

cjm

update

Una Padel summarises the contents of the new Criminal Justice Bill.

This autumn's new Parliamentary session will bring another Criminal Justice Bill and the White Paper '*Justice For All*', published in July, provides clear indications of the measures it is likely to contain. Considerable media attention has been given to the proposal to change the double jeopardy rule, but the White Paper contains many other ideas which would have an effect on the way the entire criminal justice system operates.

Rebalancing

The stated aim of the programme for reform it contains is "to rebalance the criminal justice system in favour of the victim and the community so as to reduce crime and bring more offenders to justice". The White Paper proposes extensive reform of the criminal justice process and sentencing as well as improvements to the protection and support available for victims and witnesses.

Bail Bandits

Suspects who offend on bail have been a longstanding concern of both politicians and the media. The White Paper's proposals to deal with the issue include giving the police power to impose bail conditions during the period before the suspect is charged, weighing court discretion against decisions to grant bail to defendants charged with an imprisonable offence committed whilst on bail for another offence, and extending the prosecution's right to appeal against decisions to grant bail to include all imprisonable offences. In high crime areas a pilot scheme involving the presumption against bail for suspects who test positive for class A drugs at arrest but refuse treatment is to be tried.

Cutting cracked trials

A package of measures designed to reduce the number of cases which fail because of difficulties arising from their preparation and improvements in case management are proposed.

More power for magistrates

The three-tier unified court system recommended by the Auld enquiry has been rejected, but the White Paper proposes to create a more coordinated court system with the magistrates and Crown courts working more closely together. There is a clear aim to ensure that more defendants are tried and sentenced by the magistrates' court. Magistrates' sentencing powers are to be increased from 6 to 12 months for a single offence, and magistrates will, as a result, be expected to sentence all those they find guilty, rather than sending offenders to the Crown court for sentence. Defendants will retain their right to opt for trial at the Crown court for triable either way offences, but the incentives for an early guilty plea are to be increased to discourage what

the White Paper describes as prolonging the process in the hope that the victim or witnesses will not give evidence. Where magistrates decide they could try a case they will be able to give the defendant information about the sort of sentence they would receive if they pleaded guilty at that stage. If the defendant opts for Crown court trial and then pleads guilty the sentence will be harsher.

Sentencing

The White Paper promises portentously that for the first time the purposes of sentencing will be set out in legislation. It proposes the creation of a sentencing framework which is easier for practitioners to understand and work within, and to establish a Sentencing Guidelines Council, to be chaired by the Lord Chief Justice, which would tackle unacceptable sentencing variation.

A new single community sentence is proposed to replace the individual and combined sentences which currently exist. Sentencers will have a menu of options which can be combined to form a single sentence. The options 'build on existing provisions' and include compulsory, unpaid work, offending behaviour programmes, education and training, drug testing, treatment and abstinence, intensive supervision, curfew or exclusion orders, electronic monitoring, residence requirements and participation in restorative justice schemes.

New sentences for those currently sentenced to short periods in custody, many of whom are not supervised on release include: **Custody Plus** – a new sentence which could eventually replace all custodial sentences of up to 12 months. It will consist of a maximum period of 3 months in custody served in full, followed by a compulsory period of supervision in the community within an overall sentence 'envelope' of up to 12 months. During the period in the community the offender will be subject to requirements designed to address their offending behaviour and its causes. The idea is that the community element of the sentences flows 'seamlessly' from the custodial. Offenders who fail to comply can expect to return to custody. This sentence is very similar to the Detention and Training Order for juveniles. **Custody Minus** – a new suspended sentence where the custodial sentence is suspended for up to two years on condition that the offender undertakes a 'demanding programme of activity in the community' consisting of the same elements as the new single community sentence. Breach will lead to immediate imprisonment.

Intermittent Custody – offenders would serve their custodial sentence at weekends or during the week with the rest of the time in the community where they will be able to keep their lives going and may be required to follow a treatment or reparative programme. During their custodial time offenders may undertake compulsory offending behaviour programmes.

The White Paper suggests that these sentences might be particularly appropriate for women offenders with children. A network of community custody centres will be developed, probably on the same sites as existing prisons. While in the community offenders on these sentences might be electronically monitored. Those sentenced to more than 12 months but not considered dangerous will serve half their sentence in the community under supervision and undertaking a package of activities decided upon by the prison and probation services working together before release.

For sexual or violent offenders who have been assessed as dangerous an indeterminate sentence is to be developed. A minimum term would be spent in prison and beyond that the offender would remain in jail until the Parole Board was satisfied that the risk had diminished sufficiently for the offender to be released and supervised on licence for life, rather like a life sentence.