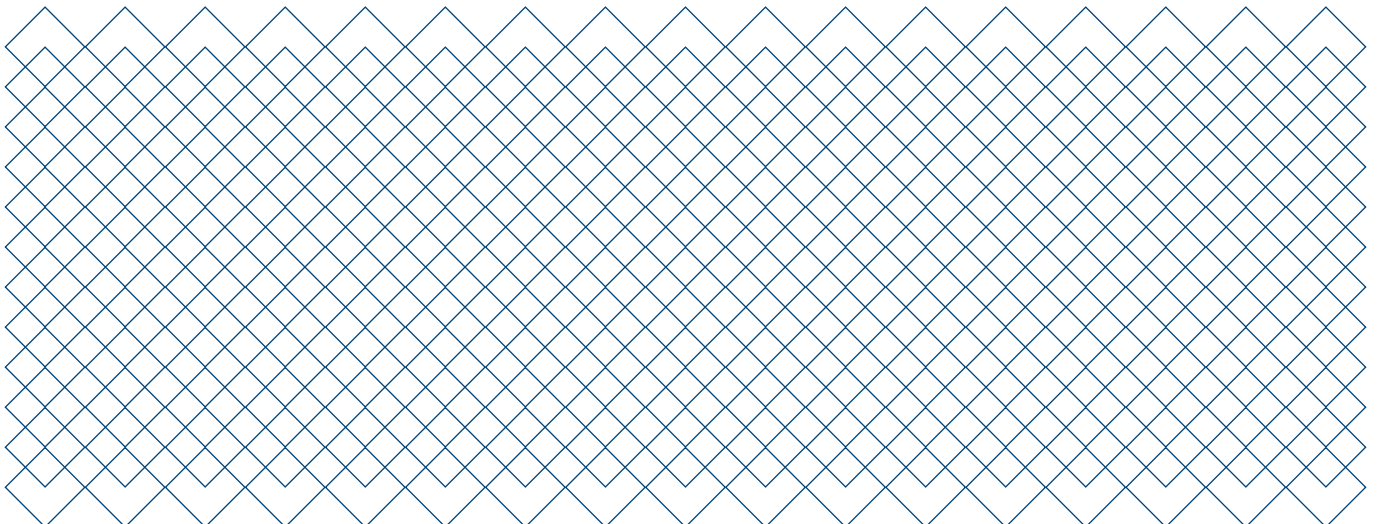




Ministry of
JUSTICE

Breaking the Cycle:

Government Response



Creating a safe, just and democratic society



Breaking the Cycle: Government Response

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

June 2011

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Foreword by Secretary of State for Justice

A firm, fair justice system which keeps the law-abiding safe and gives law-breakers their just deserts is the most fundamental thing a state should offer its citizens. In *'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders'*, we set out plans to radically reform criminal justice, ending the inefficiency and bureaucracy that has resulted in a system which fails in its most important objectives: punishing offenders, protecting the public and reducing reoffending.

Prison is the best punishment for serious criminals, because it protects the public, removes offenders from society, and takes away their liberty. But too many prisoners are able to pass their time in prison in a state of enforced idleness, with little or no constructive activity. Prisons must become places of hard work and training, where prisoners are expected to work a 40 hour week, with money from their earnings deducted to support victims' groups. We will also tackle the scandal of readily-available drugs in prisons – with many prisoners saying they tried heroin for the first time on the inside. We will introduce tough security measures to reduce the supply of drugs in prison, and establish drug free wings to help prisoners get clean.

Community sentences have not won public confidence as a punishment. There are too many cases where community orders require only 'supervision' by a probation officer – perhaps one meeting a fortnight. We will overhaul the way community sentences are used. Offenders will serve longer hours, carrying out purposeful, unpaid activity which benefits their local community, over the course of a working week of at least four days. We will make more use of electronic tagging and longer curfews. Community sentences will not be pushed as a replacement for prison sentences – instead, tougher, better community punishments will help stop offenders in their tracks earlier to stop them committing more crime.

This is the big failure that we have inherited – the national scandal of reoffending. Punishment is essential in a fair society, but on its own it does not stop people reoffending. Almost half of all adults leaving prison are reconvicted within a year – and for those serving short sentences, the figure is even higher. The same criminals are endlessly recycled through the courts, prison and community sentences, creating new victims of crime and extra costs to society. This vicious cycle costs the economy between £7 and £10 billion per year. To cut crime, we need to be far more successful at getting prisoners to go straight after serving their sentence.

Previous approaches failed to break the cycle of crime and reoffending. Tidal waves of legislation created an unworkable sentencing framework and a statute book littered with over-prescriptive law that undermined the expertise of professionals in the system. Increased spending on offender programmes, repeated structural change and the commissioning of expensive IT systems, which were not fully implemented, had only a minimal impact. An obsession

with process and targets tended to distract professionals from the most important goal – the prevention of future crime and future victims. The numbers of prisoners and offenders managed in the community increased by around 40 per cent in thirteen years. The prison system was unable to cope, resulting in 80,000 offenders being released before serving their sentences under the end of custody licence scheme. We are not aiming to cut the prison population – and we are clear that there must always be places for those that judges sentence – but we will manage a stable, effective system rather than undermining it by endlessly and irresponsibly inflating prison numbers for their own sake.

We must learn from past mistakes. We will change our whole approach to rehabilitation so that we reward and pay only for what works in delivering reduced levels of crime. Prisons will be judged on how effectively they stop their prisoners offending again. There will also be figures to show what kinds of sentence work best to stop offenders in their tracks. Independent providers, be they private companies, charities or not-for-profit organisations, will be paid according to their level of success in bringing down reoffending. They will deliver programmes which address the roots of criminality, in areas such as drug and alcohol addiction, mental illness and skills shortages. Ex-offenders who are successfully integrated back into society after serving their sentences will become taxpayers instead of a drain on the state. Our plans mean a return to what the public wants from the criminal justice system: punishment, protection and a renewed focus on breaking the cycle of crime and reoffending.

I am grateful to all those who responded to our consultation, because I believe that their contributions have helped us to set a more intelligent course for delivering effective punishment and reducing reoffending in England and Wales.



KENNETH CLARKE

Lord Chancellor and Secretary of State for Justice

Introduction

1. We published the Green Paper '*Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*' on 7 December 2010. That document set out proposals to reform how we punish, sentence and rehabilitate offenders.
2. The consultation ran for twelve weeks and we received over 1,200 responses. We also ran eleven events across the country. Four of these were open events that included those with a policy interest, voluntary sector organisations and frontline staff from police, prisons and probation as well as members of the judiciary. The remaining events invited senior managers who deliver services to offenders to discuss the proposals. This process provided an opportunity to consider jointly the opportunities and risks presented by the proposed reforms.
3. This document sets out the Government's plans following consultation.

PUNISHMENT

4. Punishments must be robust and demanding. It is simply not acceptable for a prisoner to pass his sentence in a state of idleness or for an offender to ignore a court order.
5. Offenders will have no choice but to confront the consequences of their crimes.

Custodial sentences

6. Our ambition is to transform prisons into industrious places of hard work. We will:
 - create a working week of up to 40 hours for prisoners;
 - focus the daily regime around work;
 - ensure prison work is sustainable and self-financing; and
 - focus education and training in prisons on equipping offenders to work, and link work activity to qualifications and employment opportunities on release, enabling offenders to be productive members of society, not a burden on the state.

Demanding and challenging work for prisoners

HMP Kirkham has introduced a full working week of 33 hours at the very least for all prisoners in their workshops, with HMP Maidstone, HMP Leyhill and HMP Manchester amongst others also making changes to take a range of their prison industries to full working weeks by September.

At HMP Altcourse, managed by G4S, the discipline of a regular working week of 38 hours is now a reality. This applies to around 120 prisoners who work in recycling, laundry and metal fabrication. At HMP Forest Bank, Sodexo Justice Services is proposing to launch a Social Enterprise employing prisoners for 40 hours a week in a professional printshop. As well as providing prisoners with meaningful work and real skills, the majority of profits will go to victim support organisations, with remaining profits helping to fund successful resettlement of prisoners to prevent reoffending.

We are also looking for new and innovative work partnerships with the private sector. The National Offender Management Service and Amaryllis have recently announced a new joint venture which will see prisoners renovating office furniture. This will seek to increase the numbers of prisoners who work, save costs and help the environment.

This early progress will allow us to see real changes now, and help to provide valuable lessons as we look to extend work in prisons more widely across the prison estate.

7. We will publish further details of our implementation strategy this autumn. This will explain how we plan to remove barriers for organisations from all sectors to collaborate with prisons to develop work opportunities and examine how we will avoid displacing jobs in the local community. We are setting up a Business Advisory Group to ensure our plans are firmly rooted in business reality. We will also work closely with the Department of Work and Pensions to link our proposals to the Work Programme so that work inside can lead to work outside.

Non-custodial sentences

8. Non-custodial sentences need to be tough and demanding. For too long, they have fallen short of what is required. Over 10% of community orders contain only a 'supervision' requirement (in other words, meetings with a probation officer). We aim to improve these sentences so they better punish, control and reform offenders. We will not push for community sentences to be used instead of prison – instead, we will transform community orders into more credible punishments that stop offenders getting to the point where custody is the only option.
9. As a starting point, we will:
 - ensure courts have more ways of punishing and controlling offenders by prohibiting foreign travel and imposing longer, tougher curfew orders; and
 - establish compliance panels to ensure that young people comply with their sentences.
10. We will also consider further changes to the system, including ways in which we can use the market, and payment by results, to deliver more and tougher requirements.

Seizing offenders' property

From this summer we will pilot a tough new approach in Cheshire and Norfolk. Offenders who persistently refuse to pay fines will face an ultimatum: pay up quickly or your possessions will be seized. We will send bailiffs to take possession of items such as cars or TVs. We will shortly start pilots in Cheshire and Norfolk before considering whether to roll this out more widely.

PAYBACK

11. We will make offenders pay back to victims and society for the harm they have caused – both directly and indirectly.

Offenders in custody

12. Prisoners owe a debt to victims and society. As we refocus prison regimes around work, we will create more opportunities for prisoners to make reparation. Today, we are introducing legislation that will allow us to take a portion of money earned by offenders. We will publish plans this autumn for how these funds will be used to help repair the harm offenders have caused.
13. We will also implement the Prisoners Earnings Act 1996 from September 2011 to enable deductions to be taken from some prisoners while working on licence in the community prior to release. We propose to deduct 40 per cent of their earnings, after tax and National Insurance. This should enable the Ministry of Justice to generate additional income of around £1 million per year, which will go towards victim support services.

Offenders on non-custodial sentences

14. Financial penalties can be an effective punishment which also ensures that offenders make reparation. We will encourage greater use of financial penalties both on their own and alongside other sentences, and explore other ways of increasing financial payback from offenders to victims and communities. We will:
 - improve Community Payback so it is more intensive and demanding. Offenders will work a longer working day and a longer working week. We will also introduce competition to harness the skills of the private and voluntary sectors to drive up standards and ensure that any revenue is returned to the public purse;
 - create a positive duty for courts to consider making a compensation order in all cases where harm, damage or loss is caused to an identified victim;
 - work with the Sentencing Council to encourage greater use of financial penalties;
 - work to improve further the enforcement of financial penalties; and

- consult on a new victims' strategy which will include proposals to increase the Victim Surcharge and extend its application to a wider range of disposals.

PROGRESSION

15. Punishment is our first and most important response to crime, but is not sufficient to prevent offenders from re-offending.
16. Current rates of reoffending are unacceptable. Nearly half of adult offenders released from prison are reconvicted within a year, and overall one in five offenders spent some time in custody in the year after they were released from prison or started a non-custodial sentence.¹
17. Our priorities are to get offenders off drugs and alcohol for good; address offenders' mental health problems; get offenders into work; and reduce barriers to resettlement. We will take into account the different profile of women's offending in achieving this.

Offenders in custody

18. The case for tackling drugs is self evident. Prisoners who had used Class A and Class B or C drugs in the month before custody had a reconviction rate of 71 per cent, compared to 30 per cent for those who had never taken drugs. We will move to a system focused on recovery which does not maintain heroin users on prescription alternatives such as methadone, unless absolutely necessary. We will pilot Drug Recovery Wings – focused on providing short-sentenced, drug-dependent prisoners with continuity of treatment between prison and the community – in five prisons. We will also increase security measures to reduce the supply of drugs and alcohol into prison and promote drug free environments.
19. We are working across government to ensure offenders gain the skills and aptitude to work in prison, and to secure and retain employment on release. We will use the roll out of the 'Virtual Campus' to broaden the range of employment and learning services available in custody, enabling offenders who show a commitment to reform to access appropriate IT-based learning, employment services and job searches.

Offenders on non-custodial sentences

20. We will explore options for intensive drug and alcohol treatment based accommodation. We will also continue to work with the eight local areas already announced as pilots for a payment by results approach for drugs and alcohol recovery.

¹ Adult reconvictions: results from the 2009 cohort (MoJ, March 2011).
www.justice.gov.uk/publications/statistics-and-data/reoffending/adults.htm

21. We must ensure offenders with mental health problems receive treatment in the most appropriate and the most secure setting necessary. We are working with the Department of Health and the Home Office to pilot and roll out liaison services in police custody and at courts by 2014. The Department of Health is investing £3 million this financial year in 54 adult sites. For young people, six pilots have been in operation for the last two years. An additional £2 million will be supplied to fund up to 30 sites, with the long term aim being to roll this approach out nationally. For those whose offending is linked to severe forms of personality disorder, a different approach is needed focusing on how to make better use of resources and increase access to treatment. A full response to the separate consultation that has been held on this will be published later this year.
22. Settled housing is critical to stabilising the chaotic lives of some offenders. We will work with the Department for Communities and Local Government on a scheme led by Crisis to improve access to the private rented sector for single homeless people, including offenders; work with courts to reduce the extent to which remand is used because offenders do not have stable accommodation, through wider use of Bail Accommodation and Support Service schemes; and support development of the Ministerial Working Group on Homelessness, ensuring that prisons and probation effectively play their part.

Payment by results

23. We will pioneer a world first – a system where we only pay for results, delivered by a diverse range of providers from all sectors. This principle will underpin all our work on reoffending. This is a radical shift. We have already started several pilots and will launch a competitive process this summer to commission further pilots. But we are clear that we want to rapidly build on these pilots. To do this we will ensure that we will no longer provide rehabilitation services directly without testing where the private, voluntary or community sectors can provide them more effectively and efficiently. We will publish a wider Offender Services Competition Strategy shortly, which will set out an ambitious timetable for taking payment by results forward and the wider competition strategy.

On 31 March 2011, we announced our decision to award the contract to manage HMP Doncaster to Serco, including a four-year payment by results pilot starting in October 2011. This contract, the first of its type in the world, will mean that Serco are held to account both for running a safe, decent and secure prison and the reoffending of their offenders on release. For each year of the pilot, 10% of the contract value will be placed at risk, and will only be retained by Serco if they reduce reoffending by 5 percentage points. If they fail to achieve this target, then money will be paid back to the Government. If they deliver more, then they will be paid more than the original contract price. The pilot will cover all eligible offenders released from Doncaster including those released after serving short sentences and to ensure effective services are delivered Serco have contracted with voluntary sector partners, including Catch 22 and Turning Point.

TRANSPARENCY

Opening up justice

24. We must open up justice so that victims and the public have a better understanding of how we are performing and more opportunities to get involved.
25. In March we published plans to increase community access to local criminal justice and make it easier for individuals and communities to access information about local services.² We will:
 - publish more information about sentencing, justice outcomes and local justice services;
 - streamline the requirements that govern how a court must explain a sentence for both adults and young offenders;
 - develop means by which decision-makers can assess the impact of crime on community life, gather views on community priorities then use the information as part of the justice process;
 - increase the accessibility of information on a range of volunteering opportunities across the criminal justice system to enable community participation on local crime and justice issues; and
 - increase community involvement in justice so that local people help to find resolutions to low level crime that reflect community concerns and interests. This will include continuing to test Neighbourhood Justice Panels to bring local volunteers and criminal justice professionals together, using restorative and reparative approaches, to decide what action should be taken to deal with some types of low level crime and disorder.

Recognising and repairing the harm caused to victims

26. We will ensure that victims have a more central role in the criminal justice system.
27. Victims should have an opportunity to explain the harm that a crime has caused so that sentences can be tailored to ensure that offenders make amends. There are inconsistencies in the way in which victims are currently offered the chance to make a Victim Personal Statement – the primary mechanism for victims to inform the court about the impact the crime has had on them. We want to make sure that this opportunity is routinely offered to victims and will seek views on options to make this happen through the forthcoming victims' consultation.
28. Many victims say the best way harm can be repaired is through participation in restorative justice. We are proposing using restorative

² www.justice.gov.uk/publications/community-access-criminal-justice.htm

justice interventions at each stage of the justice system. Most responses to the consultation welcomed our emphasis on greater use of restorative justice as long as it is used appropriately, interventions are of sufficiently high quality and there are sufficient safeguards in place for victims.

29. We will work with the Home Office to develop a framework that supports local practitioners to develop and deliver effective, best practice restorative justice approaches at all stages of the criminal justice system. We will also continue to develop the evidence base for, and practice of restorative justice including by:
- improving its use in community resolution as part of responses to better tackle low-level crime;
 - encouraging its use as part of or in addition to out-of-court disposals;
 - formally embedding the role of victims in restorative justice at each stage of the process;
 - improving the advice sentencers receive about pre-sentence restorative justice practices and how they take restorative justice into consideration in court, including through pre-sentence reports and Victim Personal Statements;
 - establishing guidance and minimum standards for youth offending teams, probation and prisons for undertaking more and better restorative justice practices, both pre- and post-sentence; and
 - seeking to make the referral order a more restorative disposal for young offenders by increasing the training that is given to referral order panel members, removing the current restrictions on the repeated use of the order and allowing courts greater flexibility to give a young person who is in court for the first time, and pleads guilty, a conditional discharge as an alternative to a referral order.

Responding more effectively to crime

30. Over recent years complex legislation and conflicting targets, such as bringing offences to justice, have distorted decision making. To develop a more effective response to crime, we need to reform each stage of the system.
- **Out of court:** we must ensure a more effective use of out-of-court disposals. A rapid expansion of the types of out-of-court disposal has caused confusion about how the various disposals fit together; the circumstances in which one should be used rather than another; the differences between the youth and adult systems; and the processes for administering different disposals. We will create **a clear national framework** for dealing with offences out of court which we will publish later this year. We will also replace the current youth out-of-court disposals with a system of youth cautions, and youth conditional cautions, repeal youth penalty notices for disorder and promote informal restorative disposals. We will reduce unnecessary

bureaucracy by giving the police the power to authorise a conditional caution without referral to the Crown Prosecution Service; and add the option of paying to attend an educational course to adult penalty notices for disorder.

- **Pre-trial:** each year thousands of people are remanded to custody but do not go on to receive a custodial sentence. This can be because remand is used for defendants accused of minor offences, to gain access to health services in prison, for example. This is a highly inefficient way to access assessment and treatment and represents a waste of public money. We will end this and only use remand places where it is necessary to protect the public from those whose offending and alleged offending is serious enough to warrant custody. Courts will still have the power to remand those persistent offenders who flout bail to the point that their offending may merit custody and to use remand in cases where there is a risk of domestic violence. We will also reform secure remand for young people so that all children under 18 are treated in the same way for remand purposes, rather than treating 17 year olds as adults. This will ensure compliance with the United Nations Convention on the Rights of the Child. All young people who are securely remanded will become “looked after” by the local authority. In addition, local authorities will become financially responsible for all youth remands to secure accommodation, although responsibility for commissioning and placements will be retained by central government. This will simplify current arrangements and provide a powerful incentive for local authorities to invest in alternative strategies for this group of young people.
- **Custodial sentences:** Mandatory life sentences for murder are an essential part of the sentencing framework. There are no plans to change this. Similarly, the determinate custodial sentence will remain for the majority of offenders who do not attract life sentences. We are, however, considering several important reforms:
 - creating a new offence with a mandatory minimum prison sentence of 6 months for adults, to send a clear message to those who possess a knife to threaten and endanger;
 - conducting an urgent review of sentencing for serious sexual and violent offenders. Consultation highlighted numerous weaknesses with the indeterminate sentence of Imprisonment for Public Protection. It has never worked as Parliament intended, creating instead a flawed system, which is not well understood by the public. We will conduct an urgent review with a view to replacing the current IPP regime with a much tougher determinate sentencing framework – which would be better understood by the public, and command greater confidence. The review will also cover Detention for Public Protection, the equivalent sentence to an IPP for juveniles;
 - providing courts with greater discretion in using suspended sentences so that they are able to suspend a sentence for a custodial period of up to two years, choose whether or not to

impose community requirements, and have the additional options of imposing a fine for breach; and

- legislating to remove some of the statutory restrictions in the use of fixed term recall and executive re-release to reduce unnecessary use of Parole Board resources.
- **Reducing the number of Foreign National Offenders:** foreign nationals who abuse our hospitality by committing crimes should be removed. We already have schemes underway which support this objective and are continuing to build on them to further reduce the numbers of foreign nationals in the justice system:
 - prisoner transfer arrangements, which ensure that EU nationals sentenced here serve their sentences in their country of origin, will come into force from December 2011;
 - deporting foreign national prisoners on indeterminate sentences once they have served their minimum custodial term; and
 - we are piloting the use of simple cautions to divert from prosecution foreign nationals who do not have leave to stay in the UK and have committed certain crimes, on condition that they leave the UK. We will extend this through legislation to conditional cautions.

We are conducting the IPP review with a view to replacing the current IPP regime with a much tougher determinate sentencing framework which includes:

- an increased number of serious offenders would receive life sentences – with mandatory life sentences for the most serious repeat offenders;
- it would be less open to challenge in the courts than the IPP system;
- serious sexual and violent offenders would spend at least two-thirds of their sentence in prison, where they can't pose a risk to the public, rather than being automatically released halfway through their sentence – and they would only ever be released before the end of their sentence if the Parole Board are satisfied that it is safe to do so;
- there would be compulsory programmes for dangerous offenders while they are in prison, to make them change their ways and not just commit more crimes when they are released.

We will also review the Parole Board arrangements for the rehabilitation of those with IPPs, to ensure that real work is done to reform offenders while in prison.

Following the conclusion of our review, we will bring forward government amendments to the Bill in the autumn. In the meantime, IPPs will continue to be available to the courts as they are now.

A simpler framework

31. Over the last decade we have seen repeated piecemeal changes to sentencing law and a highly centralised approach to performance management. Despite reforms to bring public services closer to communities, the justice system remains built around the needs of the people who work in it, not victims or the public it serves. As a result, the sentencing and offender management systems command little public confidence, and are difficult to interpret and administer.
32. We have introduced legislation to remove the bulk of operational complexity from release and recall decisions and to simplify other elements of sentencing law, making it easier for courts and practitioners to sentence and manage offenders. The Bill will:
 - ensure that all future sentences are subject to a single set of release arrangements, regardless of the date on which the offence was committed;
 - consolidate the various existing release provisions;
 - make the process for calculating remand time more straightforward and efficient by making it a simple administrative process;
 - create a single set of rules for the operation of Home Detention Curfew;
 - remove some of the current statutory restrictions to allow greater professional discretion to decide when lower risk prisoners who have been recalled to prison may be re-released on licence; and
 - repeal unimplemented legislation that does nothing but complicate the sentencing framework.

Simplifying performance management

33. As well as simplifying the law, we are committed to reducing top-down performance management and central prescription, by giving professionals the freedom they need to do their jobs:
 - we have published new Probation National Standards which provide more discretion on how probation services manage offenders, allowing more space for innovation;
 - we are also reforming the arrangements that central government has in place for assessing the performance of Probation Trusts and Prisons, so that they are measured according to the outcomes of reducing reoffending, rather than by inputs and processes (such as how many offenders undertake particular programmes or courses);
 - by 2012, we will have further developed probation contracts to focus more on the effective delivery of sentences of the court, reducing reoffending and to take into account the developing payment by results models; and

- in the youth justice system, we will end the current high level of central performance monitoring and develop a risk based monitoring programme centred on three key outcomes:
 - reducing the number of first time entrants to the youth justice system;
 - reducing reoffending; and
 - reducing custody numbers.
34. Subject to the passage of the Public Bodies Bill, we will transfer the functions of the Youth Justice Board to a newly created Youth Justice Division in the Ministry of Justice (distinct from the arrangements in place for adults, and led by the current Chief Executive of the Youth Justice Board). We will also establish an advisory board of stakeholders and experts to advise on youth justice issues and to provide challenge and scrutiny.
35. The new approach will be based on the principles that youth justice services will be locally determined and driven, maximise value for money, be publicly accountable through a Minister, and be lighter-touch. We want to target those Youth Offending Teams that are underperforming and free up the best performing teams to provide greater opportunity to innovate.



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