

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Extension of the Presumption against Short Periods of Imprisonment
Summary of aims and desired outcomes of Policy	The presumption against short periods of imprisonment or detention is designed to encourage a reduction in the use of short-term custodial sentences and a related increase in the use of community sentences which are more effective at reducing reoffending.
Directorate: Division: team	Justice: Community Justice Division: Community Sentences & PASS Team

Executive summary

While prison remains the right place for those who pose a significant risk to public safety, there is compelling evidence that short custodial sentences do little to rehabilitate or to reduce the likelihood of reoffending, and disrupt housing, employment and family stability.

Extending the presumption against short sentences is intended to reduce the use of short-term imprisonment through the delivery of effective, community-based sentences that better promote rehabilitation.

Sentencing patterns have indicated that since the presumption against short sentences came into force on 1 February 2011, short-term sentences still represent a significant proportion of all custodial sentences imposed.

Further strengthening the presumption against short custodial sentences is one part of the Scottish Government's ongoing and wide-ranging work designed to reduce the use of short-term imprisonment through the delivery of effective community based sentences that better promote rehabilitation.

Background

The Criminal Justice and Licensing (Scotland) Act 2010 introduced a presumption against sentences of less than three months, requiring the court to (i) only pass a sentence of three months or less if no other appropriate disposal is available and (ii) record the reasons for this.

The 2010 Act allows for Ministers to amend, through secondary legislation, the period of the presumption. Therefore it is possible to extend the presumption by increasing it from three months to a longer period such as 12 months. Extending the presumption, as noted in the Policy Note, is intended to reinforce a focus on community sentences and interventions which are more effective than short custodial sentences and can help reduce reoffending and churn in the prison estate. This will contribute to longer term reductions in the prison population and help prevent reoffending.

Despite the introduction of the presumption, the use of short term sentences has remained relatively constant in the years since 2010. Sentences of 12 months or less continue to account for around four-fifths of all sentences imposed, and research undertaken to evaluate the impact of the presumption reported that it did not feature prominently in sentencing decision making.

We anticipate that extending the presumption against short periods of imprisonment will lead to the imposition of fewer custodial sentences of 12 months or less and a corresponding increase in the number of community sentences. Numbers will be influenced by the volume of criminal proceedings and the types of offences in any given year. The proportion of community sentences compared to custodial sentences can be relevant, as well as the number of orders. Decisions will be a matter for the judiciary based on the circumstances of the case and taking account of sentencing guidelines.

The Scottish Government's public consultation on proposals to strengthen the presumption against short sentences ran from 25 September 2015 to 16 December 2015.

The consultation paper invited views on (i) the proposal to extend the current presumption and (ii) a number of additional considerations relevant to reducing the use of short sentences and the use of remand.

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https://consult.gov.scot/community-justice/short-periods-of-imprisonment/user_uploads/624951_v3_20150917.pdf

85% of the consultation responses supported an extension of the presumption and 84% supported an extension to 12 months. A key issue raised in consultation was the need to ensure the safety of victims of crime including victims of domestic abuse. Having considered this, the Scottish Government committed to extend the presumption only once additional safeguards for victims in the Domestic Abuse (Scotland) Act 2018 have come into force. The provisions were implemented on 1 April 2019.

A report presenting findings from an analysis of responses to the Scottish Government's consultation was published on 23 March 2016. This can be accessed at: <https://www2.gov.scot/Publications/2016/03/8624>

The Scope of the EQIA

A framing exercise was conducted by the Community Justice Division and members of Justice Analytical Services of the Scottish Government in advance of the consultation. This was in the context of broader consideration of penal policy, which the Presumption Against Short Sentences is an important part.

On the basis that any extension to the legislative presumption would be an amendment to an existing policy, it was considered that an extensive EQIA was not required for this policy.

Key Findings

The EQIA process has given us confidence that strengthening the existing policy of a presumption against short term custodial sentences would not impact adversely or unfairly on any groups, and will achieve better outcomes for individuals, families and communities.

In regard to specific protected characteristics, the key findings are:

Age

Consideration has been given age in respect of individuals in the justice system and family members. In relation to young people who may be convicted, it is unlikely that an extension to the current presumption

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against short periods of imprisonment will have a direct impact on children or young people. There are already specific provisions in place in relation to the imposition of custodial sentences on children and young people (under 21). Custody is not an option for under 16s.

For 16 to 21 year olds the court can only impose a period of detention if it considers that no other method of dealing with that individual is appropriate. This is the same test as that laid out in the presumption against short periods of imprisonment, and should already be being applied in all cases involving children, not just those in which a custodial sentence of 12 months or less is under consideration.

In relation to adults, the impact is intended to improve outcomes by encouraging use of community sentences which are expected to reduce reoffending and help prevent individuals being victims of crime in the future. Protections in the Domestic Abuse Act are intended to address concerns about the potential impact on victims of domestic abuse. Public protection will remain a primary consideration of the judiciary in considering sentencing options.

Parental imprisonment is an adverse childhood experience. Children and adults with multiple adverse childhood experiences (ACEs) are more likely to come into contact with the criminal justice system, though it is not a causal relationship. Studies of ACEs indicate that in comparison with individuals with no adverse childhood experiences, individuals with 4 or more ACEs are:

- 14 times more likely to have been a victim of violence over the last 12 months;
- 15 times more likely to have been a perpetrator of violence in the last 12 months; and
- 20 times more likely to have been incarcerated at any point in their life time

As part of a preventative approach to reducing adverse childhood experiences and their impact, extending the presumption against short sentences is intended to be of benefit to individuals and families across ages.

Sex

Research shows that women are more likely to receive short custodial sentences than men. Criminal Proceedings Statistics show that in 2017/18, 90% of females who received a custodial sentence were sentenced to 12 months or less, compared to 78% of males.

However, women are proportionally less likely than men to receive a custodial sentence across almost all crime types.

Women are more likely than men to be of lower risk to public safety and be in prison for crimes of dishonesty rather than of violence.

There is therefore potentially a proportionately greater benefit for women in the justice system arising from an extension of the presumption against short sentences.

- As noted, amongst consultation responses, two victims support organisations, said that they foresaw a potential risk that (the predominantly female) victims of domestic abuse could be disadvantaged by a strengthened presumption against short sentences, as it may lead to perpetrators of domestic abuse not receiving a custodial sentence. The Scottish Government's Programme for Government commitment to extend the presumption against short sentences to 12 months, once additional safeguards for victims in the Domestic Abuse (Scotland) Act 2018 are in force is intended to help address this. The Act provides that in sentencing an offender convicted of a domestic abuse offence, the court must have particular regard to the aim of ensuring the victim is not the subject of a further such offence committed by the convicted person. It also places a duty on the court to consider imposing a Non-Harassment Order to protect the victim with a presumption in favour of making the order unless the court considers it is not necessary in a particular case.

Disability

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Prisoner Survey reports that around 15% of those who responded reported a disability and around 16% reported a long-term illness. In addition, a number of respondents to the Consultation on Proposals to Strengthen the Presumption Against Short Periods of Imprisonment commented on a perceived inappropriate use of prison in relation to vulnerable offenders, including those with mental health problems and welcomed the proposed extension to the presumption as a positive step in addressing this situation.

Sexual orientation, Gender Reassignment and Pregnancy

Data sources have been considered including the SPS Prisoner Survey: <http://www.sps.gov.uk/Corporate/Publications/Publication-6101.aspx>
The Scottish Prison Service continuously reviews their equality data for all staff and people in custody and produces regular equality and diversity reports.

Data released on 27 March 2018 by the Scottish Prison Service in provides information on numbers of pregnant women serving custodial sentences of 12 months or less:

<http://sps.gov.uk/Freedomofinformation/FOI-5648.aspx>

Although numbers are small, extending the presumption potentially reduces the likelihood of women giving birth in custody.

Scottish Prison Service equality data, received for the purpose of this EQIA, shows that as at December 2018 6 short-term prisoners identified as having undergone Gender Re-assignment.

Conclusion

Overall, we anticipate that our policy proposal will have minimal impact in respect of these protected characteristics and we received no responses to the consultation that suggested otherwise.

Evidence shows that community sentences are more effective than short custodial sentences for maintaining the essential needs of an individual of any of the EQIA groupings that contribute to desistance from reoffending, whether it be employment, education and training, housing, family relationships, or medical and social care.

On balance we are confident that the overall impact of any change is likely to be positive for all groups of people. Benefits are anticipated for men and women, with potential greater benefit for women in the justice system as although there are less women in the justice system and in custody, those who are in custody are more likely to have sentence of less than 12 months.

The EQIA process did not identify any direct or indirect discrimination through the policy intention to extend the presumption against short periods of imprisonment from 3 months to 12 months.

The EQIA analysis will be kept under regular review, with any new data or evidence analysed as it becomes available to monitor the on-going impact of the extension on equality groups.