

Estimating the changes in sentencing severity and requirements for prison places associated with the Sentencing Council's guidelines

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1. Summary

One of the Sentencing Council's duties is to have regard to the impact of its guidelines on prison, probation and youth justice services, when developing them. The Council also has a statutory duty to have regard to the results of its monitoring work.

The Council has now evaluated the impact and implementation of 14 of its guidelines: 11 offence-specific, which came into force between June 2011 and July 2016, and 3 overarching guidelines, which came into force between March 2016 and June 2017. Summary reports of these evaluations have been published on the Council's website.

As part of the Council's tenth anniversary year, the Council undertook to investigate its impact in a number of areas, one of which was its impact on the need for prison places. An analytical project was therefore undertaken to estimate the cumulative impact to date of the Council's evaluated guidelines.¹ Although all the guidelines that have been evaluated thus far were reviewed, the main focus was on the impact of the Council's offence-specific guidelines on sentencing severity² and subsequently on the need for prison places, and to compare the actual outcome with the expected impact for each offence. This project is therefore part of a wider package of work looking at impacts over the first ten years of the Council.

This project has not included an analysis of the cumulative impact of guidelines on probation resources, as no sufficiently detailed data on suspended sentences or community sentences over time are currently available. Additionally, the majority of the Council's guidelines apply to adult offenders only, and so the focus of this project has been on adult offenders. However, the Council has conducted separate analysis related to children and young people, including publishing an evaluation of the Council's Sentencing children and young people guideline. Analyses of any other guidelines that apply to sentencing those aged under 18 are included within the respective individual guideline evaluations.

The Council has also conducted analytical work focusing on its impact in other more cross-cutting areas, such as consistency in sentencing, judicial attitudes and public confidence in sentencing and the criminal justice system.³ As this paper focuses on overall changes in sentencing outcomes and on the possible subsequent impact on prison resources, these other analyses are not discussed here.

The analysis showed that of the 76 offences covered by the offence-specific guideline evaluations published to date, for 49 offences, the Council's expectation for what would happen when the relevant guideline came into force was observed. In other words, where the Council expected a change in sentences, this occurred, or where the Council expected no change in average sentencing severity, no change was observed. However, for a further 18 offences, it was found that the outcome was different from that expected; for

¹ It would not have been possible to evaluate the impact of all remaining guidelines in time to input those findings into this project. Each guideline is different and requires its own focused assessment in order to understand its likely impact and whether it was implemented as expected, as different data sources, time periods, sentencing issues and wider changes need to be taken into account. This means that guidelines such as Possession of a bladed article, and any other offence-specific guidelines that came into force after mid 2016 have not been included in this analysis.

² See Annex A for a summary of what is meant by 'sentencing severity'.

³ These can all be seen here: <https://www.sentencingcouncil.org.uk/publications/item/investigating-the-sentencing-councils-impact-in-three-key-areas>

example, where the Council expected an impact but no changes in sentences were observed, or where no impact was expected but changes in sentences were observed. For the remaining nine offences, the findings were less clear, for example, because an expected impact was only partly observed, because there was only tentative evidence of a change (or tentative evidence of no change) or because the findings were not conclusive for other reasons.⁴

Overall, this means that for around two thirds (64 per cent) of the offences studied, sentencing outcomes following the introduction of the guidelines aligned with what was expected, for around a quarter (24 per cent), sentencing outcomes did not align with what was expected (either in the direction of severity increasing, decreasing, or not changing when a change was expected) and for the remaining 12 per cent the results were not conclusive.

Looking only at the impact that the Council's guidelines may have had on sentencing severity, unrelated to whether any impact was expected or not, the analysis showed that of the 76 offences covered by the offence-specific guideline evaluations published to date, for 45 offences (59 per cent) there were no observed changes in sentencing severity when the relevant guideline came into force, but for 31 offences (41 per cent), changes were observed. For 21 of the offences where changes were observed, there were increases in sentencing severity, while for the other 10, there were decreases.

Of the 21 offences with increases in sentencing severity, 14 were not related to immediate custody, and therefore were not associated with a change in the requirements for prison places. For the other 7 offences, there were changes in the use of and/ or length of immediate custodial sentences. Of the 10 offences with decreases in sentencing severity, 7 were not related to immediate custody, while 3 were related to immediate custody.⁵

Overall, this means there were 10 offences where the changes related in some way to immediate custody. The potential associated change in the requirement for prison places was estimated for 9 of these 10 offences.⁶ Overall, it is estimated that these 9 offences were associated with a need for a total of around 900 additional prison places per year, by 2018. Around three quarters of these are estimated to have arisen as a result of two offences/ guidelines: causing grievous bodily harm with intent,⁷ and robbery. To put this into context, the total prison population in England and Wales since the Council was set up has fluctuated between approximately 80,000 and 86,000, and within that, the number of sentenced prisoners has fluctuated between around 67,000 and 75,000. However, these figures on the prison population are not directly comparable with the estimated additional

⁴ For details of the findings for each offence, see Annex E of this paper, here:

<https://www.sentencingcouncil.org.uk/publications/item/investigating-the-sentencing-councils-impact-in-three-key-areas>

⁵ For one of the three offences related to immediate custody (importation/ exportation of a class B drug), the finding was not clear, as time series analysis suggested that the change was not statistically significant, but the Council believes this guideline did lead to a decrease based on other evidence available. Therefore, an associated change in prison places was estimated. For further details, see Annex D.

⁶ One offence (theft from a shop or stall) was excluded from the 10 offences, as it was not clear that the guideline was associated with the changes observed. Another of the 10 offences (importation/ exportation of a class B drug) was included despite new time series analysis showing that the change observed was not statistically significant. See Annex D for more details on both of these offences.

⁷ Throughout this paper, the phrase 'causing grievous bodily harm with intent' refers to the offence of causing grievous bodily harm with intent to do grievous bodily harm, and wounding with intent to do grievous bodily harm contrary to section 18 of the Offences against the Person Act 1861.

places associated with the Council's guidelines, and are only presented to provide a sense of magnitude.⁸

It should be noted that methodological issues mean that it is not possible to be certain about the impact of guidelines on sentences, for example, that a guideline directly caused any changes observed. Therefore, we have used phrases such as 'guidelines were associated with an increased need for prison places' and not 'guidelines caused an increase in the need for prison places'. Additionally, for each offence, a range of values was estimated to take into account some of the uncertainty around the figures. When these were combined to form a total estimated change in the requirement for prison places, this produced a very wide overall range. This means that although we have provided an estimate that the evaluated guidelines were associated with the need for around 900 additional prison places, the actual number could fall anywhere between 0 and 1,700. In addition, a large number of assumptions were required in order to produce these estimates, and the analysis has several limitations (see later in the report for more details).

Regarding the three overarching guidelines that have been evaluated - the Allocation, Reduction in sentence for a guilty plea and Sentencing children and young people guidelines - the review found that aside from a tentative finding of a decrease in sentences for children aged 15 to 17 sentenced for robbery, there was no evidence to suggest that any of these guidelines had led to a change in average sentencing severity.

Given the limitations of this work, particularly in relation to the review of the offence-specific guidelines, the findings are most useful in understanding which offences had outcomes in line with the Council's expectations for the guidelines, which did not, and which were likely to be associated with the greatest and smallest changes in the requirements for prison places. The exact figures presented in this report should therefore be treated as indicative only and not as concrete conclusions about prison resources. They also relate only to the guidelines that have been evaluated to date and not to the entire range of guidelines the Council has produced within its first 10 years.

The Council has considered this analysis and is satisfied that, for the majority of offences, the guidelines seem to have had the intended impact on sentencing severity. For some of those where sentencing outcomes did not align with expectations, the Council has either now revised the guidelines⁹ or committed to revisiting the guidelines in due course,¹⁰ while for others, particularly those where the evaluation findings were unclear or mixed, the

⁸ The figures on the prison population are based on the actual number of people in prison at a point in time, whereas the figures on the number of prison places associated with guidelines are estimated based on analysis of sentencing data, and adjusted to account for changes in sentencing volumes over time. As these figures do not come from the same source and are calculated differently, they are not directly comparable. The figures on the prison population are based on the total prison population on 30 June each year, as taken from the Ministry of Justice Offender Management Statistics publication. See 'Annual Prison Population: 2020', Tables A1.1: <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2020--2>

⁹ For example, the Council has now revised the assault offences guidelines, and the revisions should address the unanticipated impacts related to the offence of causing grievous bodily harm with intent. See the assault offences consultation document, consultation response document and resource assessment for more details: <https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&topic=assault>

¹⁰ When the Council revisits a guideline, it determines whether there are particular aspects of a guideline that may need to be amended, whether a more comprehensive revision is needed or whether no changes are needed. Any changes would then be consulted upon by following the usual consultation process.

Council will continue to monitor sentencing data¹¹ before making any decision as to whether the guidelines need to be revisited.

2. Introduction

The Sentencing Council was set up in 2010 and produces sentencing guidelines for use in all criminal courts. Analysis and research are integral parts of the Council's work. They are used in the development of guidelines as well as in their evaluation.

The Council has a statutory responsibility under section 127 of the Coroners and Justice Act 2009 to consider the resource impact of its guidelines on the prison service, probation service and youth justice services. It does this by producing a resource assessment for all draft and definitive guidelines, whereby it tries to anticipate the impact of its guidelines on sentencing outcomes and the subsequent effect that any changes may have on correctional resources. These resource assessments are published on the Council's website and cover both offence-specific guidelines (which provide sentencers with a stepped approach to sentencing particular offences), and overarching guidelines (which provide sentencers with guidance on an area that can be applied across all offences, such as the issues involved with sentencing children and young people, cases involving domestic abuse and reductions in sentence for a guilty plea).

The Council also has a statutory duty to have regard to the results of its monitoring work. All guidelines are monitored and evaluated after the guideline has been in force for a while,¹² and if there are unanticipated impacts these will be taken into account when deciding whether and when to revisit a guideline. For example, the evaluation of the assault definitive guidelines found some unanticipated impacts, and so a consultation on revised assault guidelines was conducted and definitive versions of these have recently been published.

Guidelines are largely evaluated using quantitative data on sentence levels to estimate their impact on average sentencing severity, and also in relation to the impact of guideline factors on sentencing outcomes. Evaluations are conducted with reference to the aims and objectives of the guideline, i.e. looking at whether the guideline has achieved what it was intended to do. They also include a comparison with the associated final resource assessment, so that the Council can compare what was expected to happen with what actually happened.

¹¹ For some offences, the evaluation has not been able to reach a conclusion about the impact a guideline has had or the reasons for any changes in sentences. For example, for the offence of theft from a shop or stall, some unanticipated changes in sentences were observed, but the reasons for these were unclear. The Council therefore decided to wait until further evidence about longer term sentencing trends is available before deciding whether to revise the guideline.

¹² The Council usually waits until at least six months of post-guideline sentencing data are available before starting to evaluate a guideline. In practice this means waiting around 18 months before starting an evaluation, due to a time lag in the availability of data. The Council also fits its evaluation work around guideline development and other priorities. However, for some guidelines where there is a need to determine the possible impact of the guideline more quickly, the Council will commence its evaluation sooner. For example, for the Reduction in sentence for a guilty plea guideline, the Council was able to acquire some data more rapidly, research was conducted in courts and a steering group was convened so that any issues could be identified quickly. The formal evaluation report was published as soon as possible afterwards.

This analysis is supplemented with qualitative data on sentencer views on guidelines, transcripts of judges' sentencing remarks and other evidence, where needed and available.

The Council had been in existence for 10 years in April 2020 and as part of a review of its work to date conducted a piece of analysis to summarise the overall changes in sentencing severity associated with its evaluated guidelines. The objective was to try to estimate the total, cumulative impact of the guidelines it had evaluated to date on the need for prison places and to compare the changes in sentences associated with guidelines with the impact they were expected to have when first published.

The focus is on those guidelines where it has been possible to conduct an evaluation, and on offence-specific guidelines. However, a discussion of the impact of overarching guidelines on sentencing outcomes has also been included later in the paper.

3. Methodology

This section sets out the different stages undertaken for this analysis. It also provides some information on definitional issues, as well as the assumptions that needed to be applied to the work and issues that need to be taken into account when interpreting findings.

3.1 Determining the scope

To understand the cumulative impact of its guidelines on sentencing, the Council needed to first determine the research questions and which areas would be in scope.

It was only possible to include in the analysis those guidelines for which an evaluation had already been conducted and published. Each guideline is different and requires its own focused assessment in order to understand its likely impact and whether it was implemented as expected, as different data sources, time periods, sentencing issues and wider changes need to be taken into account. It would therefore not have been possible to evaluate the impact of all remaining guidelines in time to input those findings into this project.¹³ However, the Council will consider the possible impact of its other guidelines on sentencing severity and on prison places in future.

This project has not included an analysis of the cumulative impact of guidelines on probation resources, as no sufficiently detailed data on suspended sentences or community sentences over time are currently available. Additionally, the majority of the Council's guidelines apply to adult offenders only, and so the focus of this project has been on adult offenders. However, a separate evaluation of the Council's Sentencing children

¹³ As we do not evaluate guidelines for some time after they have come into force, and then there are data lag issues, this means that guidelines such as Possession of a bladed article, and any other offence-specific guidelines that came into force after mid 2016 have not been included in this analysis. This means that guidelines covering around 59 offences (or groups of offences) which were published by the end of 2020 had not yet had an associated evaluation conducted and published by the date of publication of this paper. The guidelines evaluated and that are therefore included in this analysis represented around 89 per cent of offenders sentenced for offences covered by Sentencing Council guidelines that were published by the end of 2020 (this proportion is based on data for adult offenders sentenced in 2018). This is a high proportion because the Council covered some of the highest volume offences in its first guidelines, particularly assault offences, drug offences, theft offences and some very high volume offences in the Magistrates' Court Sentencing Guidelines (such as speeding and television licence payment evasion).

and young people guideline has been published and analyses of any other guidelines that apply to sentencing those aged under 18 are included within the respective individual guideline evaluations.

It was not possible to examine the impact of guidelines by the age, sex and ethnicity of offenders. Given the large number of offences that needed to be covered in order to provide even a high-level overview, this would have required a huge amount of additional work, for which the Council does not have resource. Therefore, it was decided that the project would look overall at all adult offenders and not provide breakdowns for different groups.

The Council also decided that this project would not look into possible reasons for the changes observed in sentencing severity and prison places (e.g. particular factors in guidelines, sentence starting points, etc). Possible reasons for any changes in sentences are discussed within the relevant guideline evaluations, published separately.

The Council has conducted analytical work focusing on its impact in other more cross-cutting areas, such as judicial attitudes, consistency in sentencing and public confidence in sentencing and the criminal justice system.¹⁴ As this paper focuses on overall sentencing outcomes and on the possible associated change in the need for prison resources, these other areas are not discussed here.

Finally, the Council decided to focus on the offence-specific guidelines only. The overarching guidelines are more cross-cutting, with a focus on issues such as mental disorders, developmental disorders or neurological impairments, domestic abuse, and reduction in sentence for a guilty plea; they do not provide sentencing ranges and generally do not aim to change average sentencing severity. In addition, the three overarching guidelines evaluated to date have not been found to have been associated with a change in sentencing severity for adult offenders, and so including these would not have changed the findings in relation to adult prison places. However, to provide a fuller overview of the Council's impact on sentencing, a brief discussion of the findings from the overarching guidelines evaluated to date has been included later in the paper.

Drawing all of these issues together, this analysis therefore aimed to answer the following three questions through this project:

- What has been the overall impact of the Council's evaluated guidelines on sentencing severity?
- What has been the overall impact of the Council's evaluated guidelines on prison places?
- How do the actual impacts of the evaluated guidelines compare with the impacts that were expected when the guidelines were implemented?

3.2 Reviewing the guideline evaluations conducted to date

As explained above, to estimate the cumulative impact of the Council's guidelines, it was first necessary to review each of the evaluations conducted to date to determine which offence-specific guidelines were associated with a change in sentencing outcomes, the

¹⁴ These can all be seen here: <https://www.sentencingcouncil.org.uk/publications/item/investigating-the-sentencing-councils-impact-in-three-key-areas>

offences for which no changes were observed, and how these findings compared with the expected impact.

Slightly different methods were used for each of the original guideline evaluations, largely because each set of offences and guidelines had different aims and objectives and a different set of circumstances to take into account, but also because of data issues. This includes the type of data that could be drawn upon for each evaluation. For example, where evaluations were looking at high-volume offences, there was more scope to undertake statistical methods such as time series analysis and regression analysis, and for offences sentenced in the Crown Court, it was possible to analyse sentencing remark transcripts (these are not available in magistrates' courts). The nature of some guidelines also meant we drew on other sources of data – for example, Environment Agency data were used as part of the Environmental offences evaluation and a sample of Court of Appeal judgments were analysed for the Health and Safety offences, corporate manslaughter and food safety and hygiene offences evaluation.

The statistical methods that have been possible for each evaluation have also differed from one evaluation to another, and the Council has developed and improved its methodologies over time. For example, the types of regression analysis conducted have depended on the frequencies of the different sentencing outcomes imposed for each offence. For robbery, for which a large proportion of offenders receive a sentence of immediate custody, the focus of the analysis was on the lengths of custodial sentences, whereas for an offence like theft from a shop or stall, for which a wide range of different sentencing outcomes are imposed, the regression analysis focused instead on average sentencing severity.

3.3 Conducting new analysis for this project

While part of this project has involved bringing together findings from existing guideline evaluations to understand the possible impact of guidelines on sentencing severity, no analysis had been conducted to date to quantify the possible impact of guidelines on prison places overall. Given the variation in data drawn upon for the original evaluations, which in turn dictated the type of analysis undertaken, this project required new analysis to draw this together to provide an overall estimate of the possible impact of guidelines on immediate custody and therefore on prison places.¹⁵

See Annex A for more information on what is meant by sentencing severity and why new analysis was necessary.

3.4 Defining prison places

It may help to understand what is meant by the term 'prison places'.

If an offender spends one year in prison, then they will need one prison place for their time there. If an offender spends two years in prison, then this would be counted as one prison

¹⁵ The new analysis used data from the Court Proceedings Database (CPD), which is maintained by the Ministry of Justice (MoJ). Every effort has been made to ensure that the analysis has been based on figures that are accurate and complete. However, 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. Further details of the processes by which MoJ validate the records in the CPD can be found within the guide to their Criminal Justice Statistics publication which can be downloaded via the link:

<https://www.gov.uk/government/collections/criminal-justice-statistics>

place in their first year, and one in their second year, which would still be counted as one place *per year*. It is not expected that this would mean that an additional cell or space would need to be built; in the context of Sentencing Council guidelines, an increase or decrease in the need for prison places is expected to mean that more or fewer spaces will be taken up within prisons, with the associated costs of having an additional person in that space.

Offenders are sentenced to immediate custody for different lengths, and at different times, so in reality it is not as simple as offenders spending whole, exact years in prison. To account for this, prison places are calculated as averages across a year. For example, if two offenders each spend six months in prison within a year, then on average, one prison place is needed overall.

Another factor to account for is that offenders do not usually spend the entire length of their sentence in prison. For example, for most standard determinate sentences,¹⁶ offenders are currently automatically released at the halfway point of their sentence, so that an offender sentenced to four years' immediate custody spends two years in prison and two years on licence in the community (although they can be recalled to prison during that period).¹⁷

If an offender would have been sentenced to four years' immediate custody before a guideline came into force, but they were sentenced to six years' immediate custody under a new guideline, then their sentence was two years higher under the guideline, but they would only serve one additional year in prison, and only one additional prison place would be needed.

A more detailed explanation of how prison places are counted is provided in Annex B.

3.5 Determining the offences for which to produce prison place estimates

An added complication for this work is that some guidelines cover a range of different offences and some offences are covered by more than one guideline.¹⁸ It was therefore

¹⁶ A standard determinate sentence is an immediate custodial sentence where the court has set a fixed length for the sentence and the offender will be automatically released from prison at the halfway point. It should be noted that there are other types of determinate sentences; for example, extended determinate sentences, which can be imposed in certain circumstances for specified violent, terrorism or sexual offences, where the court assesses the offender as a significant risk to the public of committing further specified offences. These offenders will be released at the two thirds point of their custodial period, subject to the Parole Board being satisfied that their detention is not necessary for the protection of the public. However, the release provisions relating to extended determinate sentences, and the availability and release points of other types of sentences have changed over time. See the Council's website for more information on determinate custodial sentences, extended determinate sentences and other types of sentences here: <https://www.sentencingcouncil.org.uk/about-sentencing/types-of-sentence/>

¹⁷ The release provisions for some serious violent and sexual offences changed in April 2020, so that offenders sentenced to immediate custody of seven years or longer (where that offence attracts a maximum penalty of life) now serve two thirds of their sentence in custody. The Police, Crime, Sentencing and Courts Bill 2021, which is being considered by Parliament at the time of publication of this paper, proposes extending this policy to offenders with sentences of four years or more. Although the guidelines themselves do not take account of release provision, the analysis required some assumptions around how long offenders would serve in prison. The analysis conducted for this paper assumes that all offenders given a standard determinate prison sentence serve half of their sentence in custody. This aligns with the policy for the majority of the time when the guidelines covered by this paper were in force and the Council's understanding of release policies when the guidelines were published. Any additional length of time served by offenders for offences covered by these new release provisions and for which the Council's guidelines may have increased sentences is attributable to the legislative changes and not the guidelines.

¹⁸ For example, the offences of fraud (contrary to section 1 of the Fraud Act 2006), conspiracy to defraud (contrary to common law) and false accounting (contrary to section 17 of the Theft Act 1968) are each covered by three

necessary to determine which specific offences were in scope for this project. To do this a series of questions were asked, as follows:

1. For each guideline evaluated to date, for which offences was it possible to evaluate the impact of the guideline?¹⁹
2. Did the evaluation suggest that sentences changed following the introduction of the relevant guideline?
3. If so, is the offence imprisonable (is it possible for an offender to be sentenced to immediate custody for the offence)?
4. If so, did the evaluation suggest that there may have been a change following the introduction of the guideline either in the use of immediate custody or in the lengths of immediate custodial sentences (or both)?
5. If so, were volumes (numbers of offenders sentenced) high enough, and are the data of sufficient quality to conduct new time series analysis focusing on immediate custodial sentences?

For all offences counted in question 1, and for which questions 2 to 5 were answered with 'yes', a new time series analysis was conducted to estimate whether the guideline was associated with a statistically significant change in the use and/or length of immediate custodial sentences (see Annex C for more details on the time series analysis method). If a statistically significant difference was identified, an estimate was produced of the number of prison places that may have been associated with the introduction of the guideline. A range was also generated, to illustrate some of the uncertainty around each estimate.²⁰ These impacts were then added together across all other offences where prison places had been estimated, to produce a total, cumulative change in the number of prison places required associated with guidelines.

3.6 Assumptions and caveats to the analysis

In order to produce the new estimates of prison places, the following assumptions and caveats were taken into account:

- Offenders sentenced to standard determinate immediate custodial sentences were assumed to serve 50 per cent of their sentence in prison.²¹
- Offenders sentenced to extended determinate sentences were assumed to serve 90 per cent of their sentence in prison.²²

guidelines: the Fraud guideline, the Benefit fraud guideline and the Revenue fraud guideline. Sentencers should use the most appropriate guideline in each individual case.

¹⁹ In total, there are 76 offences (or groups of offences) for which an evaluation of the impact of the relevant guideline has been conducted and published. An additional 50 offences (or groups of offences) were excluded from the evaluations that have been published, mainly because only a very small number of offenders are sentenced for these offences per year. The 76 offences that were included in the evaluations represent the overwhelming majority of offenders sentenced under the guidelines covered by the evaluations published to date (over 99 per cent in 2018).

²⁰ A range was produced for each offence by taking the confidence interval from the time series analysis and estimating the number of prison places required for the upper and lower confidence limits, thereby acting as an upper and lower estimate of the central value.

²¹ This is based on provisions under the Criminal Justice Act 2003, which states that all offenders serving standard determinate sentences will be automatically released from custody at the halfway point of their sentence and serve the remaining half of the sentence on licence in the community. Recent changes to release provisions have not been accounted for in the analysis, as these came into effect after the guidelines and associated resource assessments were published. Early release through Home Detention Curfew has also not been taken into account.

²² This is based on figures from the Ministry of Justice Offender Management Statistics publication, which suggests that offenders sentenced to extended determinate sentences and who were released from prison in 2018 had served

- Offenders sentenced to life or other indeterminate sentences were excluded from the analysis because no reliable data on the minimum terms imposed by the courts are available, and so it would not be possible to compare sentencing before a guideline came into force with sentencing under a Council guideline.²³ These sentences had also been excluded from the relevant guideline evaluations for the same reasons. However, for the offences for which the relevant guidelines have been evaluated, only a very small number of offenders were sentenced to indeterminate custodial sentences and so it is not expected that the prison place estimates would be notably different if it had been possible to include indeterminate sentences in the analysis.
- Only immediate custodial sentences could be included in this analysis. This means that any changes related to the custodial sentence lengths of suspended sentence orders have not been included. Therefore, if an offender breaches a suspended sentence order and serves a period of time in prison, and that period of time has been affected by the guideline used to impose the suspended sentence order, this has not been counted within these analyses. This is due both to a lack of data on the lengths of suspended sentence orders and a lack of data on breaches of suspended sentence orders.
- If a guideline had an impact on immediate custody then it was assumed that this would have occurred immediately after coming into force, and not several months later. To the extent that it is possible to identify that any changes in sentence outcomes are as a result of a guideline, the Council believes that most guidelines that have had an impact to date have had an impact immediately. The time series analysis used for this method also required this assumption. Where this was less clear-cut, (non-domestic burglary and theft from a shop or stall), some different decisions were made around how to account for these. See Annex D for more details.
- For comparison purposes, all estimates for this new analysis were calculated using the same updated set of offence volumes data. The Council's guidelines have come into force at different times: the earliest Council guideline included in this analysis is the assault definitive guidelines, which came into force in July 2011, and the most recent is the dangerous dog offences guidelines, which came into force in July 2016. In order to compare guidelines as consistently as possible with each other, all prison places were calculated based on 2018 volumes (the most recent full year of data when the analysis was conducted). This meant that for each guideline, findings from the time series analysis were used to estimate the extent to which a guideline was associated with a change in sentencing outcomes, and then the number of offenders sentenced for that offence in 2018 was used to estimate the number of prison places.

3.7 The expected impact of a guideline

The final stage was to compare the outcomes to those anticipated by the Council when the relevant definitive guidelines were published.

For each guideline it produces, the Council has an expectation of how the guideline should impact sentences, and this is set out in the associated final resource assessment, published alongside the definitive guideline. It may be that the guideline is expected to promote consistency and transparency in sentencing, but not to change average sentencing outcomes, or it may be that sentences are expected to increase or decrease

approximately 90 per cent of their sentences. See Table 3.2i within the 'Prison releases: October to December 2018' link: <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2018>

²³ Even if data were available, minimum terms are not likely to be a reliable indicator of time served, and so analysis would not have been meaningful.

for certain types of offences, for example, with higher or lower fine levels, changes in the requirements applied to community orders, a shift from the use of one sentencing outcome to another, or increases or decreases in custodial sentence lengths.

For each offence, the change in sentencing outcomes following the introduction of the relevant guideline was compared to the original expectation for that offence. See Annex E (a separate spreadsheet workbook) for a full breakdown.

4. Findings

4.1 Results of monitoring and evaluation

In total, the Council has published evaluations of the impact of 14 of its suites of guidelines: 11 suites of offence-specific guidelines and three overarching guidelines, which has included analysis of a total of 76 offences (or in some cases, groups of offences):

- 5 sets of offences covered by the assault offences guidelines;²⁴
- 3 offences covered by the burglary offences guidelines;
- 8 offences covered by the drug offences guidelines;
- 11 offences covered by the sexual offences guidelines;
- 2 sets of offences covered by the environmental offences guidelines;²⁵
- 13 offences covered by the fraud, bribery and money laundering guidelines;²⁶
- 5 sets of offences covered by the health and safety, corporate manslaughter and food safety and hygiene guidelines;²⁷
- 6 offences covered by the theft offences guidelines;
- 1 offence covered by the robbery offences guidelines;
- 19 offences covered by the Magistrates' Court Sentencing Guidelines; and,
- 3 offences covered by the dangerous dog offences guidelines.²⁸

Other offences were not studied, for example, because the offences were very low volume or because there were data issues (for example, where the Council wasn't able to isolate a specific offence within the data). All of these offence-specific evaluations have been published on the Council's website.²⁹ A full list of all offences (both those that were included and those that were excluded from the evaluations) is given in Annex E.

²⁴ In the assault offences definitive guideline assessment, racially/religiously aggravated versions of some of the offences were grouped with the base offences. For example, racially/religiously aggravated common assault was evaluated (and grouped) with common assault for the purposes of the evaluation.

²⁵ For the environmental offences guidelines evaluation, all offences were grouped together for the analysis, but were split into individuals and organisations, to reflect the structure of the guidelines.

²⁶ Analysis for one further offence was included in the evaluation for this guideline but sentencing trends were too volatile to draw any conclusions and so this offence has been excluded from these counts.

²⁷ For the health and safety, corporate manslaughter and food safety and hygiene guidelines, offences were grouped together as follows: health and safety offences were grouped together, but data were analysed separately for individuals and organisations; food safety and hygiene offences were grouped together, but data were analysed separately for individuals and organisations; and corporate manslaughter data was treated as a standalone offence for the analysis. This structure reflected the structure of the individual guidelines.

²⁸ Analysis for a further two offences was included in the evaluation for these guidelines but volumes were too low to draw any conclusions and so these have been excluded from these counts.

²⁹ All of the guideline assessments published to date can be found on the Sentencing Council's website, here: <https://www.sentencingcouncil.org.uk/research-and-resources/sentencing-council-research-and-analysis/guideline-monitoring-and-evaluations/>

Table 1 below shows the number of offences for which changes in average sentencing severity were observed following the introduction of the guideline, the nature of these changes and whether they were expected. These cover only those guidelines that have been evaluated.

Table 1: Number of offences evaluated to date, by whether there were changes to sentencing severity following the introduction of the guidelines, the nature of any changes, and whether the findings were expected

Changes to sentencing severity following the introduction of the guideline	Which sentencing outcomes the changes related to	Whether the findings were expected, unexpected or whether the evidence is unclear/ mixed			Total
		Expected	Unexpected	Unclear / mixed evidence	
No changes observed	N/A	42	2	1	45
Sentencing severity increased	Changes related to immediate custody*	0	6	1	7
	Changes related to other sentencing outcomes	4	5	5	14
Sentencing severity decreased	Changes related to immediate custody*	2	0	1	3
	Changes related to other sentencing outcomes	1	5	1	7
Total		49	18	9	76

*Offences for which there may have been a subsequent impact on prison places. Note that offences with a change in the use and/ or lengths of immediate custody may also have had changes in the use of other sentencing outcomes. The focus for this project is only on whether or not immediate custody changed. Note that this includes one offence (importation/ exportation of a class B drug), where there was a decrease in severity, which was not found to be statistically significant, but that the Council has concluded was a decrease due to other evidence available. See Annex D for more details.

4.2 Summary of findings

This table provides multiple breakdowns and ways of summarising the findings, but three of the main points from this table are as follows:

- For the majority of the offences studied (49 out of 76), the findings were anticipated - the Council's expectation for what would happen to sentences following the introduction of the relevant guideline came true.
- For the majority of the offences studied (45 out of 76), no changes in average sentencing severity were observed following the introduction of the relevant guideline.
- There were 10 offences where changes were observed in the use and/or lengths of immediate custody, with a potential subsequent impact on prison places (7 increases and 3 decreases). For the other 21 offences where changes in severity were observed (14 increases and 7 decreases), these changes were related to other sentencing outcomes.

For a small number of the offences where changes were observed after the relevant guideline came into force, it was unclear whether this was related to the guideline. These offences have still been included in the analysis as changes in sentencing outcomes, but more details on the specific interpretation for each offence are given in Annex E.

4.3 Expected impact versus actual changes observed

Of the 76 offences analysed in the evaluations to date, for 49 offences, the Council's expectation for what would happen when the relevant guideline came into force was observed. In other words, where the Council expected a change in sentences, this occurred, or where the Council expected no change in average sentencing severity, no change was observed.

However, for a further 18 offences, it was found that the outcome was different from that expected; for example, where the Council expected an impact but no changes in sentences were observed, or where no impact was expected but changes in sentences were observed. For the remaining nine offences, the findings were less clear, for example, because an expected impact was only partly observed, because there was only tentative evidence of a change (or tentative evidence of no change) or because the findings were not conclusive for other reasons.

Overall, this means that for around two thirds (64 per cent) of the offences studied, there is evidence that the Council's guidelines had the expected impact, for around a quarter (24 per cent) the guidelines may have had an unexpected impact and for the remaining 12 per cent the results were not conclusive.

A description of how these three sets of findings can be broken down further is given below.

Expected findings

Firstly, looking at the 49 offences where sentencing outcomes following the introduction of the relevant guideline aligned with the Council's expectation; these can be split into:

- 42 offences where no changes were expected and none were observed, and,
- seven offences where an impact was expected and the expected changes in sentences were observed.

Of these seven offences where expected changes were observed, two of these involved changes in the use of and/ or lengths of immediate custody (therefore potentially linked to a change in the requirements for prison places), whereas for the other five, the changes

were related to other sentencing outcomes (and therefore not linked to requirements for prison places), for example, increases in fine levels or shifts from fines to discharges.³⁰

Unexpected findings

For the 18 offences where the changes in sentences following the introduction of the guideline *did not* align with the expected impact; these can be split as follows:

- for 13 offences, no impact was expected but changes in sentences were observed following the introduction of the guideline;
- for one offence, an impact was expected but the resulting change in sentences was much greater than expected, although in the same direction;
- for one offence, an impact was expected but the change in sentences that was observed was different in nature than expected;
- for two offences, an impact was expected but no changes were observed; and,
- for one offence, an impact was expected, that change was not observed, but instead there was *some* evidence of a different change in sentences.³¹

Out of the 15 offences where clear changes were observed (the first three bullets above), 6 of these included changes in the use of and/or lengths of immediate custody (therefore possibly relating to a change in the requirement for prison places), while the other 9 related to other sentencing outcomes (therefore unrelated to prison places).³⁰

Unclear or mixed findings

Finally, looking at the nine offences where the results were less clear, these can be broken down as follows:

- four offences where no impact was expected but there was tentative evidence of a change in sentences following the introduction of the relevant guideline;
- one offence where an impact was expected but the expected changes were only partly observed;
- one offence for which no impact was expected and there was only tentative evidence that no change had occurred;
- two offences where an impact was expected and there was only tentative evidence of the expected changes having occurred; and,
- one offence where it was expected that there *may* be an impact as a result of legislative changes, but instead, there was only tentative evidence of a different small-scale change having occurred.

Of the nine offences where there was tentative evidence of a change, for seven of them, it is thought that even if there was a change in sentences, this was for sentences that were not related to immediate custody, and therefore there are only two offences where there was a possible change in the use and/ or lengths of immediate custody (importation/ exportation of a class B drug and theft from a shop or stall). See Annex D for more information on the findings for these offences and why the results are not conclusive.

³⁰ See Annex E for details of the findings for each offence, here: <https://www.sentencingcouncil.org.uk/publications/item/investigating-the-sentencing-councils-impact-in-three-key-areas>

³¹ For this offence (assault occasioning actual bodily harm), a decrease had been expected and instead, an increase was observed, although this increase was mostly within the bounds of what was expected and there was no strong evidence that the guideline had had an impact on sentencing severity overall.

4.4 Changes in average sentencing severity

In the previous section, the results of the evaluations have been framed in terms of the change observed in sentences following the introduction of a guideline compared with the expected impact of the guideline. Another way of framing the evaluation findings is to look at how many offences saw changes in sentences following the introduction of a guideline compared with how many saw no changes, i.e. unrelated to whether changes were expected or not, to provide an overview of the possible impact of guidelines on sentences overall.

Of the 76 offences analysed in the evaluations to date, for 45 offences, no change in average sentencing severity was detected in the original evaluation. For the other 31 offences, there was evidence of a change in average sentence severity following the introduction of the relevant guideline.³²

Out of the 31 offences where changes were observed, these can be broken down as follows:

- 21 offences with increases in the average severity of sentences imposed following the introduction of the guideline – 7 related to immediate custody and 14 related to other sentencing outcomes; and,
- 10 offences with decreases in the average severity of sentences – 3 related to immediate custody and 7 related to other sentencing outcomes.³³

This means that there were 10 offences with changes in sentencing severity related to immediate custody (7 increases and 3 decreases). Where there were changes related to immediate custody, i.e. in the proportion of offenders sentenced to immediate custody and/or in the lengths of the immediate custodial sentences imposed, there may have been an associated change in the requirement for prison places.

4.5 Changes in the requirements for prison places

New analysis has been conducted to estimate the possible additional or fewer prison places required in relation to the introduction of the Council's guidelines that were in scope for this study. Here we focus on nine of the ten offences where there have been changes in immediate custody (and therefore that may have had a subsequent impact on prison places) and where the Council considers that it is likely that the relevant guidelines contributed to these changes.³⁴

³² For some of these, the evidence was unclear or mixed, for example, for some offences, a change may have been observed in sentencing outcomes after the guideline came into force, but it was unclear whether this was related to the guideline. These offences have still been included in the analysis as changes in sentencing outcomes, but more details on the specific interpretation for each offence are given in Annex D. For some offences, the evaluation analysis showed that there was evidence of a change in severity, but this was either not statistically significant (average sentencing severity did not go outside the expected region in the time series analysis) or robust analysis could not be conducted in order to make firm conclusions about whether a change had occurred. In these cases, it may have been concluded that there was no change in severity. Further details for all offences are given in Annex E.

³³ For the offence of production of a class B drug/ cultivation of cannabis, the drug offences guideline evaluation found that following the introduction of the guideline, there was a flattening of a previous upward trend in sentencing severity. For ease of analysis (in order to split changes into increases and decreases), this has been treated within this report as a decrease in sentencing severity. However, the true picture is slightly more nuanced.

³⁴ The one offence that was excluded was theft from a shop or stall, and this was because although there was an increase in sentencing severity, including the use of immediate custody, this did not happen until around six months after the guideline came into force, and so it was not clear that the guideline was associated with the increase observed. See Annex D for further information.

It should be noted that **we can never be sure that a guideline directly caused the changes observed**. When studying sentencing outcomes over time, it is possible that an external change unrelated to the guideline happened at around the same time as a guideline was introduced, and which has had an effect on sentences. Examples could include a policy change (such as police or prosecution policy, or a legislative change) or a change in the mix of offences coming before the courts and, as such, it is not possible for the Council completely to rule out the possibility of these external factors. If sentencing levels were fairly stable before a guideline came into force, and then immediately following the introduction of a guideline there was a change in sentencing outcomes that then stayed at a similar level afterwards, and research conducted by the Council provided evidence of the guideline contributing to this change, then the Council could be more confident that the guideline caused the changes observed.

Unfortunately, it is often not this simple. There are often other trends (maybe sentences were increasing or decreasing over time and it was not possible to identify what was causing this), which can make it difficult to disentangle the possible impact of the guideline from other trends and interventions. This is why we use phrases such as 'guidelines were associated with an increased need for prison places' and not 'guidelines caused an increase in the need for prison places'.

The central estimates provided in Table 2 below are averages, but as with all statistical work of this type, there is actually a range of values that these estimates could fall within, because we can never be sure of the exact impact. The lower and upper estimates therefore provide a range for each offence, and we expect that the true value is somewhere between these two values. A number of assumptions have been required in order to estimate this (see the Methodology section).

Alongside the estimated changes, the original expected impacts (as set out in the final resource assessments published alongside the relevant guidelines) are provided, for comparison.

Table 2: Estimated changes in the requirement for prison places per year associated with the introduction of nine guidelines that the Council has evaluated, adjusted to 2018 volumes (ordered from highest to lowest), compared with the original expected impact

Offence	Average / central estimate*	Lower estimate*	Upper estimate*	Expected impact#
Robbery	500	100	800	0
Causing grievous bodily harm with intent	300	0	600	20 to 60
Non-domestic burglary	100	100	200	0
Sexual assault on a child under 13	100	100	100	0
Sexual assault	0	0	100	0
Going equipped for theft or burglary	0	0	0	0
Assault on a police constable	0	0	0	-20 to -60
Importation / exportation of a class B drug	0	0	0	-30 to -150 overall for importation/
Importation / exportation of a class A drug	-100	-100	-100	exportation offences
Total^	900	0*	1,700	~

Notes:

* The average/ central, lower and upper estimated figures are rounded to the nearest 100 prison places to account for some of the uncertainty around the estimates. This means that estimates lower than 50 prison places are rounded to 0. This also means that, for example, if a central estimate was 120, with a range of 60 to 180, these would round to a central estimate of 100, with a range of 100 to 200. Therefore, there may be occasions when the central estimate may appear to be equal to either the upper or lower bound of the range. Decreases are represented as negative numbers and are highlighted in blue.

Expected impacts remain rounded as they were in the published resource assessments. This is because the resource assessments included an assumption that average sentencing severity, the case mix coming before the courts and all other factors related to the offences would remain stable once a guideline came into force, and that the guideline would be the only intervention/ change during that period.

~ A total expected impact is not provided because resource impacts were calculated at different times based on different periods of data and so estimates are not comparable. Also, offences where an impact was expected but none was found are not included in this table and so any total would not necessarily be meaningful.

^ Row values will not appear to sum to the totals in the final row, due to rounding of estimates.

Overall, it is estimated that for offenders sentenced in 2018 for these nine offences, the Council's guidelines were associated with an increased need for around 900 additional

prison places overall, with a range of between 0 and 1,700 prison places.³⁵ The range is wide because the uncertainty around each individual estimate is added to the uncertainty of the other estimates when producing the total. The table also shows that most of these additional estimated prison places were not expected.

To put the figures into context, the total prison population in England and Wales since the Council was set up has fluctuated between approximately 80,000 and 86,000, and within that, the number of sentenced prisoners has fluctuated between around 67,000 and 75,000. In 2018 specifically, for comparison with the year used for the estimates of prison places associated with the Council's guidelines, the total prison population was around 83,000, and the number of sentenced prisoners was around 73,000.³⁶

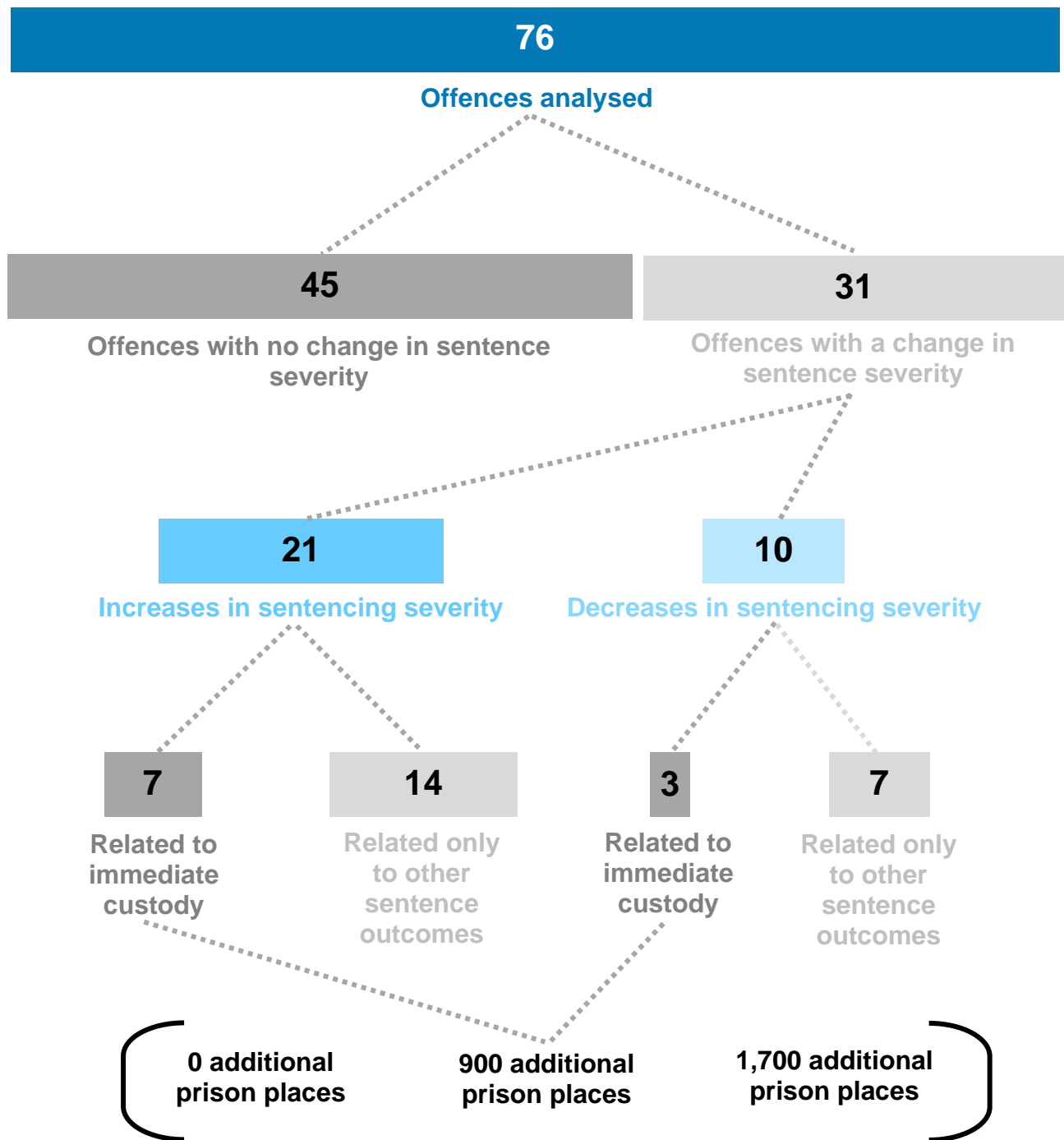
The additional prison places are largely associated with just two offences: robbery and causing grievous bodily harm with intent. For details of the possible reasons for the increases in sentencing severity observed for these offences, see their respective guideline evaluation reports.³⁷

³⁵ These figures are estimated based on the number of offenders sentenced in 2018 for these offences. The prison places estimated are 'steady state' figures, which means that they show the total number of additional/ fewer prison places that would eventually be needed, once the guideline has been in force for a while and the full effect is observed. This number of prison places would then be required every year, assuming the number of offenders sentenced each year and the case mix coming before the courts remained the same. See Annex B for more details.

³⁶ These figures are based on the total prison population on 30 June each year, as taken from the Ministry of Justice Offender Management Statistics publication. See 'Annual Prison Population: 2020', Tables A1.1: <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2020--2>

³⁷ All of the Council's guideline assessments (evaluations) can be found here: <https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=guideline-assessment>

Figure 1: Flowchart showing the high-level results of the analysis of 76 offences covered by the Council's evaluated guidelines



Bringing all of the analysis together, the flowchart above shows how the original 76 offences analysed filter down to the 10 offences with changes in the use of immediate custody, and (excluding theft from a shop or stall) the average/ central estimate of 900 additional prison places in 2018, with a range of between 0 and 1,700 prison places.

4.6 Impact of the overarching guidelines

The overarching guidelines were not in scope for the main part of this project, which focused on offences covered by offence-specific guidelines. The overarching guidelines are more cross-cutting, with a focus on issues such as mental disorders, developmental disorders or neurological impairments, domestic abuse, and reduction in sentence for a guilty plea; they do not provide sentencing ranges and generally do not aim to change average sentencing severity. However, all guidelines will have some influence in sentencing, intentionally or otherwise, and so it is still useful to look at whether the overarching guidelines may have had an impact on sentencing outcomes.

Evaluations of the impact and implementation of three of the Council's overarching guidelines have now been conducted and published; these are:

- The Allocation guideline;
- The Reduction in sentence for a guilty plea guideline; and,
- The Sentencing children and young people guideline (which includes overarching principles for sentencing children and young people, plus offence-specific guidelines for sexual offences and robbery).

For both the Allocation guideline and the Reduction in sentence for a guilty plea guideline, the Council's intention was to influence parts of the criminal justice process other than sentencing, and not to cause changes in sentencing severity.³⁸ Nonetheless, the evaluations included analysis of sentencing severity to make sure that no unintended impact on sentences had occurred and found that, as expected, no changes had occurred which were attributable to the guidelines. These guidelines therefore had the anticipated impact (in relation to sentences) of not changing sentencing outcomes, and there were subsequently no changes in the need for prison places.

For the Sentencing children and young people guideline, the final resource assessment set out that, although the aim was not to change average sentencing severity, there might be a shift from custodial to community sentences for a small number of cases. Analysis conducted as part of the evaluation suggested that overall, there was no clear change in average sentencing severity, although there was tentative evidence of a decrease for 15 to 17 year olds sentenced for robbery. This guideline therefore had the anticipated impact with respect to sentencing outcomes, as these findings were consistent with the resource assessment. No prison place estimate has been produced for this guideline, but given that the number of 15 to 17 year olds sentenced for robbery is fairly small, the reduction was tentative and the average custodial sentence length for this age group for this offence is quite low, it is likely that the impact on prison places (in terms of reducing the number needed) would have been very small.

³⁸ For the Reduction in sentence for a guilty plea guideline, the Council's intention was to encourage defendants who were going to plead guilty to do so as early in the process as possible, but not to influence the proportion of defendants who pleaded guilty. The intention was for more defendants to plead at the first stage of the proceedings, and as that would then be the only stage when defendants could receive the maximum reduction, they would be encouraged to enter an earlier plea. Evidence available at the time suggested that some offenders were receiving large reductions in sentence quite late in the process, and so it was expected that if these offenders pleaded guilty earlier, they would continue to receive the same level of reduction, and the same final sentence. If the guideline worked as intended, there was therefore not expected to be an impact on sentencing severity. For further details, see the resource assessment published alongside the guideline, and the evaluation of the impact of the guideline, here: <https://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-final-resource-assessment/> and <https://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-assessment-of-guideline/>

Overall, this means that for the overarching guidelines evaluated to date, the impact on average sentencing severity and subsequently on prison places is thought to have been negligible.

5. Conclusions

5.1 Conclusions and next steps

The aim of this analysis was to compare the changes in sentencing outcomes associated with the introduction of guidelines with the impact they were expected to have when first published, to summarise the overall changes in sentencing severity that have been associated with guidelines and to try to estimate the total, cumulative changes in the need for prison places. The work focused on offence-specific guidelines for which an evaluation had been undertaken and those offences where it was possible to estimate possible impacts. Whilst this does not cover all offences, it does cover 89 per cent of offenders who were sentenced for an offence that was covered by a Sentencing Council guideline published by the end of 2020.³⁹

The analysis showed that:

- For the majority of the offences studied (49 out of 76), the findings were expected - the Council's expectation for what would happen to sentences following the introduction of the relevant guideline came true; and,
- For the majority of the offences studied (45 out of 76) no changes in sentencing severity were observed following the introduction of the relevant guideline.

For the 31 offences where changes in sentencing severity were observed, 21 offences had increases in sentencing severity, while the other 10 had decreases. Of the 21 offences with increases in sentencing severity, 14 were not related to immediate custody, and therefore were not associated with a change in the requirements for prison places. For the other 7 offences, there were changes in the use of and/ or length of immediate custodial sentences. Of the 10 offences with decreases in sentencing severity, 7 were not related to immediate custody, while three were related to immediate custody. Overall, this means there were 10 offences where the changes related in some way to immediate custody.

The potential associated change in the requirement for prison places was estimated for nine of the 10 offences associated with changes in immediate custody. Overall, it is estimated that these 9 offences were associated with a need for a total of around 900 additional prison places per year, by 2018. Around three quarters of these are estimated to have arisen as a result of two offences or guidelines: causing grievous bodily harm with intent, and robbery.

However, it should be noted that methodological issues mean that it is not possible to be certain about the impact of guidelines on sentences, for example, that a guideline directly caused any changes observed. For each offence, a range of values was estimated to take into account some of the uncertainty around the figures. When these were combined to form a total impact, this produced a very wide overall range. This means that although we provide an estimate that the guidelines were associated with the need for around 900

³⁹ This proportion was calculated using data covering adult offenders sentenced in 2018.

additional prison places, the actual number could fall anywhere between 0 and 1,700.⁴⁰ In addition, a large number of assumptions were required in order to produce these estimates, and the analysis has several limitations (see earlier in the report for more details).

The findings are therefore most useful in understanding which offences had outcomes in line with the Council's expectations for the guidelines, which did not, and which were likely to be associated with the greatest and smallest changes in the requirements for prison places. The exact figures however should be treated as indicative only and not as concrete conclusions about prison resources.

While the focus of this project was on offence-specific guidelines, a review of the overarching guideline evaluations that have been published to date was also conducted, in order to summarise the impact of those guidelines on sentencing outcomes. This included the Allocation, Reduction in sentence for a guilty plea and Sentencing children and young people guidelines. This review found that aside from a tentative finding of a decrease in sentences for children aged 15 to 17 sentenced for robbery, there was no evidence to suggest that any of these guidelines had led to a change in average sentencing severity.

The Council has considered this analysis and is satisfied that for the majority of offences, the guidelines seem to have had the intended impact on sentencing severity. For some of those where sentencing outcomes did not align with expectations, the Council has committed to reviewing the guidelines, while for some that seem to have had small, unexpected changes in sentences or where the evidence was tentative, the Council will continue to monitor sentencing data before making any decision as to whether the guidelines need to be revisited.

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⁴⁰ To put this into context, the total prison population in England and Wales since the Council was set up has fluctuated between approximately 80,000 and 86,000, and within that, the number of sentenced prisoners has fluctuated between around 67,000 and 75,000. These figures are based on the total prison population on 30 June each year, as taken from the Ministry of Justice Offender Management Statistics publication. See 'Annual Prison Population: 2020', Tables A1.1: <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2020--2>

Annex A

Sentencing severity

In most of the guideline evaluations published to date, a statistical method called time series analysis has been used to analyse sentencing trends over time and to estimate whether a guideline may have been associated with a change in outcomes. The types of time series models that were used for the evaluations required sentencing data to be comparable - but the data included a mix of sentences comprising different sentence types and sentence lengths. To overcome this, sentences were converted into a continuous 'severity scale' with scores ranging from 0 to 100, representing the full range of sentence outcomes from a discharge (represented by 0) to 20 years' custody (represented by 100); this allowed the creation of a consistent and continuous measure of sentencing severity that could be used to evaluate changes in sentencing.

Why new analysis was necessary

However, as the sentencing severity scale involved grouping the different sentencing outcomes together, the Council could not use this previous analysis to focus specifically on the impact on immediate custodial sentences, which would be needed in order to estimate the impact on prison places. The Council needed to disentangle the use of and lengths of immediate custodial sentences from other sentencing outcomes, and this could not be done using the analysis conducted for the evaluations.

For example, in an evaluation the Council may have concluded that there was a statistically significant increase in 'average sentencing severity', but this does not tell us whether there was a statistically significant increase specifically in the use of immediate custody. Some guideline assessments included commentary on sentencing outcomes that may have been associated with the changes observed, but the Council could not have been conclusive about the extent to which a particular sentencing outcome contributed to, or was associated with, the change. In other words, the evaluations included discussion of whether guidelines may have contributed to changes in sentence severity, but not necessarily to immediate custody specifically.

Therefore, in order to make the findings comparable, and to focus specifically on immediate custodial sentences, new analysis was conducted.

Annex B

More detailed explanation of how prison places are counted

Firstly, offenders do not necessarily spend their whole sentence in prison. For most offences, offenders serve around half of their sentence in prison, and for some more severe types of sentence or for some specific offences, they serve more than half. Let us assume for all of the next few examples that offenders serve half of their sentence in prison.

If one offender was sentenced to two years in prison, then we would expect them to serve half of that (one year), so for that year, one prison place would be needed in prison for them. If one offender was sentenced to one year in prison, then on average over the whole year, half of a prison place would be needed. Similarly, if two offenders were each sentenced to one year in prison, then on average over the whole year, one prison place would be needed. Estimates of the number of prison places needed are based on the average number needed over one year.

Scaling these figures up, if 100 offenders were each sentenced to one year in prison, then for that year, 50 prison places would be needed, or if the 100 offenders were sentenced to six months in prison, then on average over the whole year, only 25 prison places would be needed.

In the resource assessments, where we estimate the likely impact of a guideline on prison places, we start by looking at the possible impact on sentence outcomes, i.e. if we think that a guideline will cause an increase to sentence lengths, then this will have a knock-on impact on the number of prison places needed. For example, if we think a guideline will increase sentences by two years, then on average, offenders will serve one extra year in prison each, and so, on average, one extra prison place will be needed per person sentenced.

So if in a resource assessment we said that 200 additional prison places may be needed as the result of a guideline, we mean that 200 more spaces will be needed for prisoners, on average, over the period of a year. These extra 200 prison places would continue to be needed every year, as long as sentences and volumes stay at steady levels in subsequent years.

Visual example

One reason this can be difficult to picture is that it takes time for the effects of a guideline on sentencing outcomes to translate into an effect on prison places, as any impact might not be seen straight away. In the more visual example below, each row represents one offender, and each column is a year in prison.

Imagine two offenders are sentenced per year for a particular offence, and they are each sentenced to six years in prison. We would assume they serve half (three years each), and this means that on average six prison places are needed per year to house them. This works like this (the green cells are the time that that specific offender spends in prison):

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Offender 1 (sentenced in year 1)	Green	Green	Green				
Offender 2 (sentenced in year 1)	Green	Green	Green				
Offender 3 (sentenced in year 2)		Green	Green	Green			
Offender 4 (sentenced in year 2)		Green	Green	Green			
Offender 5 (sentenced in year 3)			Green	Green	Green		
Offender 6 (sentenced in year 3)			Green	Green	Green		
Offender 7 (sentenced in year 4)				Green	Green	Green	
Offender 8 (sentenced in year 4)				Green	Green	Green	
Offender 9 (sentenced in year 5)					Green	Green	Green
Offender 10 (sentenced in year 5)					Green	Green	Green

If you look at the columns in years 3, 4 and 5 you can see that six offenders are in prison in each year (i.e. in year 4, six of the cells are green). If we carried on this chart for more years, then years 6, 7 and so on would also have six offenders in prison. This is where the average per year comes from – in each year, that is how many offenders would be in prison, assuming that two offenders are sentenced in each year. So for this offence, in this specific example, six prison places are needed per year.

Now imagine that a guideline causes sentences to increase by two years, with each offender sentenced to eight years' custody. Assuming offenders serve half of their sentence in prison, that means each offender would spend four years in total in prison, so it is one extra year each, which would look like this (i.e. now serving four years instead of three):

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Offender 1 (sentenced in year 1)	Green	Green	Green	Green			
Offender 2 (sentenced in year 1)	Green	Green	Green	Green			
Offender 3 (sentenced in year 2)		Green	Green	Green	Green		
Offender 4 (sentenced in year 2)		Green	Green	Green	Green		
Offender 5 (sentenced in year 3)			Green	Green	Green	Green	
Offender 6 (sentenced in year 3)			Green	Green	Green	Green	
Offender 7 (sentenced in year 4)				Green	Green	Green	Green
Offender 8 (sentenced in year 4)				Green	Green	Green	Green
Offender 9 (sentenced in year 5)					Green	Green	Green
Offender 10 (sentenced in year 5)					Green	Green	Green

This time, when you look at year 4, you can see that eight of the cells are green: more prison places were needed by the fourth year, because offenders were spending longer in prison. In this specific small-scale example, this means that eight prison places per year were needed in total under the guideline, meaning that two additional prison places per year were needed as a result of the guideline.

Annex C

The time series analysis method

A type of time series modelling called RegARIMA modelling was used to estimate whether the guidelines were associated with changes in the use of and length of immediate custodial sentences. These can be thought of as simple linear regression models of the form

$$y_t = \sum \beta_i x_{it} + z_t$$

where y_t is the proportion of offenders sentenced to immediate custody or the average custodial sentence length (ACSL) at month t , x_{it} are regression variables and z_t follows some ARIMA process which can account for seasonality, trend and autocorrelation in model residuals. To test whether sentencing guidelines were associated with a discontinuity in a time series (y_t) an indicator variable (x_{gt}) that takes the value $x_{gt < G} = -1$ and $x_{gt \geq G} = 0$, where sentencing guidelines are introduced at time $t = G$ is included in the regARIMA model and the coefficient (β_g) on the level shift variable, x_{gt} , was tested to see if it was statistically significant.

The software X-13ARIMA-SEATS⁴¹ was used (through the *seasonal* package in R),⁴² including some routines for automatic model selection (including testing whether a log transformation may be appropriate, the order of a seasonal ARIMA model and whether other regressors for calendar effects and outliers were required). For further information on regARIMA modelling see <https://www.census.gov/ts/x13as/docX13AS.pdf>.

⁴¹ Sax C, Eddelbuettel D (2018). "Seasonal Adjustment by X-13ARIMA-SEATS in R." *Journal of Statistical Software* _, *87*(11), 1-17. doi: 10.18637/jss.v087.i11. See: <https://doi.org/10.18637/jss.v087.i11>

⁴² R Core Team (2020). R: A language and environment for statistical computing. R Foundation for Statistical Computing, Vienna, Austria. See: <https://www.R-project.org/>

Annex D

For three of the offences covered by this project, some different methodological decisions were made to account for the trends observed.

Non-domestic burglary

For non-domestic burglary, the Council's guideline evaluation suggested that the increase in sentences observed following the introduction of the guideline may have been caused by the guideline. The evaluation showed that sentencing severity started increasing around five months prior to the introduction of the guideline, but that there was also evidence of the guideline contributing to an increase in average sentencing severity when it came into force several months later.

However, new analysis conducted as part of this project suggested that there was not a statistically significant change in immediate custody at the point of the introduction of the guideline (in January 2012). This seems to be because while there was an increase in the severity of sentences following the in-force date, this change had actually started several months earlier, after the guideline was published but before it came into force.

The Burglary guideline was only the second guideline that the Council published, and it may have been that some sentencers started to use the guideline before the in-force date, meaning that it is possible that the guideline started having an impact slightly earlier than expected. However, another factor that may have contributed to different sentences at around the same time was the riots that occurred in London and other major cities across England and Wales in August 2011. Although an attempt was made to exclude all cases related directly to the riots from the analysis (for both the guideline evaluation and this new analysis), it is possible that sentencing for non-domestic burglary was affected more generally by the recent riots at this time. The Council considers that it is likely that the guideline contributed to the increase observed in sentencing severity, and other analysis conducted as part of the evaluation supports this.

This analysis therefore includes an assumption that the guideline started to be used in November 2011 (the first full month after the guideline was published) instead of January 2012 when it came into force. This means that while an estimated impact on prison places has been produced for this offence, the findings are not as clear-cut as for some of the other offences.

Theft from a shop or stall

For theft from a shop or stall, the Council's guideline evaluation showed that an increase in sentencing severity occurred around six months after the guideline came into force. The Council could not find a reason for the guideline to have had an impact in courts across England and Wales so much later than the in-force date, but analysis also could not reject the possibility that the guideline caused the increases.

No prison impact has been estimated for this offence, because it is not clear what caused the changes, and any estimate would be likely to be misleading. However, as the average custodial sentence length for this offence (around two months in 2018) is low, and the evaluation found that only a small change in average sentencing severity was observed, it

is expected that any impact would have been fairly small, particularly in comparison with the impacts associated with other guidelines.

Importation/ exportation of a class B drug

The new time series analysis conducted for importation/ exportation of a class B drug suggested that there was no statistically significant change in the average custodial sentence length (ACSL) following the introduction of the guideline. This differs slightly from the findings in the evaluation, where the time series analysis had been conducted in a slightly different way, focusing on overall sentencing severity and not specifically on immediate custody. This meant that the use of and lengths of immediate custodial sentences were analysed alongside the use of other lower level sentences such as suspended sentence orders, community orders and fines, which represent a minority of offenders sentenced for this offence but still changed the analysis slightly. The time series method itself was also different. Overall, the analysis for the evaluation found that there was a decrease in average sentencing severity.

Further data analysis as part of the evaluation showed that there had been a shift from longer to shorter custodial sentences and so it had been concluded that sentence lengths had decreased. It is thought that the new analysis did not find a statistically significant change because this is a low volume offence with wide monthly variations in sentencing severity and therefore the time series analysis may not have been able to detect a change. The Council expects that, based on the other evidence available through the evaluation, and taking into account the fact that there was a decrease in sentences for the same offence for class A drugs (covered by the same guideline, and which is much higher in volume) it is likely that there was in fact a decrease in immediate custodial sentence lengths for this offence.

An associated prison impact has therefore been estimated for this offence, but the results are more tentative, and the lower bound of the range provided is zero prison places to reflect the fact that there may not have been a change.