

Final resource assessment

Imposition of community and custodial sentences overarching guideline

Introduction

This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services ([s127 Coroners and Justice Act 2009](#)).

Rationale and objectives for new guideline

The existing Imposition of community and custodial sentences overarching guideline (the 'Imposition' guideline) was issued on 1 February 2017 to replace the Sentencing Guidelines Council (SGC) guideline [New Sentences: Criminal Justice Act 2003](#). The Council sought to lay out the general principles around the imposition of a community order (CO) and a custodial sentence, within the context of the sentencing decision. It also sought to clarify the factors which may make it appropriate to suspend a custodial sentence and impose a suspended sentence order (SSO) to improve the overall consistency of approach. The guideline additionally aimed to clarify any apparent issues regarding SSOs being imposed as a more severe form of a CO, when they should only be used for suitable cases that had passed the custody threshold.

The Imposition guideline directs sentencers on when to impose a CO or custodial sentence, including in what circumstances these can be suspended and also provides other material, such as information on requirements, guidance on requesting pre-sentence reports (PSRs) and a sentencing decision flow chart. More than six years after it was originally brought into force, changes to policy, case law and case management guidance, in addition to further evidence about the experiences of individual offender groups in the criminal justice system, and a variety of both general and practitioner feedback, led the Council to conclude that a more comprehensive review of the guideline was justified.

A [review of trend analysis](#) of sentencing outcomes in March 2023 concluded that the combination of the Imposition guideline and subsequent communications in April 2018 had been effective in directing sentencers' attention to the guideline and clarifying the principles. This was evidenced by an increase in the proportion of COs and associated decrease in the proportion of SSOs from around April 2018. However, it acknowledged the limited scope of the analysis and affirmed that the

Council would be undertaking a wider policy project to review the Imposition guideline in its entirety.

This review has now been carried out and the revised Imposition guideline has been produced with the intention of providing more comprehensive guidance around issues pertaining to imposing a CO or custodial sentence. It is intended that the revised guidance highlights the importance of ensuring courts have the most comprehensive information available to them about the circumstances around the offence, the offender (and any history of compliance with previous court orders) and the available sentencing options in their area before making a sentencing determination. The revised guideline also encourages courts to use the full breadth of sentencing options available to them to tailor the sentence to the individual offender and their circumstances. It also includes new guidance regarding requesting a PSR, reference to important evidence regarding the effectiveness of immediate custodial sentences of 12 months or less, and considerations courts should take into account for specific cohorts in the criminal justice system that are pertinent to the sentencing decision process. It is hoped that the revised guidance will continue to improve the consistency of approach and the application of principles for sentencers to impose the most appropriate sentence for each offender considering all the circumstances.

Scope

The Imposition guideline applies only to adults. This assessment therefore considers the resource impact of the revised guideline on prison and probation service resources. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

Current sentencing practice

To understand the resource impact of the new guideline, an understanding of current practice is needed. However, as the Imposition guideline is an overarching guideline, there are no offence specific sentencing statistics to draw on as the guideline is applicable to a large number of different offences. Nevertheless, it is recognised that the Imposition guideline will be most relevant to those offences for which the sentencing ranges span both community and custodial sentences and within which decisions must be made regarding which outcome is most suitable to fulfil the purposes of sentencing. Relevant figures therefore include the frequency of these outcomes which have been produced from statistics from the Ministry of Justice's (MoJ) Court Proceedings Database (CPD). Specific statistics from alternative sources to support understanding of the potential prison and probation resource impacts are referenced throughout the resource impact section below, at the relevant points.

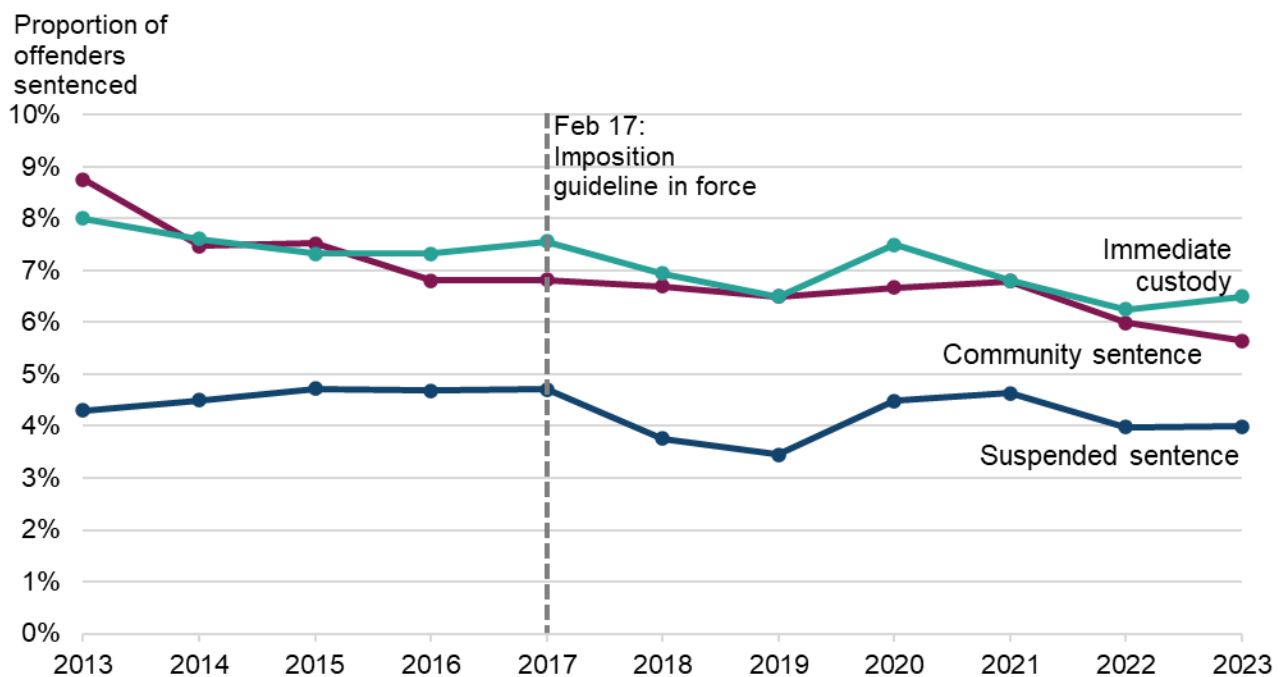
Sentencing outcomes

In 2023 there were around 71,100 immediate custodial sentences, 61,800 COs and 43,700 SSOs imposed for adults, comprising 7, 6 and 4 per cent respectively of total sentencing outcomes for that year. Triable either way offences accounted for over three quarters of all custodial sentences (both immediate and suspended) along with

slightly over half of COs. The remaining half of community orders were imposed almost entirely for summary offences.

As seen in Figure 1, the proportion of SSOs and immediate custodial sentences has fluctuated somewhat over the last decade. After the Imposition guideline came into force in February 2017 the proportion of COs generally stabilised, while the proportion of SSOs and immediate custodial sentences decreased. Between 2021 and 2022 there was a small decrease in the proportion of offenders receiving COs, SSOs and immediate custodial sentences. Then between 2022 and 2023, the proportion of COs, SSOs and immediate custody remained broadly stable.

Figure 1: Change in proportion of community and custodial sentences out of total sentencing outcomes for adult offenders, 2013 to 2023



Source: Court proceedings database, Ministry of Justice

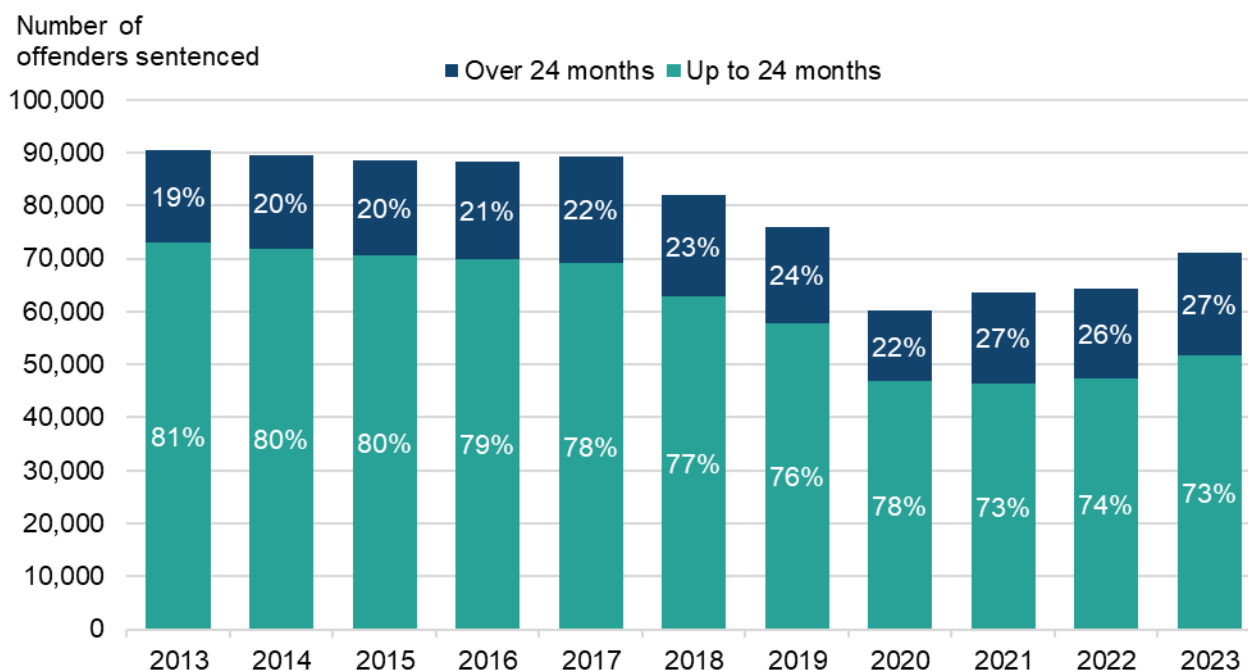
As the Imposition guideline covers principles around when it may be appropriate to suspend a custodial sentence, it is useful to consider current sentencing practice with regards to the volume of immediate custodial sentences being imposed above and below the 24-month threshold for which custodial sentences can be suspended.

As seen in Figure 2, the frequency of immediate custodial sentences above the 24-month threshold has stayed relatively stable over the last decade, between around 17,000 and 20,000, with the exception of 2020 when it fell to 13,400. This is assumed to be the result of the coronavirus (COVID-19) pandemic when court sitting times were drastically reduced and the imposition of immediate custodial sentences required additional considerations (see the Council's note on [the application of sentencing principles during the COVID-19 emergency](#)). After 2020, the number of offenders sentenced to a custodial sentence over the 24-month threshold increased and by 2023 had returned to pre-pandemic levels.

While the number of sentences over the 24-month threshold has remained relatively stable, the proportion (out of all immediate custodial sentences) has increased from 22 per cent in 2017 to 27 per cent in 2023. This is due to the decrease in sentences

below the 24-month threshold. Between 2013 and 2019 there was a year-on-year decrease in the number of sentences below the 24-month threshold, from 73,200 (81 per cent of sentence) to 57,800 (76 per cent of immediate custodial sentences). In 2020, there was a further drop in volume, attributable to the coronavirus pandemic, since then, there has been a small increase, up to around 51,600 in 2023 (73 per cent of immediate custodial sentences).

Figure 2: Number and proportion of immediate custodial sentences by final sentence length, above and below the suspension threshold of two years, 2013 to 2023



Source: Court proceedings database, Ministry of Justice

Key assumptions

To estimate the resource impacts of a guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives and anticipated consequences of the revised guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected by the guideline. Any estimates of the impact of the new guideline are therefore subject to a substantial degree of uncertainty and will be heavily reliant on an assessment of the effects of changes to the structure and wording of the revised guideline compared with the existing Imposition guideline.

The resource impact of the revised guideline is only presented in terms of changes to prison and probation resource which are expected to occur as a result of it. Any future changes to prison and probation resources unrelated to the publication of the guideline are therefore not included in the estimates.

While data exist for relevant areas such as number of offenders receiving COs and custodial sentence outcomes and the frequency of PSRs, there are many areas of

the revised guideline for which key baseline data are not currently publicly available, for example on volumes of deferred sentences and lengths of community requirements. It is also not possible to use a single measure to estimate probation resource as the association between caseloads and staffing depends on a variety of factors (including, but not limited to, offender risk, volume and combination of requirements and rehabilitative needs). Also, in part due to this, there are regional differences in the provision of probation-led services both at court and in the community. As a consequence, it is difficult to estimate with any precision the impact the guideline may have, particularly on probation resources.

Despite this, it is still important to estimate what impact the guideline may have and to consider how the guideline will work in practice. To support the development of the guideline, small-scale research was conducted with sentencers during the consultation stage to explore the potential impact of the revised guideline on sentencing practice, and how sentencers' interpret and use some of the new and revised sections of the guideline. Focus groups were held with 13 sentencers, and interviews were conducted with 10 sentencers. Both included magistrates, district judges, recorders and circuit judges. Although this is not representative of all sentencing practice or all sentencers, the research provided useful information on the potential impact of the guideline and supported this final resource assessment.

Resource impacts

This section should be read in conjunction with the revised guideline available on the [Sentencing Council website](#).

Overall, it is not possible to quantify precise impacts of the Imposition guideline for the reasons set out above. However, it is intended that, in the vast majority of cases, the guideline should not change overall sentencing practice but instead assist sentencers to apply a broader range of principles around the imposition of community and custodial sentences in a consistent way. Findings from research with sentencers conducted during the consultation period supported this and suggested that the new guideline sets out the key concepts and best practice that were already generally being considered by sentencers in court and would serve as a helpful reminder.

The guideline has been restructured, with several changes to existing sections, as well as the addition of several new sections which are intended to have specific impacts, which are set out below. These are presented following the order in the guideline, with any available relevant supporting evidence referenced throughout.

Regarding prison resources, the guideline is not expected to have a substantial impact for the majority of offenders, although it is estimated that the direction of any change would be a decrease in required resources for prisons. For example, the new direction in the guideline on consideration of previous convictions in addition to the reference to research showing the inefficacy of short custodial sentences may result in sentencers imposing fewer short immediate custodial sentences. In addition, the research with sentencers conducted during consultation found that participants noted the guideline encourages a clear move away from short immediate custodial sentences.

In terms of probation resource, although it is expected that the guideline will lead to changes in the way that probation resources are required, particularly for certain groups of offenders, these changes cannot be quantified. For example, the new direction encouraging consideration of a broader range in lengths of COs and SSOs, the imposition of different lengths, volumes of requirements and combination of requirements may result in a wider range of order lengths and wider range of the number of requirements.

Changes and additions to the guidance regarding PSRs may result in increases in requests for these, both for those in particular cohorts outlined in the guideline as well as more generally, and a possible increase in the number of adjournments requested for PSRs. However, this direction (which is in accordance with legislation) aligns with probation internal guidance and targets at the time of this work; therefore, any increase in demand and impact on probation resources is unlikely to be solely as a result of the revision of the Imposition guideline.

Altogether, these changes may lead to an impact in the way that probation resources are required across Probation-led services and these changes will need to be coordinated (for example, between staff in sentence management teams and staff in court teams responsible for PSRs) but may not necessarily lead to an overall increase or decrease in probation resources. Probation resource is still needed for immediate custodial sentences as offenders are released part way through their term on licence) as well as for and those serving sentences in the community (both SSOs and COs.)

It is important to note that there have been a variety of changes to Probation service practice which are unrelated to the guideline. For example, in July 2024, the Probation service changed their practice so that engagement was prioritised at the beginning of orders rather than throughout an order which is likely to influence the distribution of probation resource. The guideline will therefore be coming into effect at a time when other changes are taking place and therefore any changes observed in probation resource may be as a result of these other changes, and not necessarily due to the guideline.

Although it has not been possible to fully quantify and estimate the size of impacts the guideline may have on the prison and probation service, it is anticipated that the new guideline may lead to some changes and impacts to resource. The Sentencing Council will monitor the impact of the guideline where possible to allow us to identify any issues and gain a better understanding of the effect of the guideline in practice.

1. Purpose of Sentencing

This new section of the guideline outlines the five purposes of sentencing when determining the appropriate sentence for an offender. It highlights that the weighting each purpose should be given will vary from case to case, that a restriction on liberty will sometimes be necessary to safeguard victims or the public, that any restriction on the offender's liberty is commensurate with the seriousness of the offence and that this can be achieved by both a community or custodial sentence.

Sentencers will already be aware of the purposes of sentencing from the General guideline and legislation and should already be actively considering the relevant purposes of sentencing during sentencing, so there may be no impact from this

section. Overall, however, this section should help encourage consistency of the consideration of the purposes of sentencing by bringing them to sentencers attention at the start of the sentencing process.

2. Thresholds

The thresholds section is another new section of the guideline, though much of the text within it has been taken from the previous guideline. New wording under a sub heading of Previous convictions has been added to guide sentencers that “the existence of one or more relevant previous convictions should not generally be used as the sole basis to justify the case passing the custody threshold.” The new text also emphasises that numerous previous convictions might indicate an underlying problem that could be addressed more effectively through a CO, even where a custodial sentence has previously been imposed.

While these two directions are new additions to the Imposition guideline, they are not new to sentencers; similar direction is included in the expanded explanation drop down for the statutory aggravating factor of previous convictions (referenced in all offence specific guidelines as well as the general guideline).

It is intended that this section will draw courts’ attention to the considerations around the thresholds for a CO and custodial sentence more closely, as well as draw attention to the existing guidance for previous convictions. It is also intended to encourage sentencers to think more flexibly about the range of different requirements that can be attached to a CO or different lengths of CO that can be imposed, even if an offender has already served a CO for a previous offence.

As seen in the recent statistics from the Ministry of Justice [First Time Entrants into the Criminal Justice System and Offender Histories](#) publication, the proportion of different sentencing outcomes varies with the number of previous convictions or cautions an offender has received. In 2023, a similar proportion of adult offenders with no previous convictions or cautions sentenced for an indictable offence received a CO (16 per cent) and an immediate custodial sentence (19 per cent). However, for offenders with 3 or more previous convictions or cautions the difference was much larger, and for those who had received 15 or more previous convictions or cautions, the proportion of offenders receiving an immediate custodial sentence was over three times higher than those receiving a CO or an SSO for the new offence.

Although it’s not possible to quantify the impact the guideline might have, these outcomes may change on the basis of the new wording in the guideline. For example, should the inclusion of this wording substantially change how sentencers consider the weighting of previous convictions when deciding whether or not the case has passed the custody threshold, then we may expect to see some reduction in the differences in outcome currently observed between individuals with no previous convictions and multiple previous convictions. However, there are many other factors that come into play when courts are deciding on the type of sentence to impose and so we may not see any potential impact consistently across cases or types of offences.

Another possible effect of the revised guideline wording is that there may be a reduction in the likelihood of an offender receiving an immediate custodial sentence on the basis of multiple previous convictions alone. If this occurs there would be an

associated decrease in the necessary resource required for prison places. The impact on probation would most likely be a change in the way probation resources are deployed across probation-led services and at different points of the offender's journey through the criminal justice system rather than any increase or decrease overall, given that probation resource is needed both for immediate custodial sentences (on release) and sentences served in the community. According to the [Offender management statistics quarterly publication](#), in 2023, around 28 percent of offenders supervised by the Probation service in England and Wales were undertaking a CO; a similar proportion (26 per cent) were undertaking post-release supervision (after serving a custodial sentence), and a lower percentage (19 per cent) were starting a suspended sentence with requirements. Although it is not possible to quantify the effect, it is possible that the new Imposition guideline could impact the distribution of probation resources towards COs and away from post-release supervision. Research with sentencers conducted during consultation supported this and found that participants noted the guideline encourages a clear move away from custodial sentences.

Given the uncertainty in how the new guidance in the guideline may affect practice, it is not possible to estimate what impact they may have on resources. However, as the principles set out within the revised guideline are not new to Sentencing Council guidelines, and as sentencers are likely to be considering them already, especially in terms of how to take account of previous convictions in the sentencing decision, any impact may be limited.

3. Pre-sentence reports

Similar to the new Thresholds section, while there is already direction in the previous guideline on PSRs, this is spread out across two different sections. The revised guideline newly brings this information together into one specific section and includes more comprehensive guidance on PSRs.

The section newly sets out specified cohorts for whom the guidance advises courts that a PSR will normally be necessary. This includes: those who are at risk of a first custodial sentence and/or a custodial sentence of 2 years or less, young adults (typically 18-25 years), those who are female, pregnant or postnatal (have given birth in the previous 12 months) or those from an ethnic minority, cultural minority, and/or faith minority community, or if the court considers that one or more factors apply, for example: if the offender has disclosed that they are transgender, has a serious chronic medical condition, or if the court considers that the offender is at risk of or is a victim of domestic abuse, modern slavery, or coercion. This list is not exhaustive.

Data are not available to understand what proportion of most of these groups currently receive a PSR, especially as there may be intersectionality between the groups. However, analysis undertaken for this resource assessment to compare statistics on PSRs from the biennial MoJ [Equalities in the Criminal Justice System compendiums](#), with sentencing outcomes by demographic group from the [Criminal Justice System statistics quarterly: December 2023 \(CJSQ\) publication](#) (excluding offenders where these demographic data were unavailable), suggests that females are already slightly more likely to have a PSR prepared before a community or custodial sentence is imposed than males. It also indicates that offenders from an ethnic minority background are slightly less likely than white offenders to have a PSR prepared before receiving COs and immediate custodial sentences, although the rate

of unknown ethnicity is much higher in the Court Proceedings Database (CPD) source of the CJSQ publication than the probation data used in the [Ethnicity and the criminal justice system statistics 2022 publication](#), so caution must be exercised comparing across these two data sources. Furthermore, this analysis combines two different sources with slightly different counting bases so these findings should be taken as indicative rather than conclusive.

Both across all of the specified cohorts and generally, it is anticipated that there may be some increase in requests for PSRs based on the language in the revised Imposition guideline. This is anticipated to require some increased probation resource, primarily for probation court staff. However, the cohorts for which increases might be observed mostly align with probation internal guidance, at the time of this work, for staff on cohorts for whom a PSR should be requested. Therefore, any increase in resource is unlikely to be as a result of the revised guideline alone. Research conducted with sentencers during the consultation stage of guideline development found that participants identified a shift within the new guideline that provides greater encouragement for sentencers to request PSRs; some sentencers thought that PSRs would be requested more frequently as a result of the revision, while others did not think it would make a difference as PSRs were already being requested for all the cohorts outlined in the guidance.

Another key change in the PSR section concerns the approach to adjournments for PSRs. In the revised guideline, sentencers are encouraged to liaise with the Probation Service on whether a quality report can be delivered on the day and to adjourn the case if it cannot. Research published by MoJ on the impact and effectiveness of PSR reports for offenders ([Gray et al. 2023](#)) found that offenders who had a fast delivery oral ('oral') or fast delivery written ('fast delivery' or 'short format') PSR prepared for them before sentence in 2016 were statistically more likely to complete their CO or SSO (with requirements) in the years that followed than those who did not. This highlights the importance of a PSR in improving the suitability of sentencing outcomes.

As a result of this new guidance, there may be increases in the proportion of fast delivery or short format PSRs. Fast delivery or short format PSRs can be completed on the day of sentence but more commonly require an adjournment. In 2023 there were 91,400 PSRs prepared by the Probation service, an increase of 10 per cent since the previous year. Most PSRs (67 per cent) were prepared in magistrates' courts (from MoJ's [Offender Management Statistics Quarterly publication](#) (OMSQ)). In 2023, across both magistrates' court and Crown Court, fast delivery written reports were the most common type prepared, comprising around two thirds of those in magistrates' courts (67 per cent) and a higher proportion (82 per cent) of Crown Court PSRs.

Oral reports are usually completed by the Probation service on the day they are requested by the court and are most appropriate for offenders with no or low rehabilitative needs. Just under a third of magistrates' court PSRs in 2023 were oral reports, whereas at the Crown Court oral reports were the least frequent type of PSR at 5 per cent. The remaining reports at both courts are standard reports which are the most comprehensive type of PSR, require substantially more time and resource and are only appropriate for cases of high seriousness (2 per cent of PSRs at magistrates' court and 13 per cent at the Crown Court).

Furthermore, the revised guideline now sets out that where a case is being committed to the Crown Court, a PSR should be requested on committal. This addition is intended to provide more time for Probation to gather the necessary information and for a PSR to be more often available on first appearance at the Crown Court, reducing the need for adjournments. This is in line with a similar addition in the Better Case Management (BCM) Revival Handbook in January 2023 and the [Criminal Practice Directions](#), though that guidance is more limited in scope

The “Indication to Probation Service”, “Adjournments” and “On committal and sending” sub sections are not expected to drive any changes to the overall volume of reports. The changes are therefore not anticipated to increase probation resource demands. However, it is acknowledged that there may be regional differences in the impact of this guidance, depending on current service provision, particularly of probation staff in court.

4. Effectiveness of sentencing

This new section of the guideline introduces a ‘step back’ approach to encourage sentencers to consider if the provisional sentence fulfils the purposes of sentencing. The revised guideline contains new content highlighting key considerations from the literature around the effectiveness of sentencing, and considerations for sentencing young adult offenders, female offenders and mothers with dependent children, pregnant and post-natal offenders. It also advises sentencers that research has shown that short custodial sentences are generally less effective at reducing reoffending than community sentences (for example, the evidence reviews commissioned by the Council, one published in September 2022 on the [Effectiveness of sentencing options on reoffending](#) and one published in September 2024 on [Reconceptualising the effectiveness of sentencing: four perspectives](#)).

In 2023, around 50 per cent of young adults (between the ages of 18 and 24 inclusive) who received an immediate custodial sentence received a custodial sentence of over 12 months and 50 per cent received a custodial sentence of 12 months or less ([Criminal Justice System statistics quarterly publication](#)). This has changed slightly over time – in 2017, around 59 per cent of immediate custodial sentences for young adults were 12 months or less. This trend over time has also affected adult offenders of 25 and over, but the difference is not as pronounced, and a higher proportion of offenders of 25 and over continue to receive immediate custodial sentences of 12 months or less (62 per cent of immediate custodial sentences in 2023, compared with 68 per cent in 2017).

For female offenders sentenced in 2023, around 75 per cent received a sentence of 12 months or less (equating to around 3,600 offenders), a slight reduction from 78 per cent in 2017. It is worth noting that female and young adult offender groups make up a relatively small proportion of offenders sentenced to immediate custody of 12 months or less. In 2023, female offenders accounted for 9 per cent of offenders sentenced to an immediate custodial sentence of 12 months or less (equating to around 3,600 offenders). Meanwhile, young adults made up 14 per cent of offenders sentenced for the same length of sentence (equating to around 5,800 offenders).

According to the most recent [His Majesty's Prison and Probation Service \(HMPPS\) Digest](#), during 2023-24 there were 215 self-declared pregnant offenders in prison; this is slightly higher than the previous year (194 year ending March 2023). There

were a total of 53 births to women in custody, and nearly all (52) took place in a hospital.

Under the new guideline, it is anticipated that the new wording in the sub sections on young adult offenders, female offenders and mothers and pregnant and post natal offenders will further encourage sentencers to consider rehabilitative alternatives to short custodial sentences in the appropriate circumstances. Sentencers may already be fully aware of the issues surrounding short custodial sentences and as well as principles around sentencing offenders in these particular cohorts, so there may be no impact from this section. Nevertheless, any impact would be likely to lead to a reduction in the proportion of short immediate custodial sentences and a subsequent increase in other types of sentences. It is hoped that the principles around sentencing young adult offenders, female offenders and mothers and pregnant and post-natal offenders will lead to even greater impacts for these groups. These impacts would be most likely to lead to changes in the way and timing that probation resources are required (for example, to support these offenders immediately after sentence in the community rather than after being released on licence from an immediate custodial sentence), and a corresponding potential decrease in required prison resource.

5. Imposition of community orders

This pre-existing section of the guideline newly contains two short drop downs assisting sentencers in determining the length of a CO and how to consider time remanded in custody or on qualifying curfew before imposing a CO.

This section newly sets out that maximum term for which a CO can be imposed is 3 years, which is set in legislation. From MoJ's [Offender Management Statistics quarterly publication](#), the average length of a CO starting in 2023 was around 14 months, and 72 per cent of COs imposed were for exactly 12 months. A further 23 per cent of COs imposed were for over 12 months and the remaining 5 per cent of COs were for less than 12 months.

The new information on the length of a CO may remind sentencers that COs can be imposed for a range of different lengths of time and as such, we may see a change in the lengths of COs overall, although not necessarily either longer or shorter on average. This may lead to greater variety in the lengths of community orders. The overall impacts on probation are therefore assumed to be limited, and this should not impact prison resources.

The section also provides sentencers with a reminder that a fine can achieve the purposes of sentencing. Although this is not new to the revised guideline, the section provides more detailed information than the existing guideline as to which fine band may be a suitable alternative to each level of CO. It is therefore possible that the levels of fines imposed may shift and that some offenders currently receiving COs may receive fines. However, much of this wording is provided in the existing guideline so it is anticipated to have limited impact other than to help promote consistency of approach and act as a reminder for sentencers.

6. Community order levels

This pre-existing section contains information as to the different levels of community orders, and a levels table which offers non-exhaustive examples of the intensity, volume or length of requirements that can be imposed at each level.

Various revisions have been made to this section. One key revision is the guidance regarding requirements imposed for the purpose of punishment as compared to requirements imposed for the purpose of rehabilitation. The revised guideline newly states that the levels table offers non-exhaustive examples of the intensity of requirements imposed for the purpose of punishment that might be appropriate, and that any requirement/s imposed for the purpose of rehabilitation should be determined by and aligned with the offender's needs. This is a change from the guidance in the previous guideline.

In line with this, in the levels table, reference to rehabilitative requirements has been removed from the individual levels and replaced with wording that covers all three levels and emphasises that any requirements imposed for the purpose of rehabilitation should be determined by, and align with, the offender's needs, and 'Any appropriate rehabilitative requirement(s)' has been removed from the bulleted examples. Additionally, the table no longer specifies the number of recommended requirements within each order level category (low, medium and high), and courts are instead directed to tailor COs to the offender according to their specific circumstances. The range and volume included in the bulleted examples of requirements imposed for the purpose of punishment in the three levels are stated to be applicable if the court is imposing one requirement. There is new guidance that states that when imposing more than one requirement, the court should moderate the intensity, volume or length of the requirement to ensure it is not disproportionate to the level of the order.

According to the MoJ's [Offender Management Statistics publication](#), of the 58,200 offenders commencing a CO under the Probation Service in 2023, around 71 per cent had a rehabilitation activity requirement (RAR) and 51 per cent had an unpaid work requirement (UPW). Additionally, 20 per cent of COs commenced in 2023 had both a RAR and UPW requirement (which was the most frequent combination of requirements).

While sentencers are already able to use their discretion to impose a combination of requirements in a tailored way, this new text underlines the importance of this flexibility and reminds sentencers of the ability to consider a variety of different intensities, lengths and combinations of requirements on a CO. It is, therefore, anticipated that the changes in this section may lead to greater flexibility by sentencers in the imposition of community requirements, resulting in a broader range in the number of requirements imposed and intensity, volume or length of the requirements on each order, possible fluctuations in the average number of requirements, and changes to the combinations of requirements on COs.

It is also anticipated that there may be less association between the number of RAR days imposed and the intensity, volume or length of any requirements imposed for the purposes of punishment in the future. This is due to the new direction that any requirement/s imposed for the purpose of rehabilitation should be determined by and aligned with the offender's needs. Research conducted with sentencers during the

consultation period supported this and found in testing that sentencers increased only the requirement being imposed for the purpose of punishment, such as increasing the number of unpaid hours or length of curfew and did not increase the requirements imposed for the purpose of rehabilitation (i.e. RAR days).

While this change might not increase or decrease the overall impact on probation resource, it may lead to a redistribution of resources within individual portfolios of work. However, if a large number of offenders are considered as having high rehabilitative need, then there is a possibility that RAR days could increase overall, with consequent additional demand on probation resource in managing RARs.

7. Requirements

The requirements section of the Imposition guideline has been substantially expanded to provide a comprehensive summary of each requirement, the volume, length or range of that requirement, and factors that courts should consider when considering imposing them. For both COs and SSOs, the requirements most often attached to the order were unpaid work and rehabilitation activity requirements (RARs). In 2023, around 71 per cent of COs and 83 per cent of SSOs had a RAR attached to them. Around 51 per cent of COs and 49 per cent of SSOs had an unpaid work requirement attached to them. All other requirements are used more infrequently (from [Offender Management Statistics publication](#)). It is therefore anticipated that the additional guidance in the guideline may lead to an increase in the use of a broader range of requirements, particularly those that are not currently used as often by courts.

It is possible that the majority of the content of this section of the guideline may already be being considered by courts as some of this information is contained in legislation, but it is nevertheless hoped that the inclusion of the expanded information on each requirement will bring attention to requirements that may be able to be used more, ensure better consistency of approach in imposing requirements across different regions, improve understanding by courts of factors to take into account and any pre-sentencing checks (such as domestic abuse checks) that need to be made, and make it easier for courts to consider the most appropriate requirements or combination of requirements for a particular offender.

8. Imposition of custodial sentences

In this section of the guideline, the headline questions asked to sentencers has been reduced from four to three and new guidance has been added under these three questions.

This new guidance includes wording which states that COs are often punitive and last longer than shorter custodial sentences and draws sentencers' attention to research suggesting that custodial sentences of up to 12 months are less effective than other disposals at reducing reoffending and can lead to negative outcomes.

Between 2013 and 2020, the proportion of offenders sentenced to immediate custody who received a sentence of less than 12 months had remained stable (between 60 and 64 per cent). In 2021, there was a decrease in this proportion and it has remained stable since then (56 per cent in 2023) ([Criminal Justice System statistics quarterly publication](#)). The guideline could lead to further reductions in the proportion

of immediate custodial sentences shorter than 12 months being imposed, which would reduce prison resource.

Some revisions have been made to the table of factors indicating that it may or may not be appropriate to suspend a custodial sentence. 'Offender does not present high risk of reoffending or harm' has been added to the list of factors indicating that it may be appropriate to suspend a custodial sentence, meaning there are now more factors indicating it may be appropriate to suspend than those indicating it may not be appropriate to suspend. While it is not yet known whether these additions may have an impact, any impact would be likely to increase the proportion of custodial sentences that are suspended, which would reduce prison resource. It is also likely to impact the way probation resources are required for the same reasons as previously outlined, but not necessarily increase demand.

9. Suspended sentence orders

This section contains a new heading on Requirements on a suspended sentence order under which new guidance is given. This guidance reiterates the principle in the previous guideline that a suspended sentence order is a custodial sentence; as such, the imposition of a suspended sentence order is itself a punishment, with or without requirements, and newly sets out that any requirements imposed on them would be more likely to be rehabilitative in purpose. As such, the guideline suggests that courts should contemplate if a CO may be more appropriate if they are considering more onerous or intensive requirements.

The mean number of requirements on a CO commenced in 2023 was 1.6, and this figure has been stable for the last five years ([Offender Management Statistics publication](#)). On average, more requirements are imposed on SSOs, with an average of 1.8 requirements in 2023, and this figure has been increasing since 2016. It is hoped that the additional information under Requirements on a SSO will highlight the principle that a suspended sentence order is a custodial sentence and does not necessarily need additional requirements imposed on it, particularly those imposed for the (additional) purpose of punishment.

It is difficult to predict what the impact of the new guideline wording might be, but we might expect a greater mean number of requirements on a CO than on a SSO in the future rather than the current way around, with no overall increase necessarily in the number of requirements being imposed overall. There may also be changes to the type of court order from SSO to CO if sentencers consider these to be more appropriate for the particular case, although this cannot be quantified or expected. These changes would be unlikely to impact probation resources as both of these sentences are managed by probation in the community, and they are not expected to impact prison resources.

10. Deferment orders

A new section on deferment orders, which delays the passing of a sentence until a date specified by the court, has been included in the revised guideline.

Even though the majority of the text within this section already appears as supplementary information on the Council's website, its inclusion in the revised Imposition guideline could result in more engagement with this option by sentencers.

The lack of recent published data means that any impact of this inclusion will be difficult to measure accurately. Additionally, deferment requirements imposed as part of a deferment order are managed differently in different regions and not necessarily by the Probation service (the Sentencing Code 2020 allows the court to appoint a supervisor that is either a probation officer or 'any other person the court thinks appropriate who consents to the appointment', which in some regions is a police officer). This means, overall, understanding the impact of this addition will be difficult.

Risks

Risk 1: The Council's assessment of current sentencing practice is inaccurate or incomplete

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

Given it has not been possible to ascertain a reliable measure of current sentencing practice for many of the elements in the revised guideline, it is not possible to understand with any certainty the impact the guideline may have on sentencing. This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes interviews conducted with sentencers as part of the consultation exercise and views gathered on the guideline as part of the consultation. However, the Imposition guideline includes guidance on a wide range of areas of sentencing, applicable to a very broad range of offences and circumstances, and so it has not been possible to check its use in all possible contexts. Therefore, the risk cannot be fully eliminated.

Risk 2: Sentencers do not interpret the new guideline as intended

If sentencers do not interpret the guideline as intended, this could cause a change in the average severity of sentencing, with associated resource effects. For example, the addition of wording in the revised Imposition guideline which references the negative outcomes of short custodial sentences under 12 months could encourage sentencers to impose longer custodial sentences, rather than to consider alternative outcomes.

The Council takes a number of precautions in issuing a new guideline to try to ensure that sentencers interpret it as intended. Research with sentencers which was carried out during the consultation period has hopefully ensured that any issues with interpretation have been identified and already addressed.

Consultees have also had the opportunity to provide their opinion of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from MoJ and other sources where possible, to monitor the effects of its guidelines and to gain a better understanding of the effect of the guideline in practice. This also helps identify any issues and ensure any divergence from its intended interpretation is identified as quickly as possible.

Training on the revised imposition guideline will be available for magistrates online via the Judicial College shortly after the publication of the guideline and training for Crown Court judges is planned for later in the year. This should help mitigate against sentencers not interpreting the new guideline as intended and ensure that the guideline is well understood.

Further information

Figures presented include the time period from March 2020 in which restrictions were initially placed on the criminal justice system due to the coronavirus (COVID-19) pandemic, and the ongoing courts' recovery since. It is therefore possible that figures and trends may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Data sources and quality

Criminal Justice Statistics

MoJ's [Criminal Justice System statistics quarterly \(CJSQ\) publication](#) is one of the main data sources for the statistics in this resource assessment. Where court outcome figures are presented, the volumes only include cases where the offence was the principal offence committed. When an offender has been found guilty of two or more offences, the principal is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here.

It is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Work has been undertaken by MoJ to develop and deliver improvements to the criminal court sentencing data, these new processes affect data from 2017 onwards, therefore care should be taken when comparing trends between 2017 and 2016. Further information on this can be found in the 'Technical Guide to Criminal Justice Statistics' within the [Criminal Justice System Statistics Quarterly \(CJSQ\) publication](#)

Offender Management Statistics

MoJ's [Offender Management Statistics quarterly \(OMSQ\) publication](#) is another source of statistics in this publication. Available data on volumes of pre-sentence reports, volumes and combinations of community requirements and average lengths of COs and SSOs have been taken from the quarterly and annual 2023 data tables. Further information on the data sources and quality can be found in the 'Guide to Offender Management Statistics' alongside the publication.

First Time Entrants and Offender Histories

The Ministry of Justice's [First time entrants \(FTE\) into the Criminal Justice System and Offender Histories: year ending December 2023](#) publication has also been used in this report to look at the trends in outcome by offending history. These statistics are compiled from the Police National Computer (PNC). Further information on the data source behind this publication can be found in the 'Guide to Offending Histories and FTE Statistics' which is published alongside.

General conventions

Actual numbers of sentences have been rounded to the nearest 100, when more than 1,000 offenders were sentenced, and to the nearest 10 when fewer than 1,000 offenders were sentenced.

Proportions of sentencing outcomes have been rounded to the nearest integer. Percentages in this report may not appear to sum to 100 per cent, owing to rounding.