

Sentencing Council

FINAL STAGE RESOURCE ASSESSMENT: IMPOSITION OF COMMUNITY AND CUSTODIAL SENTENCES GUIDELINE

1 INTRODUCTION

1.1 This document fulfils the Council's statutory duty, under section 127 of the Coroners and Justice Act 2009, to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.

1.2 Any resource impacts which may fall elsewhere, or that are attributable to factors other than the guideline, are not included in this assessment.

2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 The Sentencing Council has issued a new definitive guideline for the imposition of community and custodial sentences, which includes suspended sentences of imprisonment, to bring it up-to-date and improve guidance on these sentences. This guideline replaces the *New Sentences: Criminal Justice Act 2003* guideline.¹

2.2 The Imposition of Community and Custodial sentences definitive guideline seeks to ensure that suspended sentence orders (SSOs) and community orders (COs) are imposed correctly and that the guideline is more functional, while retaining key information and highlighting principles that are paramount in imposing these sentences.

3 CURRENT SENTENCING PRACTICE

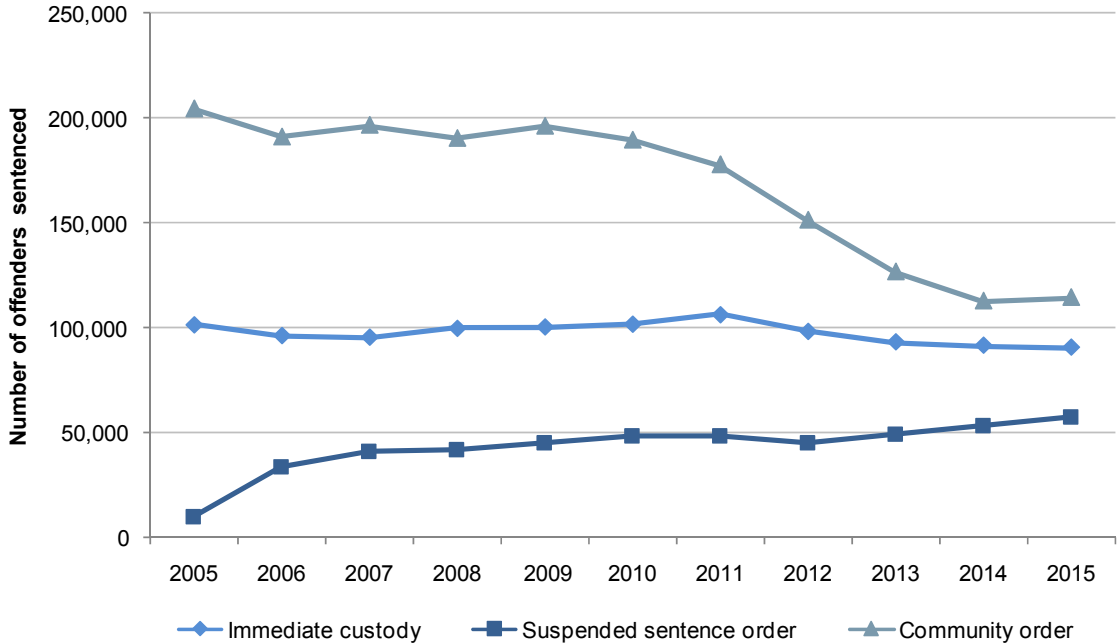
3.1 In the 12 months up to the end of December 2015, there were around 90,000 sentences of immediate custody, 57,000 SSOs and 114,000 COs imposed across all courts in England and Wales.² Figure 1 shows that over the last ten years, the number of sentences of immediate custody has fallen slightly (from around 101,000 to 90,000), whilst

¹ Sentencing Guidelines Council, 2004.

² Table Q5.1, *Criminal Justice Statistics Quarterly Update to December 2015*, Ministry of Justice, <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

the number of SSOs has substantially risen (from less than 10,000 in 2005, to 57,000 in 2015) and the number of COs has substantially declined (from around 204,000 in 2005 to around 114,000 in 2015).

Figure 1: Number of adult offenders sentenced at all courts, by sentence outcome, 2005-2015²



3.2 Discussions conducted in 2015 to support development of a separate breach guideline³ indicated that one possible reason for this trend of increasing SSOs and a corresponding decrease in COs may be that in some cases, SSOs are being imposed as a more severe form of CO where offending has not crossed the custody threshold.

3.3 Another possible reason for this trend is that since December 2012, under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, custodial sentences of two years or less can be suspended and the imposition of community requirements is discretionary.⁴ This may have contributed to the increase in suspended sentences since 2012.

³ More details on these discussions are available in the Imposition of community & custodial sentences consultation: <https://www.sentencingcouncil.org.uk/publications/item/imposition-of-community-custodial-sentences-consultation/>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524429/criminal-justice-statistics-quarterly-update-annual-2015.pdf (P28)

4 RESOURCE IMPACT

4.1 The Imposition of Community and Custodial sentences guideline is not intended or expected to affect the average severity of sentences – rather it seeks to clarify the key principles associated with the imposition of these sentences (in particular SSOs and COs).

4.2 Whilst one impact may be an increase in the number of COs and a corresponding decrease in the numbers of SSOs (in cases where SSOs were being used as a more severe form of CO), as none of these sentences will be served in custody, it is not anticipated that there will be any overall change in the relative proportions of sentences involving either immediate custody or being served in the community.⁵ It is therefore estimated that the guideline will have no overall resource impact on the prison, probation or youth justice services.

5 RISKS

5.1 The guideline is not intended to affect the average severity of sentencing, and as such, no resource effect is expected.

5.2 However, if fewer SSOs are imposed, there may be a requirement for fewer prison places as fewer are breached and activated. Conversely, if currently SSOs are not being activated as they should be (as they were incorrectly imposed in the first place), it may be the case that, by clarifying the guidance on imposition of these orders, more will now be activated in the event of a breach. This could potentially lead to a requirement for more prison places. Unfortunately, due to limited data on the number of SSOs which are currently activated, it is not possible to provide estimates of the potential impact of this. This is discussed further in the resource assessment for the draft breach guideline.

⁵ Sentences being served in the community would include at this stage a SSO as the offender would not be serving an immediate custodial sentence for which a prison place would be required. Under the new guideline some of the offenders who received a SSO with no requirements (around 17 per cent of the total SSO's imposed), may receive a CO. However, it is not possible to estimate how many may receive a CO, or which requirements may be imposed. Therefore it has been assumed that the cost of each order is similar.