Offender Rehabilitation Bill

House of Lords
Report Stage
Tuesday 25 June 2013

On 9 January 2013, the Ministry of Justice published a consultation paper entitled *Transforming Rehabilitation: A revolution in the way we manage offenders*. The consultation paper proposed a number of reforms to the existing legislation regarding the sentencing and release of offenders, including the introduction of supervision on release for offenders serving custodial sentences of less than 12 months and changes to the requirements available to the court as part of community orders and suspended sentence orders. The Bill implements the sentencing and release reforms set out in the Government’s response to the consultation.

This briefing focuses on key concerns and amendments to the Bill in the marshalled list:

- Impact of the proposals on the prison population
- New clauses - Probation reform (Amendments 1-3)
- Clauses 2 & 6 - Young adults (Amendments 4, 6 & 15)
- Clauses 2 and New Clause - Women (Amendment 5 & 18)

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Impact of the proposals on the prison population

The Prison Reform Trust is concerned that the proposals will result in a significant rise in the prison population. At a time of budget cuts and pressure on resources, it is difficult to understand why the Government has chosen to focus on custody as a gateway to rehabilitation for over 50,000 petty offenders, instead of ensuring that effective community sentences are available to all courts in England and Wales. Ministry of Justice figures show that court ordered community sentences are already 8.3% more effective at reducing reoffending, with a matched sample of offenders, than a short prison term.¹ Peers will want to use the opportunity of the report stage debate to raise two specific concerns highlighted by the updated impact assessment of the Government’s proposals.

Changes in sentencers’ behaviour

The Prison Reform Trust shares concerns raised by Peers that the Government’s proposals will see sentencers use the new short sentence with statutory supervision more often, because it is seen as a “safe” and attractive option by the courts. This could mean fewer community orders are imposed despite being more economical and more effective at reducing reoffending than short prison sentences. As the former Lord Chief Justice, Lord Woolf, said during the Second Reading of the Bill: “There will be a temptation in some courts to undermine the objective of the Bill by seeing the proposals for dealing with reoffending as justifying short sentences.”²

During the Committee Stage debate Lord Marks, Lord Dholakia and Baroness Hamwee tabled an amendment to introduce a statutory presumption against the use of short prison sentences of less than 12 months. Responding on behalf of the Government the Minister Lord McNally said:

"...the Government do not intend or expect that sentencers will change their current behaviour in any significant way in response to the provisions of the Bill. We do not expect to see an increase in the number of short custodial sentences. Offenders who do not meet the custodial threshold should receive community orders or fines ... it would be wrong for any judge, and contrary to the provisions of the existing law, if a sentencer decided to "up-tariff" an offender into custody so that they could receive 12 months of supervision.”³

The updated impact assessment of the Bill acknowledges that “there is a risk that the changes to custodial sentences of less than 12 months could lead to changes in sentence behaviour.”⁴ The assessment outlines three possible scenarios which could see demand for prison places rise or decline:

- Scenario 1: sentencers down-tariff short custodial sentences to community orders. We estimate that this would reduce the demand for prison places by around 500.
- Scenario 2: sentencers reduce custodial sentence lengths. We estimate that this would reduce the demand for prison places by around 600.
- Scenario 3: sentencers up-tariff sentences served in the community to short custodial sentences. We estimate that this would increase the demand for prison places by around 800.⁵

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¹ Table 1, Ministry of Justice (2011) Compendium of reoffending statistics and analysis, London: Ministry of Justice
² 2nd reading: House of Lords, 20 May, 2013
³ Committee: 2nd sitting: House of Lords, 11 June, 2013
⁵ Ibid.
Under the third scenario an additional 10,000 offenders would be up tariffed to short custodial sentences, resulting in a demand for around 800 additional prison places. Given the assurances made by the Minister during the Committee Stage debate, Peers will want to seek clarification from the Government regarding what steps will be taken, though additional guidance or other appropriate measures, to prevent the risk of up tariffing identified in the impact assessment.

Rise in breach and recall to custody

The Prison Reform Trust is particularly concerned that, without additional safeguards, the proposals will result in an increase in breach and recall to custody, which will drive up the short sentenced prison population. The Government acknowledged in the Summary of responses to the Transforming Rehabilitation consultation that “many” respondents suggested that return to custody for breach should “only be available as a final option after other sanctions have failed, rather than an automatic response in every case”. It assures in the Summary that “conditions attached to mandatory supervision will be geared towards rehabilitation rather than punishment, with discretion for providers to identify the activities that should be carried out. We propose to adopt a range of sanctions to address non-compliance with supervision, only recalling offenders to custody as a final measure.”

The Government’s original impact assessment of the proposals did not provide an estimate of how many offenders are likely to breach license or supervision requirements or how many offenders are likely to be recalled to custody under the new arrangements. During the Committee Stage debate Lord Ramsbotham tabled a probing amendment on the social and economic costs of the proposals and requiring an estimate of the associated numbers of breaches and recalls.

The Government has now published an updated impact assessment which highlights the significant risks of an increase in breach and recall to custody. It acknowledges that “offenders released after serving custodial sentences of less than 12 months are more likely to be petty offenders, more likely to have drug-related issues, more likely to be unemployed and in general more likely lead more chaotic lives. In absolute terms this difference is difficult to quantify, but our best estimate is that offenders released after serving custodial sentences of less than 12 months are, for behavioural reasons, 35% more likely to breach than offenders released after serving 12 months or more. Our lowest estimate is that they are 10% less likely to breach, and the highest estimate that they are 50% more likely to breach.”

While the impact assessment suggests that probation may be less likely to prosecute breach compared to other types of offender, it puts the likelihood of sentencers imposing a sanction for breach at 100%. It estimates that 70% of sanctions imposed following breach of extended supervision will be committal to custody for 2 weeks, 20% will be electronically monitored curfews lasting an average of 50 days, and 10% will be an average of 35 hours of unpaid work.

Overall it estimates that around 13,000 offenders will be recalled or committed to custody, giving a prison places increase of around 600 additional places, at a cost of £16m per year. It estimates that there would be around 3,000 offenders given electronically monitored curfews, at a cost of £2m per year, and around 1,000 offenders given unpaid work, at a cost

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6 Ibid.
9 Ibid.
of less than £1m per year. There would be around 14,000 offenders returned to court at a cost of £6m per year. This gives a best estimate of the cost of breach for offenders released after serving custodial sentences of less than 12 months of £24m per year.

At the end of March, 69 of the 124 prisons in England and Wales were overcrowded. The National Offender Management Service is having to make overall resource savings of almost 25% in real terms by 2014-15. We note that for commercial reasons the Government is withholding the costs of supervision for 50,000 short sentenced prisoners on release. With such limited information, it is difficult for Peers to exercise proper Parliamentary scrutiny (see Amendments 1-3 below).

Given the assurances made by the Government in the Summary of responses to the Transforming Rehabilitation consultation, Peers will want to raise questions as to how the Government will ensure custody will be used as a last resort, and whether additional guidance will be issued to the courts. Peers will also want assurances of how the Government intends to fund the additional costs of breach and recall.

New clauses - Probation reforms (Amendments 1-3)

Amendment 1

Insert the following new Clause—

“Probation

Probation service reform: Parliamentary approval

No alteration or reform may be made to the structure of the probation service unless the proposals have been laid before, and approved by resolution of, both Houses of Parliament.”

Amendment 2

Insert the following new Clause—

“Proposed reform of probation services

(1) Subject to subsection (2), before instituting a system of payment by results for the provision of services to supervise offenders, the Secretary of State shall prescribe by statutory instrument a scheme for such a system, which shall be laid before and approved by resolution of both Houses of Parliament.

(2) Before such system may come into existence, the Secretary of State shall undertake a pilot scheme lasting three years in duration, which shall be independently evaluated, with the evaluation report laid before Parliament and approved by resolution of both Houses of Parliament.

(3) Any payment by results pilot shall be based upon existing probation trust areas.”

Amendment 3

Insert the following new Clause—

“Low, medium and high risk offenders

(1) For the purpose of the provision of probation services, the definition of a low, medium and high risk provider shall be prescribed by statutory instrument, which shall be laid before Parliament and subject to the affirmative resolution procedure of both Houses.

(2) For the purpose of the provision of probation services and supervision post release, the definition of a low or medium risk offender shall not include offences of a violent or sexual nature, stalking or domestic violence.”

Amendments 1, 2 and 3 amend the Bill to ensure effective Parliamentary scrutiny and oversight of the Government’s far-reaching probation reforms. We are particularly concerned that the Government is withholding information on the financial implications of the Bill on the grounds of commercial confidentiality. The updated impact statement acknowledges that “There will be a significant additional cost to extend supervision to these offenders. We have undertaken detailed modelling and are confident that we have a good understanding of the likely costs and impacts. However, it would be inappropriate to release these costs, as they will be dependent on the outcome of competing offender services in the community. If we were to publish a figure for the future costs this would give organisations bidding for contracts a target and would prejudice the effectiveness of the competition. For that reason, this impact assessment only contains volumes of offenders that will be affected.”

The Transforming Rehabilitation Strategy claims that the “proposals will be affordable within the context of the MoJ commitment to deliver annual savings of over £2 Billion by 2014/15 and forward into the next SR” but does not provide further details.

The Prison Reform Trust has serious concerns regarding the impact of the proposals to compete out the management of low and medium risk offenders to the private and voluntary sector. We share the concerns of the Probation Chiefs Association and Probation Association that they could lead to a fragmented service which compromises accountability and puts public safety at risk. Payment by results is a risky experiment which is untried and untested in the criminal justice system. The Government has cancelled the PBR pilots despite the interim evaluation of the Peterborough pilot showing only a slight fall in reoffending. We would encourage Peers to support these amendments.

Clauses 2 & 6 - Young adults (Amendments 4, 6 & 15)

Amendment 4

Clause 2

Page 2, leave out lines 11 and 12 and insert—

“(a) the offender was aged under 18 when the sentence was passed,”

11 Ibid.
13 http://www.bbc.co.uk/news/uk-22886395
Amendment 6

Clause 2

Page 2, line 42, at end insert “or, where the offender was aged under 18 when the sentence was passed, a member of the youth offending team established by the local authority in whose area the offender resides for the time being”

Amendment 15

Clause 6

Page 7, leave out line 19 and insert—

“(b) the offender will be aged under 21 on the last day of the supervision period, and”

Young adults are a particularly vulnerable group in the justice system. The point of transfer from youth to adult justice services is a critical time for a young person and for the justice professionals who must work to ensure that a young person’s welfare is properly safeguarded and that any risks they pose to the public are minimised.

Currently only those sentenced to at least two years on a detention and training order are required to have 12 months’ supervision. The Youth Justice Board and probation trusts have developed effective transition arrangements for the supervision of young adults in the community. The Government’s proposals will mean that even those getting a six-month detention and training order will have to have a 12-month supervision order upon release if they are over the age of 18 at the end of the requisite custodial period. Under the proposals young people could be transferred to private providers who do not know them and subject to long periods of supervision according to adult expectations and demands. This could undermine effective transition arrangements and, as the updated impact assessment of the Bill acknowledges, significantly increase the scope for breach and recall to custody.

In its response to the Transforming Rehabilitation consultation, the Youth Justice Board stated that “Evidence suggests that failing to manage transitions appropriately can lead to young people committing further offences during this period.”

These amendments are intended to ensure appropriate arrangements for the supervision of young adults.

- Amendment 4 amends clause 2 to exclude anyone aged under 18 on the day of sentencing from the new supervision period. This would ensure anyone sentenced as a juvenile would not be subject to the new supervision requirements. It would maintain current supervision arrangements and help ensure youth offending teams and probation services are able to continue to build on the best practice developed in the transition of 18 year olds to the adult justice system
- Amendment 6 amends clause 2 to ensure appropriate discretion in the supervision of young adults by clarifying that a supervisor could either by an officer of a provider of probation services or, for people sentenced as juveniles, a member of a youth offending team.
- Amendment 15 amends clause 6 to extend the possibility of youth offending team supervision up to the age of 21 to anyone who was sentenced to a detention and training order. This would protect the vital discretion youth offending teams should have in the supervision of this age group.
During the Committee Stage debate Baroness Linklater tabled amendments to clarify arrangements for provision for young adults. The Minister Lord McNally acknowledged that the question of who supervises young adults “is one of the things that I want to think about”. He continued: “I hope that the two bodies concerned would make a practical decision about the needs of the individual, but as the noble Lord, Lord Beecham, said, if that was not available, who would be the judge? Would that have to go back to court? I will think about that, and if there is a gap we will fill it.”

We would encourage Peers to support these amendments. Following the Minister Lord McNally’s acknowledgment in the Committee Stage debate that there is an issue about who will supervise during the additional supervision period, we would encourage Peers to seek assurances that youth offending teams will have the responsibility for supervising young adults.

Clauses 2 and New Clause - Women (Amendment 5 & 18)

Amendment 5

Clause 2

Page 2, line 37, at end insert—

“(7A) The Secretary of State must have regard to the particular needs of women when determining the requirements that should be specified by him under this section.”

Amendment 18

Insert the following new Clause—

“Provision for female offenders

(1) Section 3 of the Offender Management Act 2007 (power to make arrangements for the provision of probation services) is amended as follows.

(2) After subsection (2) insert—

“(2A) Arrangements under subsection (2) shall require providers of probation services to make provision for the delivery of services for female offenders which take account of the particular needs of women.”

(3) After subsection (5) insert—

“(5A) Arrangements under subsection (5) shall make provision for the delivery of services for female offenders which take into account of the particular needs of women.”"

Amendment 5 ensures that the specific needs of women are given due regard when setting requirements under the supervision period. Amendment 18 requires providers of probation services to have services available to women offenders which take account of their particular needs.
This Bill presents an opportunity to place the Government’s women’s justice reforms on a statutory footing. The Transforming Rehabilitation Strategy acknowledges “the widespread support amongst consultation responses for ensuring providers are commissioned to deliver services tailored to the specific needs of women offenders”. However, it is not clear from the Strategy, and there is no provision as yet in the Bill, to give women’s specific services sufficient priority. All rehabilitation services will be commissioned under a single contract, rather than competing out services specifically for women offenders, with providers having to “articulate and respond to the particular needs of women offenders where these differ for men”. The Strategy states that the forthcoming review of the women’s custodial estate will “strengthen services for women released from prison,” but does not explain how.

The Strategy asserts that reforms to open up the probation service to market forces will support existing providers of women’s services; however, as these providers are too small and specialist, this will require them to become part of a supply chain to win a contract package area. We are concerned that their success may be dependent on the outcome of whichever prime provider’s bid they align themselves with, irrespective of their own past performance.

The Minister acknowledged during the Committee Stage debate that “We have made painfully slow progress in this area. Too many women are in our prisons. It is palpably obvious that women have different problems and needs and, as the noble Baroness, Lady Linklater, has reminded us, the collateral damage from the imprisonment of women is substantial. Nothing divides us on this.”

The Government’s proposals to extend statutory monitoring and supervision to offenders serving short sentences will disproportionately affect women. We note the absence of an equality impact assessment or any other accompanying information on how these proposals will affect women. However, it is well known that most women serve very short prison sentences, with 59% sentenced to custody for six months or less, so will be subject to the new supervision periods. Most women entering prison under sentence (81%) have committed a non-violent offence. Theft and handling stolen goods accounted for 37% of women entering custody under sentence. Over half of all women in prison reported having experienced emotional, physical or sexual abuse as a child, compared to a quarter of men. The majority of women in prison are primarily responsible for dependent children. Each year over 17,000 children are separated from their mothers by imprisonment.

Unless the monitoring and supervision requirements accommodate women’s specific needs and circumstances there is a strong likelihood that more women will end up recalled to custody for breach of licensing conditions, which is already a significant driver of women’s imprisonment. **We would encourage Peers to support these amendments.**