

## **Consultation Stage Resource Assessment: Summary offences in the Magistrates' Court Sentencing Guidelines (MCSG)**

### **1 INTRODUCTION**

1.1 This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services<sup>1</sup>.

### **2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE**

2.1 The current MCSG were last updated fully in 2008 and cover both summary and either-way offences. The current version comprises both guidelines published by the Council's predecessor, the Sentencing Guidelines Council ('legacy guidelines') and also Sentencing Council guidelines. Both groups of guidelines contain guidance on the full range of sentencing options available, including where applicable, when community and custodial sentences should be considered.

2.2 The approach of the 'legacy guidelines' is now out of date as a result of the introduction of the Sentencing Council guidelines, which all use a standard approach, regardless of the type of offence being considered. The Sentencing Council is therefore revising the existing guidelines, starting initially with the existing summary offences.

2.3 The Council's objective is for all sentencing guidelines to follow a single, consistent format, with a view to promoting consistency. Although the proposals take account of changes to legislation and other relevant factors, they are not intended to result in significant changes to sentencing levels or existing sentencing practice.

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<sup>1</sup> Coroners and Justice Act 2009 section 127.

2.4 In the first stage of revision of the MCSG, the following 27 offences are covered:

- **Alcohol sale offences** - *Licensing Act 2003, s.141; s.146; s.147*
- **Animal cruelty** - *Animal Welfare Act 2006, s.4, s.8 and s.9*
- **Careless driving** - *Road Traffic Act 1988, s.3 119*
- **Communication network offences** - *Communications Act 2003, s.127(1)*
- **Communication network offences** - *Communications Act 2003 s.127(2)*
- **Drive whilst Disqualified** - *Road Traffic Act 1988, s.103*
- **Drugs – fail to attend/ remain for initial assessment** - *Drugs Act 2005, s.12*
- **Drugs – fail/ refuse to provide a sample** - *Police and Criminal Evidence Act 1984, s.63B*
- **Drunk and disorderly in a public place** - *Criminal Justice Act 1967, s.91*
- **Excess alcohol (drive/ attempt)** - *Road Traffic Act 1988, s.5(1)(a)*
- **Excess alcohol (in charge)** - *Road Traffic Act 1988, s.5(1)(b)*
- **Fail to provide specimen for analysis (drive/ attempt)** - *Road Traffic Act 1988, s.7(6)*
- **Fail to provide specimen for analysis (in charge)** - *Road Traffic Act 1988, s.7(6)*
- **Fail to stop/ report road accident** - *Road Traffic Act 1988, s.170(4)*
- **Football related offences** - *Sporting Events (Control of Alcohol etc.) Act 1985, s.2(1) and s.2(2), Football Offences Act 1991, s.2, s.3 and s.4 and Criminal Justice and Public Order Act 1994, s.166*
- **No insurance** - *Road Traffic Act 1988, s.143*
- **Obstruct/ resist a police constable in execution of duty** - *Police Act 1996, s.89(2)*
- **Railway fare evasion** - *Regulation of Railways Act 1889, s.5(1) and s.5(3)*

- **School non-attendance** - *Education Act 1996, s.444(1) and s.444(1A)*
- **Sexual activity in a public lavatory** - *Sexual Offences Act 2003, s.71*
- **Speeding** - *Road Traffic Regulation Act 1984, s.89(10)*
- **Taxi Touting/ soliciting for hire** - *Criminal Justice and Public Order Act 1994, s.167*
- **TV licence payment evasion** - *Communications Act 2003, s.363*
- **Unfit through drink or drugs (drive/ attempt )** - *Road Traffic Act 1988, s.4(1)*
- **Unfit through drink or drugs (in charge)** - *Road Traffic Act 1988, s.4(2)*
- **Vehicle interference** - *Criminal Attempts Act 1981, s.9*
- **Vehicle taking, without consent** - *Theft Act 1968, s.12*

### 3 SCOPE

3.1 This resource assessment has considered the summary offences in the MCSG where custody is included in the sentencing range; it is these offences where any changes to the guideline will have the greatest impact on correctional resources. These offences are:

- **Motor vehicle interference:** *Criminal Attempts Act 1981, s.9*
- **Taking vehicle without consent:** *Theft Act 1968, s.12*
- **Drink driving: Excess alcohol (drive/ attempt to drive):** *Road Traffic Act 1988, s5(1)(a)*
- **Driving whilst disqualified:** *Road Traffic Act 1988, s.103*
- **Animal cruelty:** *Animal Welfare Act 2006, s.4 (unnecessary suffering), s.8 (fighting etc), s.9 (breach of duty of person responsible for animal to ensure welfare)*
- **Communications network offences:** *Communications Act 2003, s.127(1) and s.127(2): s.127(1) Sending grossly offensive, indecent, obscene or menacing messages; s.127(2) Sending false message/ persistent use of communications network for purpose of causing annoyance, inconvenience or needless anxiety*

## **4 KEY ASSUMPTIONS**

4.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is founded on the objectives of the new guideline, and backed up by analytical work which has been undertaken in support of the guideline. However, strong assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a large degree of uncertainty.

4.2 Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the structure and wording of the guideline.

4.3 The resource impact of the new guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of the new guideline. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

## **5. RESOURCE IMPACTS**

5.1 As outlined in 3.1, the resource assessment has considered the seven summary offences in the MCSG where custody is included in the sentencing range. For four of these offences, there will be no changes to guideline starting points and ranges; the new guidelines merely reflect a conversion from previous guidelines to the Sentencing Council model. The four offences are: Vehicle interference; Vehicle taking without consent; Excess alcohol (drive/ attempt to drive and in charge) and Drive whilst Disqualified. As the

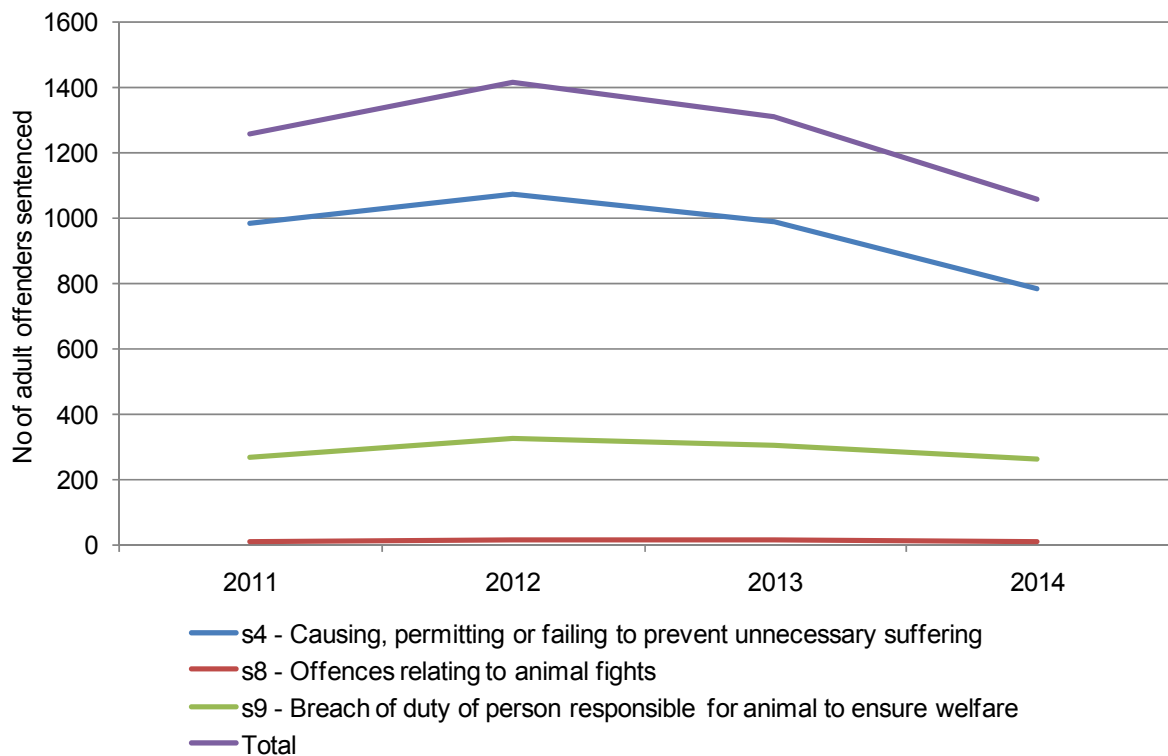
guideline is not intended to change sentencing practice, it is not anticipated that there will be any impact on correctional resources.

5.2 However for three of the offences - Animal Cruelty offences and the two Communication Network offences - there will be a change in the focus of the guidelines. The following section provides more detail on this, starting with current sentencing for these offences, before discussing whether the guideline changes may lead to any resource impacts.

### **Sentencing for Animal Cruelty and Communications Network offences**

5.3 Animal Cruelty and Communications Network offences are low volume offences. Figure 1 shows the number of animal cruelty offences each year since 2011. In total, there are on average around 1,200 of these offences each year sentenced in both courts, with around 98 per cent of these sentenced in the magistrates' court. The majority of offences over all years related to section 4 offences – causing, permitting or failing to prevent unnecessary suffering - with there being very few section 8 offences – offences related to animal fights.

**Figure 1: Number of adult offenders sentenced for specified offences under the Animal Welfare Act 2006, both courts, 2011-2014**

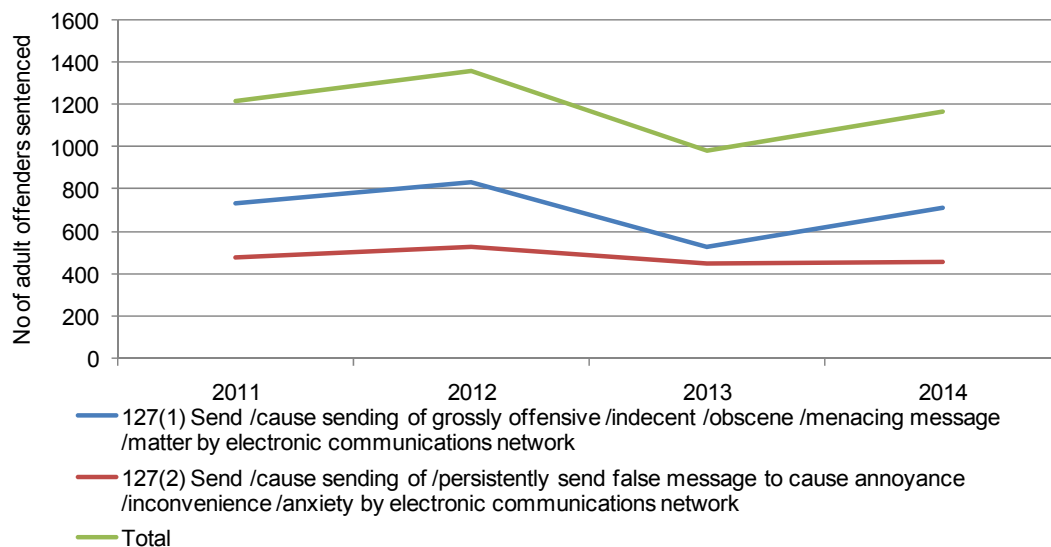


5.4 In addition to the volume being low, the number of adults where a custodial sentence was imposed in 2014 was less than 100 for all offences. The average custodial sentence length (ACSL) for section 4 offences (which represent the largest volume of custodial sentences) was 14 weeks, with a range from three to 26 weeks.

5.5 Figure 2 shows the number of Communication Network offences (section 127(1) and section 127(2)) between 2011 and 2014. Again the volume of offences is relatively low, just over 1,000 a year on average. Ninety eight per cent of these offences are sentenced in the magistrates' court.

5.6 In 2014, 153 offenders sentenced for Communication Network offences were given an immediate custodial sentence, which was 13 per cent of the total sentenced. The ACSL for section 127(1) offences was nine weeks and for section 127(2) offences 10 weeks. Both offences have a sentence range from two to 26 weeks.

**Figure 2: Number of adult offenders sentenced for specified malicious communications offences, both courts, 2014**



## Resource issues

### *Animal Cruelty*

5.7 The Council's aim is not to increase the overall numbers of those receiving a custodial sentence for these offences. However, the Council does wish to ensure that the most serious cases attract custody, and that the length of the custodial sentence for those offenders is of an appropriate length.

5.8 Therefore, the guideline is designed with the intention that fewer offenders will fall into category 1 than fall into the highest category in the existing guideline, but where they do, their offending will be more serious and they are therefore likely to receive higher sentences (i.e. from the starting point and above). This may result in an increase in ACSLs for offenders in the top category. However, as there will be fewer offenders in the top category than are sentenced in that category under the current guideline, this is likely to negate any impact. The fact that so few offenders receive a custodial sentence for animal offences also means that the resource impact of this change is likely to be negligible.

### *Communication Network offences*

5.9 The new guideline for communication network offences retain the same starting points and ranges for category 2 and 3 offences as under the existing guidelines, but changes them for category 1 offences (the highest level of offending). The changes bring the starting points and ranges for both offences into line, in one combined guideline: for section 127(1) offences the starting point and top end of the range are increased by three weeks to nine weeks and 15 weeks, respectively; for section 127(2) offences the starting point and top of the range are reduced by three weeks to nine weeks and 15 weeks, respectively. The Council is of the view that all category one offences covered under the SGC guideline are of the same seriousness, regardless of which section of the Act they are charged under, which should be reflected through the same starting point and range.

5.10 Due to the low volume of offenders receiving a custodial sentence, and due to them being grouped at the lower end of the custody range, the impact on resources is likely to be minimal, involving fewer than five prison places.

## **6. SUPPORTING EVIDENCE**

6.1 To ensure that the objectives of the guideline are realised, and to better understand the potential resource impacts of the guideline, the Council has carried out analytical work in support of the guideline. Statistical analysis of current sentencing practice has been undertaken on selected offences to help inform the sentencing ranges in the draft guideline. Official sentencing statistics have been supplemented with a review of feedback on actual cases in the magistrates' courts, which has enabled the Council to identify the harm and culpability factors present in offences.

## **7. RISKS**

7.1 Two main risks have been identified:

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



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

7.3 This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guideline has the intended effect and inviting views on the guideline. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

7.4 The risk is also mitigated by the collection and analysis of sentencing information from courts. By comparing sentence outcomes to those that may result from the new guideline, it is possible to detect and amend problematic areas of the proposed new guideline.

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

7.5 This could cause a change in the average severity of sentencing, with associated resource effects (including the potential for anticipated changes to some categories of the guideline to affect other categories where no change was intended).

7.6 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing.

7.7 Following the release of guidelines, explanatory material will be provided to read alongside the guidelines; consultees can also feedback their views of the likely effect of the guidelines, and whether this differs from the

effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.