338 (62.9%)	-
	Revoked due to review	282 (10.4%)	302 (10.2%)	212 (5.3%)	221 (6.5%)	182 (5.6%)	195 (7.4%)	178 (8.4%)	-
	Revoked due to breach	629 (23.1%)	797 (26.8%)	1146 (28.8%)	797 (23.3%)	776 (23.9%)	556 (21.1%)	457 (21.5%)	-
	Transfer out of area	54 (2%)	79 (2.7%)	79 (2%)	93 (2.7%)	88 (2.7%)	54 (2%)	52 (2.4%)	-
	Death	10 (0.4%)	14 (0.5%)	23 (0.6%)	17 (0.5%)	23 (0.7%)	14 (0.5%)	10 (0.5%)	-
	Other	88 (3.2%)	93 (3.1%)	106 (2.7%)	104 (3%)	226 (7%)	101 (3.8%)	93 (4.4%)	-



## Community payback order requirements

	2011-12	2012-13	2013-14
<b>Unpaid work or other activity</b>	7776 (76%)	12,785 (79.6%)	14,879 (80%)
<b>Offender supervision</b>	6382 (62.4%)	8,816 (54.9%)	9,413 (50.6%)
<b>Conduct<sup>229</sup></b>	2360 (23.1%)	1,610 (10%)	1,147 (6.2%)
<b>Programme</b>	809 (7.9%)	1,047 (6.5%)	1,178 (6.3%)
<b>Alcohol treatment</b>	536 (5.2%)	398 (2.5%)	400 (2.2%)
<b>Compensation</b>	350 (3.4%)	609 (3.8%)	606 (3.3%)
<b>Drug treatment</b>	236 (2.3%)	183 (1.1%)	167 (0.9%)
<b>Mental health treatment</b>	74 (0.7%)	97 (0.6%)	65 (0.9%)
<b>Residence</b>	51	37	45

Costs of Community Payback Orders, Community Service Orders, Supervised Attendance Orders and Probation Orders<sup>230</sup>

Volume	Total Expenditure	Unit Cost <sup>232</sup>
19,576 Orders commenced	£37,374,215	£1,909

Drug Treatment and Testing Orders<sup>231</sup>

		2012-13	2013-14
<b>Total in existence<sup>233</sup></b>	Total	1,333	-
	male	1,064	-
	female	269	-
<b>Total in force on 31st March 2013</b>	Total	747	706
	male	601	569
	female	146	137

<sup>229</sup> The fall in the use of the conduct requirement after 2011-12 is due to a 2012 appeal court judgement that conduct requirements must be specific and include more than general conditions to stay out of trouble or to refrain from committing another criminal offence. This will have an impact on the level of supervision requirements as orders with a conduct requirement should also include supervision.

<sup>230</sup> Refers to unit cost figures from 2013/14.

<sup>231</sup> Figures include DTTO IIs, which have been piloted in the City of Edinburgh, Midlothian and East Lothian areas since June 2008.

<sup>232</sup> The unit cost is calculated by dividing total recorded expenditure on Community Payback Orders, Community Service Orders, Probation Orders and Supervised Attendance Orders across the 8 CJAs by the volume of those disposals. The unit cost does not include the costs of delivering some services which may be accessed by offenders as a consequence of requirements imposed with these orders.

<sup>233</sup> This information can be obtained from the unit level returns Scottish Justice Analytical Services received from local authorities for the first time in 2012-13. This constitutes a proper flow rate.

Commencements<sup>234</sup>

		2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
	Total	526	599	673	601	752	739	661	557	640	620
	male	437	494	552	461	576	566	533	455	512	497
	female	89	105	121	140	176	173	128	102	128	123
Revocations	Successfully completed/ early discharge	120 (38.1%)	186 (40%)	208 (38.9%)	183 (37.3%)	215 (39.7%)	263 (44.7%)	303 (46%)	339 (53.6%)	310 (52.6%)	345 (52.2%)
	Revoked due to review	32 (10.2%)	81 (17.4%)	76 (14.2%)	68 (13.8%)	83 (15.3%)	119 (20.2%)	115 (17.5%)	90 (14.2%)	135 (23.3%)	134 (20.3%)
	Revoked due to breach	133 (42.2%)	154 (33.1%)	197 (36.8%)	173 (35.2%)	193 (35.6%)	144 (24.5%)	185 (28.1%)	127 (20.1%)	101 (17.4%)	149 (22.5%)
	Transfer out of area	0 (0%)	4 (0.9%)	2 (0.4%)	7 (1.4%)	8 (1.5%)	5 (0.9%)	6 (0.9%)	41 (6.5%)	11 (1.9%)	6 (0.9%)
	Death	1 (0.3%)	4 (0.9%)	1 (0.2%)	2 (0.4%)	3 (0.6%)	4 (0.7%)	6 (0.9%)	4 (0.6%)	6 (1%)	8 (1.2%)
	Other	29 (9.2%)	36 (7.7%)	51 (9.5%)	58 (11.8%)	40 (7.4%)	53 (9%)	43 (6.5%)	32 (5.1%)	22 (3.8%)	19 (2.9%)

Cost of DTTOs<sup>235</sup>

Services/Disposals	Volume	Total Expenditure	Unit Cost <sup>236</sup>
DTTOs (Including Drug Courts) <sup>237</sup>	614 Orders commenced	£5,897,261	£9,605

Restriction of Liberty Orders<sup>238</sup>People with a charge proved in the Scottish courts given a Restriction of Liberty Order as a main penalty<sup>239</sup>

		2004/05	2005/06	2006/07	2007/08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Restriction of liberty order	Total	1097	1136	1179	1155	1143	931	831	845	919	1074
	male	-	-	-	-	1016	828	742	727	765	-
	female	-	-	-	-	127	103	89	118	145	-

Cost of RLOs<sup>240</sup>

Services/Disposals	Volume	Total Expenditure	Unit Cost <sup>241</sup>
Electronic Monitoring <sup>242</sup>	3,929 new reports	£2,884,643	£734

<sup>234</sup> Counts orders commenced so will double count individuals subject to more than one type of order in a given year.

<sup>235</sup> Refers to unit cost figures from 2013/14.

<sup>236</sup> The unit cost is calculated by dividing total recorded expenditure on DTTOs across the 8 CJAs by the volume of DTTOs commenced.

<sup>237</sup> Drugs courts issue disposals other than DTTOs. Taking all drugs court expenditure into account in calculating the unit cost of a DTTO is therefore likely to over-estimate the unit cost of a DTTO. Conversely, excluding the costs of drugs courts entirely is likely to understate the unit cost.

<sup>238</sup> There is only information on RLOs handed out in the Scottish courts in total for 2004/5 to 2013/14, and by gender for 2008/9 to 2012/13.

<sup>239</sup> Data sourced from 'Criminal Proceedings in Scottish Courts', 'Criminal Proceedings in Scotland' and Freedom of Information Response from the Justice Analytics Service, FOI reference: FoI/14/01825, Scottish Govt.

<sup>240</sup> Refers to unit cost figures from 2013/14.

<sup>241</sup> The unit cost is calculated by dividing total recorded expenditure on electronic monitoring by the volume individuals monitored.

<sup>242</sup> This section shows the unit cost of electronic monitoring which is issued in the following circumstances: Court orders (Restriction of Liberty Orders and as a sanction for breaching a community payback order); Early release from prison (Home Detention Curfew for short term prisoners and Parole Licence for long term prisoners (over 4 years sentence)); Movement Restriction Condition as part of Intensive Support and Monitoring (imposed by children hearings); and as part of a DTTO.

**Northern Ireland****Probation Orders, Combination Orders and Community Service Orders<sup>243</sup>**

			2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Probation Order</b>	<b>No. of people given new orders<sup>244</sup></b>	Total	1318	1274	1274	1350	1335	1177	1209
		male	1131	1056	1064	1132	1081	950	958
		female	187	218	210	218	254	227	251
	<b>Flow rate<sup>245</sup></b>	Total	2784	2754	2740	2884	2977	2830	2694
		male	2362	2331	2304	2440	2488	2334	2192
		female	422	423	436	444	489	496	502
	<b>Daily rate<sup>246</sup></b>	Total	1503	1500	1594	1702	1698	1523	1517
		Per/100,000	85.3	84.3	88.9	94.3	93.6	83.5	82.9
		male	1293	1266	1357	1453	1415	1263	1258
		female	210	234	237	249	283	260	259
	<b>1 year breach rate<sup>247 248</sup></b>	Total	-	-	-	22%	24%	24%	-
	<b>Combination Order</b>	<b>No. of people given new orders<sup>74</sup></b>	Total	206	204	214	308	315	315
male			189	190	206	283	287	292	256
female			17	14	8	25	28	23	24
<b>Flow rate<sup>75</sup></b>		Total	415	420	438	559	635	662	637
		male	379	388	411	523	583	606	582
		female	36	32	27	36	52	56	55
<b>Daily rate<sup>76</sup></b>		Total	213	212	252	311	332	346	342
		male	196	195	241	286	298	317	317
		female	17	17	11	25	34	29	25
		Per/100,000	12.1	11.9	14.1	17.2	18.3	19.0	18.7
<b>1 year breach rate<sup>77 78</sup></b>		Total	-	-	-	39%	31%	34%	-
<b>Community Service Order</b>		<b>No. of people given new orders<sup>74</sup></b>	Total	756	958	1156	1280	1505	1409
	male		679	840	1019	1125	1285	1212	1135
	female		77	118	137	155	220	197	178
	<b>Flow rate<sup>75</sup></b>	Total	1280	1464	1752	2014	2270	2329	2126
		male	1154	1303	1561	1780	1969	2007	1841
		female	126	161	191	234	301	322	285
	<b>Daily rate<sup>76</sup></b>	Total	482	601	740	806	915	841	760
		male	444	548	659	719	793	735	670
		female	38	53	81	87	122	106	90
		Per 100,000	27.4	33.8	41.3	44.7	50.4	46.1	41.5
	<b>One year breach rate<sup>77 78</sup></b>	Total	-	-	-	28%	28%	27%	-

<sup>243</sup> Figures taken from Freedom of Information response from the Probation Board of Northern Ireland. FOI reference: 023.60.14.

<sup>244</sup> Counted as the number of people given new Probation Orders, Community Service Orders or Combination Orders in a given year.

<sup>245</sup> Total number of people supervised at any point during the year under Combination Orders, Probation Orders, or Community Service Orders in a given year. Includes people whose order commenced in a different year but has not yet expired.

<sup>246</sup> Number of people supervised at a point in time (end of financial year, 31st March) under Probation Orders, Community Service Orders or Combination Orders.

<sup>247</sup> Figures taken from 'Statistical Brief – Analysis of Breach Rates: 2012/13', Probation Board for Northern Ireland.

<sup>248</sup> An order is deemed to have breached when an order contact meeting type of 'Decision to Breach', 'Breach Summons Lodged', or 'Breach Warrant Lodged' is recorded on the PIMS (PBNI case management system) referral within one year of the start date of the order. The rates presented in this table should therefore be described as 'one-year breach rates'. It is not possible at this stage to include either the reason for the initiation of breach proceedings or the outcome of the proceedings due to the way this information is recorded on PIMS.

Cost of Probation Orders, Combination Orders and Community Service orders, Northern Ireland <sup>249</sup>

	Unit cost
Community Service Order	£2,000
Probation Order	£4,200
Combination Order	£4,200

Number of people given an additional requirement where they started a Combination Order or Probation Order by additional requirement, Northern Ireland <sup>250 251</sup>

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Alcohol Management Programme</b>	172 (39.4%)	180 (29.8%)	219 (33.4%)	263 (34.5%)	154 (26.9%)	169 (29.4%)	182 (32.1%)
<b>Anger Management and Cognitive Self Change programmes</b>	159 (36.5%)	150 (24.8%)	121 (18.4%)	167 (21.9%)	133 (23.2%)	106 (18.5%)	70 (12.3%)
<b>Community Sex Offender Groupwork Programme</b>	30 (6.9%)	33 (5.5%)	22 (3.4%)	24 (3.1%)	36 (6.3%)	47 (8.2%)	49 (8.6%)
<b>Integrated Domestic Abuse Programme</b>	66 (15.1%)	86 (14.2%)	75 (11.4%)	79 (10.4%)	57 (9.9%)	67 (11.7%)	47 (8.3%)
<b>Probation Approved Accommodation</b>	9 (2.1%)	15 (2.5%)	24 (3.7%)	24 (3.1%)	22 (3.8%)	16 (2.8%)	14 (2.5%)
<b>Resolve<sup>252</sup></b>	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	33 (5.8%)
<b>Think First</b>	0 (0%)	141 (23.3%)	195 (29.7%)	206 (27%)	171 (29.8%)	169 (29.4%)	134 (23.6%)
<b>Thinking Skills<sup>253</sup></b>	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	38 (6.7%)
<b>Total</b>	436	605	656	763	573	574	567

<sup>249</sup> Refers to costs in 2010 taken from DOJNI (2011) 'Consultation on a review of community sentences'. Belfast: DOJNI.

<sup>250</sup> Sourced from Freedom of Information response from the Probation Board for Northern Ireland. FOI reference: 023.60.14.

<sup>251</sup> Table excludes for example, additional licence conditions and interventions recommended by the Supervising Officer during the period of community supervision.

<sup>252</sup> This is a new programme.

<sup>253</sup> The 'Thinking Skills' programme has now replaced the 'Think First' programme.

Suspended sentences England and Wales<sup>254</sup>

			2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>Suspended sentence order<sup>1 1 1 1</sup></b>	<b>People serving</b>	<b>Flow</b>	5,848	32,727	44,421	45,502	46,897	47,902	47,521	45,275	43,134	44,944
		<b>Daily</b>	5,383	28,364	42,912	43,977	43,615	43,561	41,766	38,452	38,227	39,251
		<b>Per 100,000</b>	10.9	60.7	81.7	83.0	84.9	86.0	84.6	80.0	75.7	
	<b>Males</b>	<b>Flow</b>	45,832	95,111	99,573	101,552	103,074	99,598	94,046	86,708	82,448	38,181
		<b>Daily</b>	4,727	24,698	37,091	37,759	37,264	37,450	35,673	32,747	32,711	33,657
	<b>Females</b>	<b>Flow</b>	723	4281	5,951	6,476	6,823	6,694	7,046	6,803	6,234	6,763
		<b>Daily</b>	656	3,666	5,821	6,218	6,351	6,111	6,093	5,705	5,516	5,594
	<b>Revocations<sup>1 1</sup></b>	<b>Ran full course</b>		2,929 (31%)	12,910 (46%)	20,452 (50%)	24,081 (55%)	25,344 (56%)	26,865 (57%)	26,372 (57%)	22,631 (55%)	55%
		<b>Good progress</b>		530 (6%)	1,632 (6%)	4,090 (10%)	4,378 (10%)	4,892 (11%)	4,713 (10%)	5,358 (12%)	5,035 (12%)	13%
		<b>Failure to comply with requirements</b>		2,646 (28%)	6,131 (22%)	6,136 (15%)	5,254 (12%)	5,455 (12%)	5,185 (11%)	5,156 (11%)	4,026 (10%)	9%
		<b>Conviction of an offence</b>		2,308 (25%)	5,088 (18%)	6,954 (17%)	7,005 (16%)	6,731 (15%)	7,070 (15%)	6,971 (15%)	6,377 (15%)	16%
		<b>Other reasons</b>		996 (11%)	2,508 (9%)	3,272 (8%)	3,065 (7%)	3,036 (7%)	3,299 (7%)	2,595 (6%)	3,084 (7%)	7%
		<b>N for revocations (100%)</b>		9,409	28,269	40,904	43,783	45,458	47,132	46,452	41,153	38,196

<sup>254</sup> Figures taken from *Offender Management Statistics Quarterly. Probation Annual Tables 2013*, Ministry of Justice.

**Convictions where disposal included a suspended custodial element at courts in Northern Ireland**<sup>255 256</sup>

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>Suspended sentence</b>	Total	1,701	1,591	1,633	1,898	2,175	2,264	2,336	2,970	2,777	2,993	3,503	4,151	4,526	4,408
	male	1,565	1,445	1,489	1,705	1,952	2,008	2,094	2,625	2,482	2,685	3,092	3,613	3,881	3,795
	female	136	146	144	193	223	256	242	345	295	308	411	538	645	613

**Structured deferred sentences, Scotland**<sup>257 258</sup>

	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Total</b>	4,659	2,819	768	493	586	614
<b>Male</b>	3,634	2,172	529	329	361	398
<b>Female</b>	1,025	647	239	164	225	216

<sup>255</sup> Data collected on the principal offence rule; only the most serious offence for which an offender is convicted is included.

<sup>256</sup> Data provided by the Department of Justice for Northern Ireland via email.

<sup>257</sup> A new criminal case management system was introduced by the Scottish Court Service during 2006/07 so the first year with full information available is 2008/09.

<sup>258</sup> Data taken from a freedom of Information response from the Scottish Courts and Tribunals Service. FOI reference: RW\FOI201549.

## Alternatives during execution<sup>259</sup>

### Overview

The point during a custodial sentence when a person is released from prison will depend mainly on the length and type of sentence and the person's behaviour in custody. These factors will also influence what happens to a person on release and whether conditions or restrictions will be imposed, including any period of curfew, tagging or probation.

In E&W recent changes introduced to sentencing law<sup>260</sup> have created two major changes to the way a person is dealt with during service of a prison sentence. These changes relate to compulsory periods of supervision (for those sentenced to less than two years – dealt with in Pt 1 s 2) and to restrictions on automatic early release rules part way through a term of imprisonment.

'Extended sentences' (introduced in December 2012) include a custodial part and a licence part. The custodial part is designed mainly to punish. The licence part is designed to deal with risk posed by the individual. The court can impose extended sentences where it finds that the person is 'dangerous' and poses 'a significant risk of serious harm to members of the public'. Until 2014 most prisoners serving extended sentences were automatically released at the 2/3 point without consideration by the Parole Board. Once released they served the remainder of the custodial period on licence, and then the extended licence on top of that. Only a minority of those serving such sentences were not eligible for automatic release and instead had their cases considered by the Parole Board.

Recent legislation ended the system of automatic early release.<sup>261</sup> Now all prisoners serving an extended sentence, of any length, irrespective of whether they have a previous conviction for a relevant offence, have to go before the Parole Board. If release is not granted, the person will be released at the expiry of the custodial term. Under the previous form of extended sentences introduced with 2003 legislation, automatic release was granted at the half-way point of a sentence. The result of these changes is that in 3 years, receiving an extended sentence will for many prisoners double the time they serve, resulting in more pressure on prison places, and on the workload of Parole Boards.

If a person is released early from prison they will be subject to a licence, setting out conditions they must adhere to because their sentence is still ongoing but they are serving the rest of it in the community and not in prison. Anyone on home detention curfew will be on licence. If the conditions are broken the person may be recalled to prison. A person on licence will have to attend regular meetings with a probation officer. There may also be certain other conditions imposed.

In E&W, licence conditions are set by prison governors, with any additional conditions being selected from an approved list and recommended by probation. Standard conditions set for all prisoners include requirements to keep in touch with and receive visits from the designated probation officer, permanently live at an address approved by the probation officer, not travel without permission, not commit an offence, be of good behaviour and 'not behave in a way which

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<sup>259</sup> Those established during the execution of the sentence as forms of early release from prison.

<sup>260</sup> Criminal Justice and Courts Act 2015; and Offender Rehabilitation Act 2014

<sup>261</sup> Crime and Courts Act 2013

undermines the purposes of the release on licence, which are to protect the public, prevent re-offending and promote successful re-integration into the community’.

For life-sentenced prisoners, licence conditions are set by the Parole Board. A life licence remains in force - and offenders remain liable to recall - for the rest of their life, but offenders can apply to the Justice Secretary (through a request to probation) and argue that the conditions are no longer necessary and should be cancelled. The supervision element of a life licence normally remains in force for around 4 years (up to 10 years for people convicted of sexual offences), and can remain in force for longer or shorter periods depending on the case. The Justice Secretary will normally refer the case to the Parole Board before cancelling the supervision requirements.<sup>262</sup>

The recall of prisoners to prison due to breach of licence or other release conditions has been identified as a major contributing factor in prison population growth. In the latest government prison population projections (for 2014-2020)<sup>263</sup> it is acknowledged that the imposition of automatic post-release supervision for anyone sentenced to less than two years would likely impact on prison numbers. The analysis states that breaches of these licence or supervision periods could result in the person being recalled or committed to custody, impacting on the prison population. The estimated impact is higher levels of growth in projected recall numbers than in previous projections published prior to the legislation introducing the automatic supervision period.

In Northern Ireland, too, this has been identified as contributing to rising numbers. The Owers report on Northern Ireland’s prison system recommended that recall only be used to address risk or non-compliance and only for the shortest time necessary. It also criticized the inadequacy of data in NI on length of time spent in custody by those recalled or the numbers of people recalled. It recommended better data in respect of both.

### Alternatives during execution from the legal point of view

There are three measures of importance in the UK: parole, home detention curfew with electronic monitoring, and post-release probation supervision. These measures are not simply considered ‘alternatives’ to the continuation of custody. They also reflect policy goals regarding resettlement practice, public protection and controlling the risk of reoffending.

#### **Discretionary parole and access to parole (all jurisdictions)**

The possibility of seeking parole is open to the majority of sentenced prisoners in the UK at a certain point during their sentence. The purpose is for a decision to be taken about whether a prisoner should be released from prison (or moved to open conditions) to help prepare the prisoner for eventual return to the community after serving the prison sentence. The parole process involves an assessment of the risks of releasing the prisoner. It therefore requires consideration of the interests of victims and the wider public as well as those of the prisoner. If conducted properly, the parole hearing gives a prisoner an opportunity to be involved in decision making process about his future after prison.

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<sup>262</sup> More detailed information can be found here: NOMS, Probation Instruction, *Licence Conditions*, PI 2011/7

<sup>263</sup> *Prison Population Projections 2014 – 2020 England and Wales*, MOJ Statistics Bulletin, November 2014 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/380586/prison-population-projections-2014-2020.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380586/prison-population-projections-2014-2020.pdf)



### Home Detention Curfew and post-release electronic monitoring

Eligible prisoners may be released from prison early on condition they wear an electronic tag, usually on the ankle. Includes a curfew condition that requires those subject to it to remain at a particular place for a set period each day (usually for 12 hours). This is called Home Detention Curfew in E&W and was introduced in 1999 (E&W) and 2006 (S). In NI, electronic monitoring has also been introduced as a condition of licences for the release of prisoners undergoing post-prison supervision or subject to a curfew.

### Post-release probation

Whereas the above two measures involve some discretion in the decision-making process, there are also sentences entailing automatic periods of compulsory post-release supervision. Probation is an automatic consequence of sentence length (E&W – 2 years or less), or sentence type (NI, in cases where a determinate custodial sentence was ordered).

Probation after release can also be selected on a discretionary basis as one of the licence conditions set.

The UK has seen a rapid growth in the number of people are subject to post-release probation since 2000. This is likely to continue, due to recent extensions of probation requirements for short-term prisoners.

### Total number of people (flow and daily rate) serving alternatives during execution in 2014 and historical series since 2000

At the end of this section, we present quantitative data for parole, home detention curfew, post release probation and revocations, for all three jurisdictions, to the extent available.

### Alternative measures in detail

#### Parole

#### Content

The parole process involves an assessment of the risks of releasing the prisoner, carried out by a body which acts independently of the prison estate and judicial system. The decision is taken either at an oral hearing, at which the prisoner can make representations or, in some cases, on the basis of a hearing ‘on paper’, based on written statements and representations which the prisoner is entitled to see and comment on prior to the decision. Parole decisions require consideration of the interests of victims and the wider public, as well as those of the prisoner. Parole Boards operate differently in each jurisdiction. In the following answers, we focus on E&W but provide a brief section on S and NI at the end.

The rules are set out in subsidiary legislation.<sup>264</sup> Prisoners eligible for parole are those who have an extended sentence, or a fixed-term sentence:

- of 4 years or more, or
- passed for a serious violent or sexual crime committed before 4 April 2005.

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<sup>264</sup> In England and Wales, the Parole Board Rules 2011 (SI 2011/2947). CCJS can provide information on the rules in NI and S if required.

No one sentenced to less than 4 years can apply for parole. If the person is serving life imprisonment, or an indeterminate sentence, the Justice Secretary applies for parole on their behalf.

Prisoners can apply up to 6 months before their earliest release date. After an application form is submitted the hearing should take place no longer than 6 months later. Delays are frequent, in practice: see below.

Hearings are held in prisons and are not open to the public. Decisions are sent to the prisoner in writing and are not public documents. Oral hearings never used to be held and even today are not held in all cases. But the Supreme Court recently held that, for fairness reasons, they will generally be needed.<sup>265</sup> Therefore, paper adjudications by a single Parole Board member will now be far fewer. Reliance on paper hearings had grown when the Board's workload increased dramatically due to introduction of indeterminate sentences for public protection (now abolished) and a new rule that licence breach cases had to be dealt with by the Parole Board.

There will now be a hearing if the Board considers, based on the file it receives, that there is a realistic prospect of success, or if oral evidence is required from the prisoner. At the hearing up to 3 members of a panel will decide the application, based on evidence from the prison on:

- offender's behaviour in prison
- future plans once released
- whether offender likely to commit more crime or is a danger to the public
- this offence and any previous offences
- what the judge said when sentencing
- the statement of any victims
- medical, psychiatric and psychological evidence.

There are frequently delays beyond the 6 month limit. Prisoners sometimes succeed in claiming compensation for delay. A former chairman of the Parole Board has called for more funding, warning of potential prison disturbances (and recalling the notorious riot at Strangeways prison in 1990) if action is not taken to resource effectively for rising caseloads.<sup>266</sup>

Unsuccessful applicants can apply for a judicial review of refusal of parole where:

- important information was not given to the Parole Board
- the application was not dealt with appropriately, eg the decision was manifestly unreasonable.

Victims are allowed to attend to make statements but not to remain for the whole hearing. Their evidence might be needed if a release is to be made conditional on, eg the offender not going to an area where they live. Victims are informed when any release conditions they have requested are not applied by the Board.

### **Purpose or official goal of the measure**

The aim is to decide whether a prisoner should be released (or moved to open conditions) and to help prepare the prisoner for this. The process is an assessment of the risks of releasing the prisoner. It requires consideration of the public interest as well as those of the prisoner; and to a limited extent, the interests of victims. There have been complaints by victims that their views are

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<sup>265</sup> *Osborn v The Parole Board* [2013] UKSC 61

<sup>266</sup> BBC News, 'Warning over prison release delay', 14 May 2012. <http://www.bbc.co.uk/news/uk-18051500>

not given due regard at the parole stage. In response the Parole Board has pointed to the limited relevant information victims would have about the matters the Board must consider, which concern the prisoner's progress during sentence as evidenced by for example, psychologists' evidence, probation and prison officers' reports. Victim statements are not likely to contribute to the objective risk assessment required.

If conducted properly, the parole hearing gives a prisoner an opportunity to be involved in decision making process about his future after prison as well as on the imposition of licence conditions which could restrict various freedoms. A fair process requires all the necessary information to be available to the decision-making panel, and to be properly tested by those wishing to challenge that information.

Justice requires that people whose interests are affected by an official decision have a fair opportunity to contribute to and influence the decision process.<sup>267</sup> Legal representation is a key part of this. However, following austerity cuts, legal aid funding is now only available if the prisoner is being considered for release from a life sentence. For all other prisoners, no legal aid is offered. This means many prisoners' ability to challenge unreasonable parole decisions or take action over serious delays will be severely compromised.

### Supervision model adopted (e.g. control-oriented, rehabilitation-oriented...)

Parole decisions are aimed at risk control. Rehabilitation could in some cases be helped by a supervision requirement or some other targeted support to resettle the person being contained in the licence assuming this is properly resourced and delivered.

### Relations between the public and the private sector in managing the measures

There has traditionally been no private sector involvement in Parole Board decisions. Ensuring that prisoners' applications for parole are properly dealt with involves co-operation between the Prison Service, the Parole Board, probation and the police. The NPS is responsible for preparing all Parole Board reports on behalf of the probation service, and for victim liaison. Assistance is also needed from the MOJ (for analytical and similar input) and NOMS (managers will usually be important witnesses at parole hearings).

Following the TR reforms in E&W, private providers will also have a role in supporting the through-care and post-release supervision of some prisoners. They will have to liaise effectively with the Parole Board and the NPS. Good collaboration and information-sharing will be needed between the NPS and the CRCs. In addition, the workloads of NPS offender managers must be kept under control, otherwise practitioners have warned it will be impossible to create the necessary level of engagement with the offender prior to the hearing. If there are staff shortages or funding cuts to the NPS this will result in delayed hearings when reports are not ready.

Evidence to a Parliamentary Committee observed that, for the reforms to succeed, the Parole Board would need to focus on the more serious offenders, such as those being released on parole following a life or indeterminate sentence. The less serious offenders could be left to the contracted-out sector.<sup>268</sup>

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<sup>267</sup> As confirmed in the Supreme Court decision in *Osborn*

<sup>268</sup> Oral evidence to Justice Select Committee about Parole Board, December 2013  
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-work-of-the-parole-board/oral/4733.html>

### Budget allocated and its suitability

The Parole Board in E&W has suffered budget cuts and staffing reductions. The overall number of salaried staff had gone down from roughly 100 to around 82. There has been no decrease in the number of staff on the casework support side, the cuts having been made to middle management. Members are paid for oral hearings they sit in, and these are the most expensive part of the parole service. Oral hearings have increased in number as a result of recent Supreme Court decisions discussed above which trebled the number of anticipated oral hearings, raising operating costs by at least £10m according to Parole Board estimates.<sup>269</sup> A further consequence has been an increase in the backlog of cases awaiting decision which exceeded 1,000 at the end of 2013.

Another ongoing pressure on the Board's caseload is the change to how breaches of licence by released prisoners are dealt with. Now, the Board is responsible for recalled prisoners, who will often be required to attend a Board hearing after a breach while on licence, even in cases where the original offence was not serious. In all such cases the Board must decide whether the person should be released again.

### Impact of measures:

#### on the prison population

The number of prisoners granted parole in any year will have a corresponding impact in reducing numbers. However, the number of prisoners eligible to apply for parole has seen a steady increase over recent years and, as stated, there is a backlog of delayed cases. This reduces the downward impact on prison numbers that a fully functional parole system could have.

Those recalled for breach of licence are also now dealt with by the Parole Board. For all those where a decision is taken to return them to custody, there will be a corresponding increase in the prison population.

#### on the lives of the subjects involved (work, physical/psychological wellbeing, family and social relationships, goals and life perspectives, recidivism rate)

At best, the parole process can be seen as a key part of overall sentence planning for prisoners and those supporting them. The decision must look into whether the prisoner has worked towards 'addressing his/her offending behaviour'. A common ground for parole refusal is that the board considers the prisoner has failed to do so. However, this process will be hampered from the start if the sentence plan does not include work to help the prisoner do this: for example, through counselling, courses, and work experience. With resources, staff levels and funds being cut year after year while prisoner numbers increase, it is questionable how fair the parole process can be, and what positive impact the process will have on prisoners' future lives in the community. When resources are cut and workloads increase, the focus inevitably shifts to risk control.

The positive impacts of the parole system would be maximized if the parole application process itself works well, with the appropriate staffing levels and all available support offered to the prisoner to ensure the procedure is understood. A report of May 2000 found that the parole system procedures and the criteria applied were not understood well by prisoners. This led to information being produced aimed at providing the details in a clear, accessible way, with involvement of NGOs working to support prisoners and their families.

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<sup>269</sup> BBC News online, 12 July 2014, 'Parole hearings 'to treble' after 'fairness' ruling' <http://www.bbc.co.uk/news/uk-28272742>

### Home Detention Curfew (HDC)

This measure is provided by primary legislation accompanied by rules contained in secondary legislation (Prison Service Orders). Since its introduction, its use has grown steadily.

In **E&W** applications are decided by the Prison Service and authorization is given by prison governors (or in private prisons, by the prison controller) under authority delegated by the Justice Secretary. All eligible prisoners must be assessed for HDC whether they apply for it or not.

In **S** potentially eligible prisoners must apply for HDC. Otherwise, the approach is generally similar to E&W. CJSW can assist the decision by providing information and support about, for example, accommodation availability.

The information below covers the two jurisdictions, but when there are significant differences between the two, these are pointed out.

#### **Content**

HDC allows prisoners serving sentences between three months and four years to be released early on licence into the community, while wearing an electronic tag (usually on the ankle). In Scotland prisoners serving over 4 years and granted parole are also eligible for a HDC for the period between parole being granted and their parole qualifying date.

HDC has a curfew condition requiring prisoners to remain at a particular place for a set period each day. Guidance states that the normal period should be 12 hours, though requests can be made to shorten the period, for example, for employment or caring obligations. Curfews can never be less than nine hours. Breach of the curfew or other licence conditions or being charged with a further offence may result in recall.

Prisoners convicted of certain offences are excluded (sex offences and some violent offences) as are those liable to deportation on release. Others are presumed unsuitable unless there are exceptional circumstances (examples include those convicted of terrorism offences or homicide). To be eligible, prisoners must:

- Pass a risk assessment (decision made by Prison staff, includes a report by probation.<sup>270</sup> This report may include third party comments, for example, from people at the proposed address or from the victim).
- Have suitable accommodation approved by the probation service.
- Meet other criteria aimed at public protection and preventing reoffending.

Other conditions can be included in the licence on a case-by-case basis.

Time spent on HDC varies according to original prison sentence length from a minimum of 14 days. The maximum length of time has been extended several times since its introduction (current maximum in E&W: 135 days, in S: 6 months). In E&W the average amount of time spent on HDC was 2.8 months (for quarter ending Dec 2013, Ministry of Justice, 2014).

#### **Purpose or official goal of the measure**

The official purpose is to 'manage more effectively the transition of prisoners from custody back into the community'.<sup>271</sup> HDC is intended to support a prisoner's transition out of prison by

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<sup>270</sup> Throughout this section 'probation' refers to the probation arrangements in E&W and the equivalent criminal justice social work services in Scotland.

controlled access to the community. It gives the offender a period of conditional liberty with a lesser set of constraints than those entailed by incarceration. It can prepare prisoners for full freedom by creating opportunities to respond 'responsibly' by getting to the end of the release period without breaching the constraints, 'testing prisoners in conditions that afford them increased freedom is a valuable means of helping offenders reintegrate with their families and communities'.<sup>272</sup> The aim is to promote rehabilitation and resettlement while offering a measure of public protection.

It is not the officially stated purpose of the scheme to reduce prison numbers or prison sentence lengths. Despite the measure's potential to reduce pressure on prisons at a time of overcrowding and constrained resources, there is political sensitivity about connecting early release schemes to their impact on prison numbers. To illustrate this, the Sentencing Commission in Scotland, when reviewing early release schemes, were asked not to look at the impact on prison numbers of these schemes or reforms to them.

### Supervision model adopted (e.g. control-oriented, rehabilitation-oriented...)

Again, the measure is essentially aimed at control, extending a form of surveillance and restriction of liberty, outside the prison walls. The notional goal of helping towards reintegration is questionable given the fairly short duration of the measure, particularly if limited support services are available.

### Relations between the public and the private sector in managing the measures

HDC involves collaboration between the following agencies.

**Prison Service:** Makes decision to grant HDC and responsible for recall to prison in cases of breach. In Scotland initial risk assessment carried out by prison service.

**Probation:** Compiles report assessing suitability of the proposed accommodation prior to HDC being granted and assessment of available information about prisoner. In E&W: Responsible for monitoring any non-curfew licence conditions (e.g. subject to supervision). In S: If there are any nonstandard conditions that require monitoring, CJSW or police are expected to do this, although they have no statutory obligation to do so.

**Police:** They are notified of HDC releases. If they arrest or caution someone subject to HDC, they are expected to inform the prison service.

**Private contractors:** The provision and monitoring of electronic tags is contracted out to the private sector in all three jurisdictions. In E&W, Capita currently provides electronic monitoring. The legitimacy of measures dependent on electronic monitoring has also been threatened by disputed charging practices. G4S and Serco previously supplied these services but withdrew from the 2013 bidding process whilst facing a Serious Fraud Office investigation about over-charging. In S, Serco has a five year contract entered into in 2013, worth £13 million. If the curfew is broken the police and probation services are sent an 'alert' by the private provider.

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<sup>271</sup> Home Office Guidance, referring to Prison Service Order 6700, *Home Detention Curfew*

<sup>272</sup> *Balancing Risk and Need, Review of the decision to send Brian Martin to open conditions in the light of his subsequent absconding from the Open Estate on 18 May 2009 and issues highlighted as a consequence*, A Spencer, (2009), Scottish Government Report

### Budget allocated and its suitability

It costs an estimated £1,300 to monitor someone on HDC for 90 days, compared to £6,500 for a similar period in custody.<sup>273</sup> However, as only those judged less 'risky' are eligible, this group is most likely to include those for whom prison is least appropriate. So it may be more useful to compare the cost of prison and HDC to a similar period of time spent on a community sentence. In a 2012 report<sup>274</sup> the current system was criticized as insufficiently competitive, as a small group of private companies controlled the market and NOMS were failing to harness sufficient innovation or reform in the technology or the involvement of probation and police.

#### Impact of measures:

##### on the prison population

#### England and Wales

*Effect on prison numbers* Without the introduction of HDC it is clear that, other things being equal, prison overcrowding would have been worse than it is today. The Ministry of Justice has acknowledged this in official reports on the period since 2005, linking under-use with rises in prisoner numbers and increased use with falls in the amount of time served.

*Effect on reoffending figures* A recent study<sup>275</sup> showed that people on HDC were no more likely to engage in criminal behaviour when released than those with similar characteristics who were not eligible for early release on HDC. Another study suggests that HDC can have a positive effect on reducing reoffending, but only when combined with other forms of support and monitoring.<sup>276</sup>

#### Scotland

Research with prison staff and CJSW found that most considered the main purpose of HDC to be the management of prison populations. This was reinforced by figures showing that it is the most crowded prisons that make the most use of HDC.<sup>277</sup>

However, there are concerns that HDC (and early release more generally) is not well explained in the public domain and risks being seen as a way to manage prison populations without due consideration for public safety. This situation risks increasing the level of public cynicism about this kind of measure being too lenient compared to a longer time in prison.

##### on the lives of the subjects involved concerning in particular the following aspects:

##### work

People on HDC are free to work during normal working hours and, in that sense, its benefits outweigh the disadvantages of remaining in prison and unable to work or look for work. If an offer

<sup>273</sup> *The electronic monitoring of adult offenders*, National Audit Office, 2006

<sup>274</sup> *The future of corrections*, Policy Exchange, September 2012

<http://www.policyexchange.org.uk/publications/category/item/future-of-corrections-exploring-the-use-of-electronic-monitoring>

<sup>275</sup> *The effect of home detention curfew on recidivism* (Marie, Moreton and Goncalves, 2011) Research Summary 1/11, Ministry of Justice

[www.justice.gov.uk/publications/research-and-analysis/moj/effect-hdc-recidivism.htm](http://www.justice.gov.uk/publications/research-and-analysis/moj/effect-hdc-recidivism.htm)

<sup>276</sup> 'Effects of early release from prison using electronic tagging in Sweden', F Marklund and S Holmberg (2009) *Journal of Experimental Criminology*, vol. 5: 41-61

<sup>277</sup> *Evaluating Home Detention Curfew and Open Prison in Scotland*, S Armstrong, M Malloch, M Nellis, P Norris, Scottish Govt Social Research, 2011

of employment conflicts with the hours of the curfew, the individual should explain this to probation services in order to seek a revision to the terms of the licence. In practice, this could be difficult to bring about quickly, and some people on curfew may be restricted to applying only for work that can be done outside their curfew hours. For those with childcare or other caring responsibilities to fulfil, this would be a further factor making the curfew difficult to meet while simultaneously working during normal hours.

### **physical and psychological well being**

Questions have been raised about the suitability of ankle tags for women, as these would potentially be more noticeable than for men and may 'heighten stigma and embarrassment'.<sup>278</sup> Some people are more likely to find it difficult to occupy themselves and use time effectively whilst under curfew, which can increase family and relationship stress and lead to boredom and depression.

### **familiar and social relationship**

There is some evidence that families can find 12-hour curfews stressful but HDC is usually strongly supported by families as it enables their relative to get out of prison.<sup>279</sup> It has been suggested that one reason why women's compliance rates are lower than men's may be that women sometimes have no option but to break the curfew due to their caring responsibilities, particularly when they are single parents.<sup>280</sup>

Relationships and family life are generally considered better under an HDC than when someone is in prison (assuming they do not themselves present a threat or risk to family members). However, the inflexible way HDC can be applied has been criticized. This relates to the insensitivity of the equipment given that a tag-wearer can cause an alert simply by putting out a rubbish bin outside during curfew hours. It is important that sparing use is made of HDCs and that innocent breaches like this are not capable of triggering costly or disproportionate consequences.

### **recidivism rate**

(This was dealt with above under prison impacts.)

## **Post-release probation**

### **Content**

Supervision after a person's release from prison has traditionally formed a significant part of probation's work in all the UK systems. The main elements of probation for all three UK jurisdictions were covered in Part 1 section 2 (Probation practice) and will not be repeated here. Instead we explain aspects of the UK systems that are specific to supervision after release from prison and that were not dealt with in Part 1.

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<sup>278</sup> 'Designed for men, but also worn by women', E Holdsworth, A Hucklesby, *Criminal Justice Matters*, Vol 95 (1) 2014. See also research to be published in 2016 under European Commission Action project (JUST/2013/JPEN/AG) 'Creativity and Effectiveness in the Use of Electronic Monitoring as an Alternative to Imprisonment in EU Member States'. The project is managed and coordinated at the Centre for Criminal Justice Studies, University of Leeds, by Professor Anthea Hucklesby and involves partners from five EU jurisdictions including England and Wales.

<sup>279</sup> (Armstrong et al., 2011 above)

<sup>280</sup> (Holdsworth & Hucklesby, 2014 above)



## England and Wales

A key feature of the TR reforms will be the extension of compulsory post-release supervision to a larger number of short-sentenced prisoners, as already explained.

## Northern Ireland

The Determinate Custodial Sentence is unique to NI and requires an offender to serve a fixed period of imprisonment followed by a fixed period of supervision in the community. The sentencing court will specify the length of each part of the sentence.

## Scotland

As part of their legal duty to promote social welfare and community safety, criminal justice social work offer supervision for prisoners returning to the community subject to licence and conditions. They also contribute to risk assessment and planning for high risk offenders under multi-agency public protection (MAPPAs) arrangements discussed in Part 1.

CJSW services have a legal duty to provide assistance to persons released from prison and their families on request, following a short-term sentence (up to four years). They are also required to provide compulsory supervision for long-term prisoners (sentences of more than four years) who are subject to statutory supervision (including where supervision is a condition of parole). In addition, large national voluntary agencies<sup>281</sup> provide a range of personal assistance and family support. Unique to Scotland, a lifetime supervision order (Order of Lifelong Restriction) is available to the Court when sentencing.

The NGO, the Howard League Scotland, has called for improved transitional support for all short-term prisoners on release, arguing that every prisoner who requires it should be met at the gate by a support worker or volunteer known to them, and that this person should continue to support the individual as long as is necessary for them to become able to maintain a tenancy.<sup>282</sup>

## Supervision model adopted (e.g. control-oriented, rehabilitation-oriented...)

Recent years have seen a shift of emphasis in how the work of post-release probation is delivered, away from traditional rehabilitation and resettlement support, towards risk management, crime prevention and safeguarding.

Though presented as reforms that would improve rehabilitation outcomes for larger numbers of offenders, it is too early to say whether the TR changes will in fact do this. In March 2015, the House of Commons Justice Select Committee warned that the level of pressure that prisons are currently working under risked undermining the positive impact of the 'through-the-gate' and post-release probation support envisaged under the TR programme. The increase in overcrowding in prisons had, in their view, undermined constructive regimes designed to encourage rehabilitation and had actually limited the opportunities to reduce reoffending.

## Relations between the public and the private sector in managing the measures

We described the public and private bodies' functions and interactions in Part 1.

In E&W, the delivery of the additional caseload of post-release supervision will fall mainly to the new CRCs, so will be planned and managed by the private sector in collaboration with voluntary,

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<sup>281</sup> Organisations such as Sacro, Action for Children and Apex

<sup>282</sup> Howard League Scotland website <http://www.howardleaguescotland.org.uk/>

statutory and other bodies. The NPS, police and courts will also be closely involved, as explained in Part 1.

### **Budget allocated and its suitability**

There will be around 50,000 extra cases for probation to supervise in E&W as a result of the extension of compulsory post-release probation, but no extra funding from government to pay for it. Payments to the CRCs for the cases they supervise will be geared to 'results' based largely on whether the person reoffends within a year from release. The government has stated that the only way it can afford to introduce the additional supervision for short-sentenced prisoners is to introduce private sector delivery incentivised through payment by results.

Only time will tell whether the necessary savings will be generated. The risks are that the quality of supervision will be reduced, reconviction rates will not be cut, and orders will be breached resulting in greater workloads for CRCs, the NPS (which has responsibility for enforcing orders), courts, police and prisons. These adverse consequences could carry heavy costs which could exceed savings achieved by privatisation.

### **Impact of measures:**

#### **on the prison population**

It is too early to know what impacts on prison numbers the additional compulsory supervision requirement will have but one potential adverse effect would arise if large increases in breach numbers led to further pressure on the prison population. The new laws on compulsory post-release supervision for anyone sentenced to two years or less set out the potential effects of breach. There are four sanctions for magistrates to choose from. These are: fines, unpaid work, an electronically monitored curfew and prison for up to 2 weeks. Even if prison is not used the first time, if one of the other sanctions is applied but breached, prison would be more likely the next time.

#### **on the lives of the subjects involved concerning in particular the following aspects:**

#### **work, physical and psychological well being, familiar and social relationship, goals and life perspectives**

If post-release probation has positive impacts in these areas, it will be as a result of productive and effective relationships, support and programmes being offered to ex-prisoners during their compulsory period of post-release probation. We have described above the potential positive impacts which targeted, professional and well-resourced probation support can have. We have also described its limitations when those released from prison continue to face multiple disadvantages and the additional stigma of having a conviction and having served time in prison.

#### **recidivism rate**

The main justification for the TR restructuring was the high reconviction rates of short-sentenced prisoners, and the fact that supervision after release was not provided for such prisoners but only for those seen as presenting a higher risk. However, as discussed earlier, there is no evidence yet that extending supervision on a compulsory basis to cover anyone sentenced to 2 years or less would have any specific impact on reconviction rates.

Quantitative data on measures during execution of a custodial sentenceParoleEngland and Wales<sup>283</sup>

	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Parole releases</b> <sup>284</sup>	2,491	2,788	2,790	3,777	3,268

Scotland<sup>285</sup>

	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Parole releases</b>	362	336	314	297	323	236	245

## Northern Ireland

Number of people on PBNI caseload serving licences in the community at 31 March 2007 to 31 March 2014<sup>286 287</sup>

		<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
<b>Numbers supervised</b>	<b>Female</b>	<u>&lt;4</u>	<u>&lt;4</u>	<u>&lt;4</u>	<u>&lt;4</u>	<u>4</u>	<u>8</u>	<u>21</u>	<u>31</u>
	<b>Male</b>	<u>74</u>	<u>83</u>	<u>94</u>	<u>118</u>	<u>218</u>	<u>366</u>	<u>560</u>	<u>769</u>
	<b>Total</b>					<u>222</u>	<u>374</u>	<u>581</u>	<u>800</u>

<sup>283</sup> Figures taken from *Parole Board for England and Wales Annual Report and Accounts 2013/14*.

<sup>284</sup> Includes oral and paper review, recall and advice hearings for determinate, life and IPP sentenced prisoners which resulted in a release outcome.

<sup>285</sup> Figures taken from 'Parole Board for Scotland Annual Reports'.

<sup>286</sup> This includes: Life Sentence, Article 26 Licence, Determinate Custodial Sentence (DCS), Extended Custodial Sentences (ECS), Indeterminate Custodial Sentences (ICS) and GB Transfers. The notable increase is due to the introduction of the DCS, ECS and ICS licences (ref Criminal Justice (Northern Ireland) Order 2008)

<sup>287</sup> Data taken from Freedom of Information response from the Probation Board of Northern Ireland, FOI reference: 023.11.15.

Home Detention CurfewEngland and Wales<sup>288</sup>

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>No. released on HDC</b>	15,511	13,648	20,456	21,188	19,294	17,296	13,666	11,428	11,721	11,534	12,250	12,727	12,803	10,419
<b>Average daily population (at end of year)<sup>289</sup></b>	1,700	1,700	3,100	3,700	3,400	3,300	2,500	2,400	2,600	2,500	2,800	2,800	2,800	2,500
<b>No. of males released</b>	14,006	12,120	18,509	19,050	17,159	15,392	12,122	10,108	10,239	10,164	10,770	11,151	11,142	9,051
<b>No. of females released</b>	1,505	1,528	1,947	2,138	2,135	1,904	1,544	1,320	1,482	1,370	1,480	1,576	1,661	1,368

## Revocations

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>Total</b>	<b>769</b>	<b>673</b>	<b>1,479</b>	<b>2,716</b>	<b>3,003</b>	<b>2,627</b>	<b>2,184</b>	<b>1,654</b>	<b>1,442</b>	<b>1,441</b>	<b>1,154</b>	<b>1,179</b>	<b>924</b>	<b>701</b>
<b>Breach of HDC conditions</b>		365	815	1,470	1,710	1,722	1,522	1,227	1,062	930	625	718	742	634
<b>Charged with new offence</b>		110	218	402	464	327	230	155	169	228	205	221	47	1
<b>Breach of non-HDC licence conditions</b>		10	57	139	173	166	124	96	64	95	114	96	8	0
<b>Other</b>		188	389	705	656	412	308	176	147	188	210	144	127	66

Scotland<sup>290 291</sup>

	2007/8	2008/9	2009/10	2010/11	2011/12
<b>No. released on HDC</b>	2,082	2,056	1,885	1,820	1,942
<b>No. men released on HDC</b>	1,857	1,804	1,674	1,614	1,698
<b>No. women released on HDC</b>	225	252	211	206	244
<b>Average daily population<sup>292</sup></b>	310	370	373	358	365
<b>Average men daily population</b>	274	325	333	320	323
<b>Average women daily population</b>	36	45	40	38	42

<sup>288</sup> Data taken from *Offender Management Caseload Statistics 2004*, Home Office, and *Offender Management Statistics*, 2013 annual edition, Ministry of Justice

<sup>289</sup> The figures have been rounded to the nearest 100.

<sup>290</sup> HDC was implemented in 2006 in Scotland. These figures include all those aged over 16.

<sup>291</sup> Figures taken from *Prison Statistics and Population Projections Scotland 2011-12*, *Cost of the criminal justice system in Scotland* dataset and a Freedom of Information response from the Scottish Prison Service, FOI reference: FOI 14274.

<sup>292</sup> Figures exclude prisoners recorded as unlawfully at large. This is due to a time lag in recording the outcome of recall procedures in certain cases, which results in an over-estimate of the HDC population if these cases are included. Figures for 2010-11 have been revised upward by about 15% as a result of cleaning outstanding cases recorded as unlawfully at large.

## Recalls to custody from HDC

	2007/8	2008/9	2009/10	2010/11	2011/12
<b>Total</b> <sup>293</sup>	511	458	394	381	381

Reasons for recall to custody from HDC<sup>294</sup>

	2007	2008	2009	2010	2011	2012	2013	2014
<b>Assault (or threat) on contractor</b>	1	2	1	3	-	1	1	1
<b>Breach of licence conditions</b>	109	127	109	79	95	91	82	79
<b>Cancelled breach - appeal</b>	20	38	27	16	15	9	13	14
<b>Cumulative breach of curfew</b>	42	32	14	22	19	18	8	13
<b>False breach (SPS/Serco error)</b>	8	16	17	13	3	10	8	10
<b>Intentional damage to EM equipment</b>	64	60	52	44	29	41	35	33
<b>Minor breach of curfew (&gt;2&lt;6 hrs)</b>	9	7	4	3	6	2	1	4
<b>New warrant served</b>	21	42	43	48	37	41	34	28
<b>Presence at a restricted location</b>	-	-	1	4	1	1	-	1
<b>Preventing installation of EM equipment</b>	22	20	10	15	19	19	10	11
<b>Preventing maintenance of EM equipment</b>	1	2	-	3	-	2	1	1
<b>Serious breach of curfew (&gt;6 hrs)</b>	201	190	149	131	145	128	106	119
<b>Withdrawal of consent (householder)</b>	26	30	29	28	35	25	18	20

Cost of HDC<sup>295</sup>

Services/Disposals	Volume	Total Expenditure	Unit Cost <sup>296</sup>
Electronic Monitoring <sup>297</sup>	3,929 new reports	£2,884,643	£734
Home Detention Curfew Reports <sup>298</sup>	2,919 Reports written	£415,744	£142

<sup>293</sup> Figures for 2007-08 were revised in the 2009-10 data release as a result of technical difficulties in recording the outcome of recall procedures in certain cases. The revised figures are about 10% lower than those published in the original 2007-08 release.

<sup>294</sup> Figures are for calendar years so do not correspond to data on total recalls to custody.

<sup>295</sup> Refers to unit cost figures from 2013/14.

<sup>296</sup> The unit cost is calculated by dividing the total expenditure over the volume.

<sup>297</sup> This section shows the unit cost of electronic monitoring which is issued in the following circumstances: Court orders (Restriction of Liberty Orders and as a sanction for breaching a community payback order); Early release from prison (Home Detention Curfew for short term prisoners and Parole Licence for long term prisoners (over 4 years sentence)); Movement Restriction Condition as part of Intensive Support and Monitoring (imposed by children hearings); and as part of a DTTO.

Post-release supervisionNumber of people under post release supervision December 2002 to December 2014 in England and Wales <sup>299 300 301</sup>

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>Number of people under post release supervision</b>	22,000	21,106	22,739	25,603	26,096	28,721	32,220	34,881	37,229	40,049	42,162	39,565	39,270
<b>Number of men under post release supervision</b>	20,777	19,839	21,319	24,095	24,550	26,930	30,190	32,656	34,835	37,487	39,558	37,255	37,056
<b>Number of women under post release supervision</b>	1,223	1,267	1,420	1,508	1,546	1,791	2,030	2,225	2,394	2,562	2,604	2,310	2,214

Number of people under post-release supervision by the PBNI at 31 March each year in Northern Ireland <sup>302</sup>

	2010	2011	2012	2013	2014	2015
<b>Post-release supervision</b>	722	649	648	765	925	11,048

<sup>298</sup> This only represents the cost of the report writing. The cost of the Electronic Monitoring element of the Home Detention Curfew is £734.

<sup>299</sup> Data taken from *Offender Management Statistics*, Ministry of Justice, annual editions.

<sup>300</sup> Each person is counted only once in the total even if they were subject to several types of sentence at the year end.

<sup>301</sup> Reliable information on the probation caseload is only available from 2002 onwards.

<sup>302</sup> Figures taken from *PBNI Caseload Statistics 2014/15*, Probation Board for Northern Ireland.