

Clinks Briefing on the Government's response to Breaking the Cycle and the Legal Aid, Sentencing and Punishment of Offenders Bill

June 2011

Introduction

The Government has published a written response to the *Breaking the Cycle* Green Paper consultation. This was accompanied by a Bill to alter the legislative framework for the reforms, *Legal Aid, Sentencing and Punishment of Offenders Bill*¹. The Bill received its first reading in Parliament on 21st June 2011 and will next go for a second reading, at which point it may be debated in the House of Commons.

The Government response to the *Breaking the Cycle* consultation marks a retreat from some of the more radical suggestions outlined in the Green Paper earlier this year. Disappointingly, a statement in the foreword explicitly states "we are not aiming to cut the prison population". This has been perceived in many quarters as a u-turn on criminal justice policy and gives rise to concerns over where the missing £130 million will now be saved.

The Government response is a fairly short document that includes little detail about how Voluntary and Community Sector (VCS) organisations are to be financed and supported. We expect this to be expanded upon in the Offender Services Competition Strategy to be published shortly.

This briefing notes the key provisions contained within the Government response and the Bill. Clinks will shortly be preparing a response to the Government paper and we invite our members to contribute their views and comments.

Working Prisons:

- Create a working week of up to 40 hours for prisoners.
- Focus the daily regime around work.
- Ensure prison work is sustainable and self-financing.
- Focus education and training in prisons on equipping offenders to work, and link work activity to qualifications and employment opportunities on release.

The Bill allows for a portion of the prisoner's earnings, within prison and when working outside on licence, to be deducted to go towards victim support services. The proposal is for a 40% deduction after National Insurance and Tax.

The implementation strategy for work in prison will be published in the autumn. The Ministry of Justice is setting up a Business Advisory Group and also collaborating with the Department of Work and Pensions to link proposals with the Work Programme.

Community Sentences:

The Ministry of Justice (MoJ) aims to make community penalties more credible; focusing on 'punishment, control and reform' of offenders.

- Courts will have the power to prohibit foreign travel and impose longer curfews.
- Compliance panels will be established to ensure that young offenders comply with their sentences. This summer, in Norfolk and Suffolk, the MoJ are piloting a scheme under which offenders who persistently refuse to pay fines will have items seized, such as cars and TVs.

¹ The full Bill and its progress through Parliament can be viewed at: <http://services.parliament.uk/bills/2010-11/legalaidsentencingandpunishmentoffenders.html>

- Increase use of financial penalties, both on their own and alongside other sentences.
- Community Payback to be more intensive and demanding, with longer days and a working week.

Progression:

The Government response states a number of priorities, aside from punishment, including getting offenders off drugs and alcohol, addressing offenders' mental health problems, helping offenders into employment and reducing the barriers to resettlement. In custody, this will mean moving to a system of recovery.

- In five prisons, Drug Recovery Wings will be piloted; focused on providing continuity of treatment for short-term, drug-dependent prisoners between prison and the community.
- The 'Virtual Campus' will be rolled out to broaden the range of employment and learning services available in custody.
- In the community, opportunities for intensive drug and alcohol treatment based accommodation will be considered. There are already eight local areas piloting payment by results approaches to drug and alcohol recovery.
- For offenders with mental health problems, the MoJ is working with the Department of Health and the Home Office to pilot and roll out liaison services in police custody and at courts by 2014.
- Separate consultation on offending linked to severe personality disorder will be published later this year.
- Scheme led by Crisis to improve access to private rental sector for single homeless people.
- Wider use of Bail and Support Service Schemes to reduce extent to which remand is used because offenders do not have stable accommodation.
- MoJ to support a Ministerial Working Group on Homelessness.

Payment by results:

- A number of payment by results pilots have already begun in prisons and the community and there will be a competitive process this summer to commission further pilots.
- Timetable for payment by results will be contained in the wider Offender Services Competition Strategy.

Transparency:

The MoJ aims to give victims and the public a better understanding of the Criminal Justice System (CJS) and opportunities to get involved.

- More information to be published about sentencing, justice outcomes and local justice services.
- Community priorities to inform the justice process.
- Increased accessibility of information on volunteering opportunities.
- Continue testing Neighbourhood Justice Panels to bring local volunteers and criminal justice professionals together.

A more central role for victims:

- Forthcoming victims' consultation.
- Restorative justice interventions at every stage in the justice system.
- MoJ to work with Home Office to develop a framework that supports local practitioners to develop effective restorative justice approaches.

Reforms to the justice system:

- Development of a national framework for out-of-court disposals to be published later this year.
- Remand only to be used where necessary to protect the public where alleged offending is serious enough to warrant custody, including a risk of domestic violence.
- New offence with mandatory minimum prison sentence of 6 months for adults for possession of a knife to threaten or endanger.
- Review of serious sexual and violent offenders and IPPs, with view to replacing IPP regime with determinate sentencing framework.
 - Increased number of serious offenders would receive life sentences.
 - Serious sexual or violent offenders would spend at least two-thirds of their sentence in prison.
- Give courts greater discretion to use suspended sentences for up to two years, choose whether or not to impose community requirements, and have additional options of imposing fines for breach.
- Create a single set of rules for the operation of Home Detention Curfew.
- Allow greater professional discretion to decide when low risk prisoners who have been recalled to prison may be released on licence.

Simplifying performance management:

- More discretion for how probation services manage offenders.
- Performance of Probation Trusts and Prisons to be measured according to the outcomes of reducing reoffending, rather than by inputs and processes.

Youth Justice:

- Transfer functions of Youth Justice Board (YJB) to newly created Youth Justice Division in the MoJ (distinct from the arrangements in place for adults and led by the current Chief Executive of the YJB).
- All young people who are remanded will be recognised as 'looked after' by the local authority. All children under 18 to be treated the same, rather than treating 17 year olds as adults.
- Local authorities to be financially responsible for all youth remands to secure accommodation to create an incentive to invest in alternative strategies.

Reducing number of foreign national prisoners:

- Prisoner transfer arrangements so that EU nationals sentenced here serve their sentences in their country of origin come into force from December 2011.
- Deport foreign national prisoners on indeterminate sentences once they have served their minimum custodial term.
- Pilot use of cautions to divert from prosecution foreign nationals who do not have leave to stay in the UK and have committed certain crimes, on condition that they leave the UK.

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Sentencing:

- Imposes a duty on courts to consider Compensation Orders for certain types of offence.
- Increases the length of prison sentence that can be suspended, giving the court discretion not to impose community requirements as part of the sentence and enabling it to impose a fine for breach of a suspended sentence order.
- Extends the maximum curfew from twelve to sixteen hours a day and from a maximum period six to twelve months.
- Makes amendments to the Mental Health, Drug Rehabilitation and Alcohol Treatment requirements.
- Creates a new power to prohibit foreign travel as part of an order.
- Amends Youth Referral Orders to provide more flexibility and discretion for their repeated use.

Bail:

- Restrict the court's powers to remand unconvicted adults in custody where it is apparent that there is no real prospect that the defendant would receive a custodial sentence if convicted. A court would still be able to remand in custody for the defendant's own protection, or where there was a risk of further offending involving domestic violence.
- Children who are held on remand will have to be recognised as 'looked after' by local authorities.
- Imposes more rigorous requirements before under 18s can be remanded into youth detention accommodation.

Prisoners:

- Gives the Secretary of State the power to make rules in respect of the employment and payment, including reductions in or deductions from such payments.

Knives and offensive weapons:

- Creates new offences of threatening with an offensive weapon or an article with a blade or point, creating an immediate risk of serious physical harm. There will be a minimum sentence of 6 months imprisonment for persons over 18 found guilty of this new offence.

To contribute to the Clinks Response, please email views and comments to clare.hayes@clinks.org



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