

Management of Offenders and Sentencing Bill - Initial/Partial Race Equality Impact Assessment

This assessment considers how measures proposed in the Management of Offenders and Sentencing Bill will impact on race equality issues. The majority of the proposed measures have been assessed as race neutral. Of those where an impact has been identified, the Home Office believes that the measures will have a positive effect.

Background

The Carter review of correctional services set out the case for establishing a National Offender Management Service and providing more effective alternatives to custody. The Government welcomed Lord Carter's report and took forward key elements of the review, aimed at reducing re-offending through better management of offenders, in its consultation paper – 'Reducing Crime - Changing Lives'. Numerous consultation responses were received from black and ethnic minority and faith groups. There was clear overall support for the principles of end to end offender management, contestability and targeting resources more effectively so that custodial sentences are used for more serious and persistent offenders.

Initial Impact Assessment on specific Bill measures:

1. Ombudsman

Policy Objective

To establish HM Commissioner for Offender Management and Prisons.

The Commissioner will provide robust and conspicuously independent adjudication of complaints from offenders and immigration detainees; and will investigate deaths of prisoners, young people detained in secure training centres, residents of approved premises (formerly known as probation and bail hostels) and those in immigration detention accommodation. The Commissioner will also be able to investigate other incidents of concern on request of the Home Secretary.

These functions are, for the most part, currently performed by the Prisons and Probation Ombudsman on a non-statutory basis. There has been a commitment on the part of the Home Office since 1998 to put the Ombudsman on a statutory footing. This was confirmed in the 2002 Criminal Justice White Paper 'Justice for All'. Amendment of the Parliamentary Commissioner Act 1967 will remove from the Parliamentary Ombudsman's jurisdiction any matters which fall within the jurisdiction of the new Commissioner.

Relevance to Racial Equality

Placing the functions currently performed by the Ombudsman on a statutory footing will not fundamentally alter those functions but will strengthen the Government's commitment to providing an independent route for complaints and independent scrutiny of the events leading to a death in custody. The Ombudsman aims to be accessible to all who are entitled to make use of his office and fair in the treatment of all complainants without regard to criminal history, race, ethnicity, religion or any

other such consideration. However, as black and minority ethnic (BME) groups are over represented in the criminal justice system, this measure is likely to have positive race impact.

The evidence of disproportionate representation of prisoners from minority ethnic groups in the criminal justice system is well established. In June 2001, prisoners from minority groups accounted for 21% of the male population and 26% of the female population. Research shows that black suspects are more likely than white to be remanded in custody than released on bail. Research carried out in early nineties into sentencing and race¹ found evidence, from a study of Crown Courts in the West Midlands, which after over 80 relevant variable factors (previous offences, age etc) were taken into account, black defendants stood between 5% to 8% greater chance of being sent to prison than comparable white offenders. The Home Office has commissioned a new study to update this research (final report due summer 2006).

The Ombudsman, assisted by the Home Office Research and Development Statistics branch, conducts an ongoing exercise to issue questionnaires to prisoners who have complained to his office. A report in April 2004 that reviewed survey findings from April 2003 found that, from 66 returns by prisoners who had submitted a complaint eligible for investigation by the Ombudsman, 81% of complainants classified themselves as white, 5% as mixed, 2% as Asian, and 11% as black. The report also found that, from 102 returns by prisoners who had submitted a complaint ineligible for investigation, 75% of complainants classified themselves as white, 1% as mixed, 6% as Asian, 13% as black, and 3% as Chinese or other ethnic group.

The Ombudsman has collected information on the ethnicity of probation complainants from 233 out of 670 probation complaints received by his office since September 2001. Ethnicity information is collected from probation areas, prison service records and monitoring forms sent to offenders with a complaint ineligible for investigation by the Ombudsman. 187 of the 233 complainants were classified as white, 4 as mixed, 12 as Asian, 29 as black, and 1 as Chinese or other ethnic group.

A total of 37 complaints received by the Ombudsman in 2003-2004 were classified as relating to race. The Ombudsman ensures enhanced quality assurance for reports of investigations into discrimination or racism.

The Prison Service monitors the ethnic makeup of deaths in prison custody. There were 181 such deaths in 2003: 166 were classified as white, 6 as Asian, 7 as black, 1 as Chinese and 1 as other. The National Probation Directorate monitors the ethnic makeup of deaths of residents of National Probation Service approved premises. There were 11 such deaths in 2003: 9 were classified as white, 1 as Asian, and 1 as black.

Safeguards

This policy is likely to have a positive or, at worst, neutral impact on race equality issues. The Commissioner will build upon the existing safeguards employed by the current Ombudsman. For example, the Ombudsman has formed a staff working group on diversity responsible for steering office initiatives within a diversity action plan;

¹ Race and Sentencing, a study in the Crown Court, Dr Roger Hood, University of Oxford 1992.

regularly reviews and revises office policies and practices to ensure diversity issues are included; and includes such issues in induction and training for new recruits. Race and diversity issues will be included in a programme of training for new death investigators and family liaison officers.

Recommendations

We do not recommend any change to the provisions of this measure in light of the above assessment.

2. Measures to transfer powers to directors and staff of private prisons:

Policy Objective

To create an environment that supports greater contestability in the provision of custodial places.

This will be achieved by removing some of the historical inconsistencies in powers held by directors of private prisons and governors in the public sector. These specifically relate to the power to conduct adjudication hearings into alleged offences against prison discipline; to authorise the use of force and segregation; and to resolve legal anomalies between the powers to search and detain of public and private sector prison staff.

The 1991 Criminal Justice Act created the roles of director and controller in private prisons. Although the director was given powers comparable to a governor in a public sector prison, specific provision was made to prevent the director from adjudicating or authorising the use of force and segregation. These statutory duties were given to controllers who were Crown servants and were generally former public sector prison staff.

The first private prison opened in 1992, and there are now 10 (with another due to open in early 2005). Private prisons now hold in excess of 10% of the total prison population at any time. They have a strong record of delivery, employ many senior managers with an operational background in public sector prisons, and have been a key driving force behind the introduction of the 'decency agenda' across the Prison Service.

The proposed measures will allow directors, rather than controllers employed by the Home Office, to exercise adjudication functions and authorise use of force and segregation.

The 1991 Criminal Justice Act also set the powers of staff employed in private prisons – prisoner custody officers (PCOs). Unlike prison officers in the public sector who enjoy limited constabulary powers in the course of their duties, PCOs were given clearly legally defined and limited powers. Their power to search was limited, and they had no right to detain a visitor even if they found them in the act of conveying drugs into the prison.

The proposed measures will give PCOs extended powers to search and detain visitors, while stopping short of giving them constabulary powers. A PCO will be able to conduct a full external search of a visitor, and will also be able to detain a person found to have committed an offence until the police can attend the prison.

Relevance to Racial Equality

The policy will affect prisoners in, and visitors to, private prisons only. Although BME groups are disproportionately represented in the prison population transferring the power to adjudicate, segregate and authorise the use of force to directors, will not result in any difference in treatment between white and BME prisoners.

Similarly, although a larger proportion of visitors are likely to be from a BME background and thus affected disproportionately by the increased search and detention powers for PCOs, this measure will not result in any difference between the treatment of white or BME visitors.

Safeguards

This policy will not have any adverse impact on race equality issues due to important safeguards that exist within the contracted prison estate. Firstly, in relation to adjudications, segregation and the use of force, all providers have a contractual obligation to comply fully with all current race relations legislation. A tough competency framework will be introduced for directors and their staff before they are able to exercise these powers. All contractors' staff are already required to undertake training in race awareness. Contractors will additionally be required to ensure their staff are trained to at least the standard required to undertake this range of duties in the public sector. Each private prison already has a controller who will monitor the application of these powers on a daily basis.

Recommendations

We do not recommend any change to the provisions of this measure in light of the above assessment.

3. Day fines

Policy Objective

To introduce a 'day fine' system which will reinforce the rigour and effectiveness of community punishments

Over the last ten years the use of prison and probation has increased significantly despite there being no increase in the number of offenders convicted in the courts or the seriousness of their offences. Over the same period the use of the fine has decreased sharply. Both the Criminal Justice Act 2003 and proposals flowing from the Carter Review are designed to rebalance the sentencing system to ensure that demand for resources is better targeted. This will enable the increased use of fines for low level offenders, probation to concentrate on more serious offenders and prison to be reserved for serious, dangerous and persistent offenders.

The Carter Report, *Managing Offenders, Reducing Crime* pointed out that the number of fines imposed by the courts fell by a fifth between 1992 and 2002 and recommended the introduction of a day fine system to rebuild fines as a credible punishment.

Home Office Ministers have agreed to pilot the introduction of a 'day fine' scheme, building on the Carter recommendations. The overall intention is that, by introducing

a statutory methodology for calculating the amount of each fine, fines should bear more equally on people of differing means and there should be less fine default.

The new scheme will apply when a court imposes a fine on adult offenders – that is, on an individual who is aged 18 or over. The ‘day fine’ scheme will be based on the courts reflecting the seriousness of the offence committed by an offender in the number of “income units” imposed; and then assessing the value of the “income unit” on the basis of the offender’s daily disposable income. This represents a fundamental move away from the current system in which the seriousness of the offence is largely reflected in the size of the financial penalty. The introduction of a statutory method for taking into account an offender’s means, once the seriousness of the offence has been established, will not only be fairer but should also reduce the level of fine default. Piloting the scheme will ensure it is practicable.

Relevance to Racial Equality

The new fine scheme will apply to adult individuals who receive a fine. Many of the consultation responses welcomed the introduction of a day fine scheme which would divert from prison minor offenders for whom a short stay in prison serves little purpose. No specific issues were identified as having a specific impact on BME communities. However, because of the disproportionate representation of BME groups in the criminal justice system as a whole, a fines scheme that bears more equally on offenders will indirectly have a positive impact on those black and ethnic minority offenders that are given fines. This is also likely to have a positive impact on BME groups and their families.

Safeguards

No dangers were raised in respect of race equality issues in relation to this policy. There are consequently no specific safeguards that are planned for this provision. Sentencers will receive training on the proposed new fines scheme. Race equality training is delivered as part of all sentencers’ general training. Monitoring of sentencing behaviour and the use of fines will be ongoing. There will be an evaluation of the scheme when it is introduced.

Recommendations

We do not recommend any change to the provisions of this measure in light of the above assessment.

4. Sentencing Guidelines Council

Policy Objective

To expand the remit of the Sentencing Guidelines Council requiring it to take into account the capacity of the correctional services when issuing guidelines.

The CJA 2003 established the Sentencing Guidelines Council and gave it responsibility for generating sentencing guidelines for all courts. It is supported in this role by the Sentencing Advisory Panel which provides advice on sentencing guidelines, based on consultation. This measure will give the Council responsibility for promoting sentencing practice which uses the existing capacity of correctional services to best effect, as proposed in the Carter Review of Correctional Services. It will do this by producing comprehensive guidelines, based on sentencing priorities and informed by evidence (provided by the Panel) on sentence effectiveness, and by

information on existing and future correctional capacity. This will ensure that demand generated by the courts is broadly in balance with correctional services capacity, enabling effective sentence delivery and targeting of any additional investment. The Council will also be responsible for communicating to sentencers information about their sentencing practice, and its effectiveness.

Relevance to Racial Equality

The measures to strengthen the Sentencing Guidelines Council support the Government's objective to promote consistent sentencing and reduce disparity of outcomes, including disparities between different ethnic groups. Under these proposals, guidance from the Sentencing Guidelines Council will enable sentencers in different areas to analyse their sentencing behaviour and compare it with that of sentencers in other areas, thus promoting consistent and appropriate sentencing. This is particularly important for BME groups because of their disproportionate representation in the criminal justice system.

Safeguards

The Sentencing Guidelines Council will build on the work already undertaken by the Home Office to monitor and evaluate sentencing behaviour. Through its work in monitoring the application of guidelines it will be in a position to identify and address unwarranted disparity in sentencing, including any unequal outcomes for BME defendants. In developing guidelines, it will draw on relevant research, including outputs from the Home Office's new race and sentencing study.

Recommendations

We do not recommend any change to the provisions of this measure in light of the above assessment.

5. Electronic Monitoring

Policy Objective

To extend the use of electronic monitoring as an aid to supervision of offenders and to prescribe the conditions in which it may be used as a condition of bail.

The Carter Report recommended that electronic monitoring be used more extensively and, in particular, that satellite tracking be used to control the movement of offenders and to provide the police with information on the behaviour of persistent offenders. Although the technology is an aid to supervision rather than providing complete control, increasing its use would improve current levels of monitoring.

Electronic monitoring will be extended to provide for the tracking of an offender's whereabouts as a requirement of a community order and a suspended sentence order ('custody minus'). Where the offender is suspected of committing further crime, information about his whereabouts can be passed on to the police for investigative purposes.

A provision will also be made to extend to adults the statutory provision which currently applies to juveniles under which courts have the power to impose electronic monitoring as a condition of bail. At present courts can impose such a condition on adults but do so infrequently. The conditions in which electronic monitoring for adults will be used as a condition of bail will be prescribed to ensure that it is used where it

is potentially cost-effective, i.e. where a defendant would otherwise have been remanded into custody.

Relevance to Racial Equality

a) electronic monitoring

In providing for the electronic monitoring of an offender's whereabouts under a community order or custody minus, the intention is primarily to target persistent and higher risk offenders within this sentence group. The proposed provision is framed so that the requirement may not be imposed by the court without a recommendation from the National Offender Management Service, which will provide for the most efficient targeting of its use. The court will have to be satisfied that the use of the requirement is proportionate and justified in each case. The electronic monitoring of an offender's whereabouts will provide an additional management tool, usually as part of an intensive package of community measures, and may encourage greater use of community orders and custody minus where the offender is on the cusp of immediate custody. Statistics show that community sentences can account for 37% of sentences passed on black and Asian defendants in magistrates' courts and the electronic tracking measure would therefore affect this group. Since 14% of black and Asian defendants also received immediate custody this measure could also potentially benefit them by drawing them into receiving a community sentence as opposed to immediate custody. This would therefore have a positive impact on BME offenders.²

b) tagging on bail

Evidence suggests that BME defendants are more likely to be remanded in custody than white defendants. In June 2002, 14% of BME prisoners were on remand awaiting trial, compared with 10% of white prisoners.³ Tagging on bail as an alternative to a remand in custody is therefore likely to have a positive impact on BME defendants.

Safeguards

No dangers were raised in relation to race equality issues arising from the proposal to monitor the whereabouts of offenders on community orders and custody minus. The use of the requirement would be subject to evaluation. There were also no concerns raised in relation to tagging on bail: the proposal is to pilot the scheme initially and any further extension of the scheme would be subject to a rigorous evaluation, of which race equality issues would form a part.

Recommendations

We do not recommend any change to these provisions in the light of the above assessment.

² Section 95 Statistics on Race in the Criminal Justice System - table 6.2 Persons sentenced for indictable offences at magistrates courts by outcome and ethnic appearance of defendant, for selected areas 2002 - page 63

³ Section 95 Statistics on Race in the Criminal Justice System - table 9.5 Prison population by ethnic group, type of prisoner, age group, offence group and the sentence length - page 4

6. Mandatory polygraph tests for sex offenders on licence

Policy Objective

To establish the usefulness of polygraph tests as an aid to treating and managing sex offenders.

This measure would take a power to impose mandatory polygraph testing as a licence condition on offenders who have committed specified sex offences and who are sentenced to 12 months imprisonment or more. A polygraph test measures a subject's bodily reactions when asked questions. The results are plotted in real time on a computer screen and a trained examiner determines whether the subject is telling the truth or not. Lying is indicated by an abnormal reaction when giving that particular response.

A polygraph test is designed to support traditional supervision, by encouraging offenders to be more truthful in discussion their behaviour, in a way that helps themselves and the supervising officer. Sex offenders generally have high levels of denial and polygraph testing may aid supervising officers to target treatment and supervision more effectively, leading to greater public protection. Polygraph tests are an additional management tool: there is no intention to use them for evidential purposes.

The National Probation Service is currently conducting a pilot using polygraph testing on a voluntary basis on offenders who have agreed to do a sex offender treatment programme. However, the fact that the testing is voluntary, and therefore the group is not representative, means that the research results will not be certain. In order to conduct a pilot whose results can be properly assessed, it is necessary to conduct the testing on a mandatory basis. The measure is for a time limited pilot in a limited number of probation areas. Any further extension would be subject to successful research results and would require a statutory instrument subject to affirmative resolution.

Relevance to Racial Equality

Polygraph tests are an additional management tool and can aid rehabilitation by helping sex offenders to be more truthful and to keep to their relapse prevention plans, which would have a positive effect on this group of offenders. Statistics show that BME groups are not over represented in this group of offenders accounting for 6% of total sentenced.⁴ This measure is therefore likely to have a neutral impact on BME groups.

Safeguards

No dangers are raised in respect of race equality issues in relation to this policy. Any extension of the provision will depend on the outcome of the research and will be subject to further debate through the affirmative resolution procedure in Parliament. Ethnicity data, which is already being collected during the current pilot, will be collected during the proposed extended pilot and an analysis of this data will form part of the evaluation of the scheme.

⁴ Section 95 Statistics on Race in the Criminal Justice System - table 6.3 Persons sentenced at magistrates courts by type of sentence and ethnic group for selected offences and area, 2002 - violence against the person and sexual offences - page 65

Recommendations

We do not recommend any change to the provisions of this measure in light of the above assessment.

7. Removing the age cap on Attendance Centres

Policy objective

To remove the age restriction of under 25 years on attendance centre requirements in order to pilot their expanded use for low risk offenders

An attendance centre requirement of between 12 and 36 hours is available as part of the generic community sentence for adults under 25. Senior attendance centres (for offenders over 18 and under 25) provide a simple and inexpensive restriction of liberty. They are considerably less expensive than unpaid work. The proposed measure in the Bill will remove the age restriction of under 25 years on attendance centre requirements in order to pilot their expanded use for those offenders over 25 who have committed offences that courts deem sufficiently serious to warrant a community penalty but who are at low risk of re-offending. The centres could also be used for low level offenders whom the courts regard as being inappropriate to receive a fine or for fine defaulters, and as an effective punishment for breach of community orders. A pilot will ascertain whether they provide an effective disposal for low level offenders without undermining work to increase the use of the fine.

Relevance to Racial Equality

There are currently no figures on the number of adult BME offenders who are sentenced to an attendance centre, but the proposed research into the pilot will include proper ethnic monitoring. However, there are figures for juveniles. These show that, in total in 2003/4, 11.5% of sentences were imposed on BME offenders. They were made subject to 13% of attendance centre orders imposed, and a similar percentage of fines or supervision orders.

National standards for attendance centres already lay down that the work of attendance centres must be free from discrimination on the grounds of race, gender, disability, creed, language ability, literacy, sexual orientation, or any other irrelevant ground. Attendance centres must deliver quality public service in a manner which is fair for all sectors of the community.

The aim of the attendance centre measure is to find a more cost effective low level intervention for adult offenders of all ages and not just those who are under 25. If they are found to be a more effective way of dealing with low level offenders then they will benefit BME groups who are disproportionately represented in the criminal justice system as a whole.

Safeguards

The attendance centre pilot will be researched before any decision is made as to whether the measure should be rolled out. The research will look at race equality issues and the effects of the policy on BME offenders subject to the attendance centre order.

Recommendations

We do not recommend any change to the provisions of this measure in light of the above assessment.

8. MISCELLANEOUS MEASURES

The following measures are also in the Bill and have been assessed as having no race equality issues:

1. Minor amendments to Criminal Justice and Courts Service Act 2000.

Minor changes to the above act to establish the aims of NOMS, add sentence planning to the functions of a probation officer and to increase contestability.

2. Measures to allow data sharing within NOMS

This measure will formalise arrangements for data sharing within NOMS.

3. Independent Monitoring Boards

This measure updates the name of Board of Visitors and removes the requirement for each Board to have two JPs.