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Criminal Justice

An introduction

Second edition

Peter Joyce

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CHAPTER EIGHT

Prison and its alternatives This

This chapter considers the development of the Prison Service in England and Wales, assesses the impact of the prison environment on the goal of reform and rehabilitation and evaluates non- custodial sentences as a response to crime.
The chapter also analyses the rationale for the merger of the probation and prison services within the framework of the National Offender Management Service (NOMS).
In particular, the chapter

- discusses the evolution of the English prison system from the late nineteenth century onwards, devoting particular emphasis to the period since *c*.1990;
- evaluates the nature of the prison environment, seeking to suggest why prisons have traditionally found it difficult to bring about the reform and rehabilitation of inmates;
- considers ways other than custodial sentences as responses to crime, and
- evaluates the strengths and weaknesses of these proposals;
- examines the development of the Probation Service, devoting particular emphasis to the changing role of this agency since the early 1990s;
- analyses the rationale for contemporary policy seeking to more closely coordinate the work of the prison and probation services through the National Offender Management Service;
- discusses the policy of the 2010 Coalition government towards prison and its alternatives.

THE DEVELOPMENT OF PRISONS IN ENGLAND AND WALES

This section charts the historical development of prisons and the diverse aims with which they have been associated.

The Gladstone Report, 1895: prisons as rehabilitative institutions

Penal reformers in the late eighteenth century and early years of the nineteenth century had identified the reforming potential of prisons in which opportunities would be presented to inmates to change their attitudes and behaviour. The 1779 Penitentiary Act indicated this change in the purpose of prisons. They had formerly existed as institutions to house those awaiting sentence or the implementation of it (either execution or transportation) or to hold debtors and those guilty of relatively minor crimes. Under the influence of evangelical reformers (such as Elizabeth Fry and John Howard) and utilitarian thinkers (such as Jeremy Bentham) prisons assumed a new purpose as institutions to deter crime and reform criminals.

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However, whether or not offenders availed themselves of the opportunities with which they were presented to reform themselves was primarily subject to their determination: reform was ultimately very much a personal decision.

There was a potential tension between the role of prisons to deter crime and that of reforming criminals, and during the course of the nineteenth century the balance shifted towards deterrence. Prisons became dominated by a custodial philosophy which emphasized secure confinement to protect the public. Prison regimes after the 1860s were characterized by harsh conditions and severe punishments whereby disobedience was subject to physical forms of punishment that included flogging and solitary confinement. Conditions were made unpleasant in order to deter offenders from returning. Although the goal of reform was not totally abandoned, it was primarily to be accomplished by instilling the work ethic and other positive values as opposed to addressing the root causes of criminal behaviour. This philosophy underpinned the 1864 Penal Servitude Act.

Towards the end of the nineteenth century a new approach, that of rehabilitation, emerged as a key function of prisons. The difference between reform and rehabilitation was that the latter promoted a more positive role for the state to bring about changes in those offenders who were receptive to changing their ways. The Gladstone Report of 1895 was a key development in promoting the role of prisons as rehabilitative institutions (see Hudson, 1987: 3–11).

The report of Herbert Gladstone sought a move away from the harsh conditions that had existed in Britain's prisons since the middle of the nineteenth century. It identified the main fault of prison as being that 'it treats prisoners too much as irreclaimable criminals, rather than reclaimable men and women' (Gladstone, 1895: 16). The report was based upon the belief that prisoners were sent to these institutions *as* punishment rather than *for* punishment and it resulted in changes to prison conditions, including the abandonment of the use of the crank and treadmill. Although the deterrent role of prisons was not abandoned, it was balanced by placing a similar emphasis on the objective of the reform of convicted offenders. The report argued that prison discipline and treatment should be designed to maintain, stimulate or awaken the higher susceptibilities of prisoners, to develop their moral instincts, to train them in orderly and industrial habits, and whenever possible to turn them out of prison better men and women, both physically and morally, than when they came in. Its key provisions were incorporated into the 1898 Prisons Act.

The emphasis placed on prisons as mechanisms to secure the rehabilitation of prisoners was underpinned by positivist assumptions that it was legitimate to focus remedial attention on the individual with a view to treating the causes of their offending behaviour. Post-1945 government policy continued to assert that the constructive function of prisons was to prevent those committed to their care from offending again, and endorsed the Gladstone Committee's belief that this objective would not be achieved solely through the use of a regime designed to deter through fear (Home Office, 1959). The concept of 'positive custody' that was contained in the May Report similarly emphasized the constructive aspects of imprisonment delivered by features that included work and education (Home Office, 1979).

Nonetheless, the prison environment that operated in this period was run on military lines. Staff frequently had a background in one of the three armed services and discipline was tight. Any infringement of the rules was harshly dealt with at internal hearings and punishments –

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which included the bread and water diet – were meted out for minor infractions of prison rules.

The decline of the rehabilitative ideal: Conservative policy, 1979–97

The individualism which Conservative governments promoted between 1979 and 1997 was reflected in their attitude towards those who broke the law. The existing emphasis within prisons on rehabilitation gave way to a retributivist objective, reinforced by a political goal to 'get tough with criminals'. The latter was a key aspect of law and order ideology that was embraced by Conservative governments in those years (Cavadino and Dignan, 1992: 26–7). This resulted in significant departures from the justice model (which is discussed in Chapter 7), in particular the 1997 Crime (Sentences) Act that provided for stiff sentences for certain categories of repeat offenders that took into account past offending behaviour in addition to the current offence.

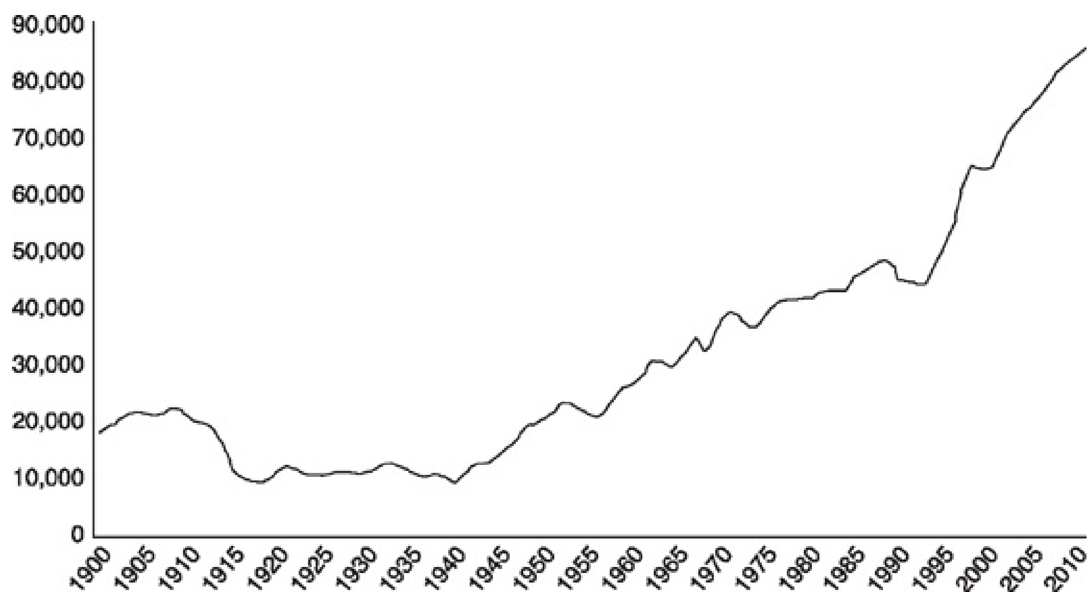

Figure 8.1 The prison population in England and Wales since 1900.

Imprisonment has sharply risen since 1945.

Source: Ministry of Justice (2010) *Offender Management Caseload Statistics*, Table A1.2. Cited in G. Berman (2012) *Prison Population Statistics*. London: House of Commons Library. [Online] www.parliament.uk/briefing-papers/SN0434.pdf

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The Conservative perception that the public required evidence that the government was pursuing a punitive approach towards those who committed crime served to place prisons at the forefront of their thinking. Consequently, 22 new prisons were constructed between 1979 and 1996. The incarceration of offenders provided tangible proof that criminals were being caught, and was the key feature of an approach summarized by the phrase 'prison works' (Howard, 1993a). This caused prison numbers to increase: the prison population rose above 50,000 in January 1994, reached 56,000 by the end of July 1996 and 60,000 on the eve of the

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May 1997 general election. This was due to a change in government policy concerning imprisonment rather than to any dramatic rise in crime. The increase in prison numbers had a direct impact on the prisoners' environment since it resulted in overcrowding (see Figure 8.1) .

Policy changes also affected conditions within prisons. The emphasis placed on the rehabilitation of individual prisoners by the treatment model was replaced by a harsher, 'decent but austere' environment that could be presented as additional proof that those who committed crime were being appropriately punished for their wrongdoings – prison did not offer offenders an 'easy ride'. One problem with this approach was that austere regimes may result in brutalization involving prisoners attacking each other. It may also exert an adverse impact on an inmate's treatment by prison staff since it sends out a message to them regarding what purpose prisons are designed to fulfil. The key changes affecting prison conditions that were introduced by Conservative governments in the 1990s included:

- new and increased powers for prison governors;
- the removal of in- cell televisions for approximately 2,000 prisoners, although successive reports by Woolf (1991) and Learmont (1995) argued for wider availability of this facility on the grounds that it had a beneficial impact on prison life; in particular it helps relieve the boredom associated with incarceration which, if not responded to, will result in tensions within prisons leading to inmates assaulting each other and possibly riots;
- the introduction of random mandatory drug tests (MDTs) throughout the Prison Service in 1996;
- the development of new rules governing home leave and temporary release provisions;
- the introduction of the incentives and earned privileges scheme (IEP) whereby prisoners were divided into three categories – basic, standard and enhanced. Prisoners started off in the standard category and could be downgraded for unsatisfactory behaviour (losing privileges such as evening association or visits and spending a greater proportion of their time in cells) or upgraded for good behaviour.

Additionally, financial stringency announced in January 1996 (which entailed a 15 per cent cut in the budget of the Prison Service over the following three years, involving the loss of 3,000 jobs) was followed by subsequent attempts to reduce the costs per prisoner by 10.2 per cent in 1998/9. This resulted in fewer staff working longer hours and superintending more inmates. Prisoners therefore spent more time in their cells and this reduction in contact between themselves and prison staff had a detrimental impact on the rehabilitation of offenders. During the 1997 general election campaign the Conservative government asserted that treatment and rehabilitation were, and would be, adequately funded (Howard, 1997: 7), but it was subsequently pointed out that whereas the Prison Service spent £30 million a year on mandatory drugs testing, only £5 million was available for treatment programmes, with good ones being a rarity (Teers, 1997: 13).

Criticisms of Conservative prison policy

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The prison policies pursued by Conservative governments between 1979 and 1997 were subject to widespread criticism. The belief that tougher sentences and more austere prison regimes had a deterrent effect on criminals was challenged by the view that many crimes were committed on impulse (Prison Reform Trust, 1993: 3–4). The belief that prison might 'work' as a deterrent was also put into question by low detection and conviction rates, which meant that the fear of prison was a relatively minor factor in the decision to commit a crime; it was perhaps viewed as an occupational hazard rather than the inevitable consequence of criminal activity.

Conservative policy also argued that prison could 'work' by incapacitating offenders. This approach was based upon what has been described as the 'eliminative ideal' (Rutherford, 1997) that underpinned measures such as transportation. It was defended by the then Home Secretary who asserted that between 3 and 13 crimes would be prevented if a burglar was sent to prison for a year rather than being given a community sentence order (Howard, 1993b). However, the validity of this assertion (which was based on the reoffending rates of a sample of 197 convicted burglars given community sentence orders in 1987) was questioned. In 1993 a Home Office study suggested that, as few offenders were caught and only 1 in 12 of those arrested were jailed, it would require a disproportionate increase in the prison population to make a substantial impact on the annual crime rate. It was estimated that in order to decrease the level of crime by 1 per cent it would be necessary to expand the prison population by 25 per cent (Tarling, 1993). The expenditure required to build new prisons to accommodate this influx of prisoners was estimated at £1 billion (Prison Reform Trust, 1993: 6).

The policy of building more prisons and jailing more offenders was condemned by one author of the report into the Strangeways Prison riot as 'short sighted and irresponsible' (Woolf, 1993). The Prison Governors' Association chairman warned that rising numbers coupled with financial cuts and an emphasis on security created a serious danger of prison riots (Scott, 1995). Many of those in prison (34 per cent) were on remand awaiting trial, and a significant number had been given custodial sentences for failing to pay fines (Prison Reform Trust, 1995: 3). This latter problem disproportionately affected women whose 'crimes of poverty' included non- payment of television licences and fines (O'Friel, 1995).

The belief that prison might 'work' by reforming criminals was also scrutinized. A Home Office study on recidivism was conducted, based on 65,624 offenders who had left prison in 1987. Criminal records were examined after two and four years to ascertain how many of these offenders were subsequently reconvicted. The figures showed a reconviction rate of 71 per cent for young male offenders, 49 per cent for adult male offenders and 40 per cent for female offenders within the two- year period. The respective reconviction rates for all males over a four- year period was 68 per cent, and 48 per cent for women (Home Office, 1994a: 133–8). Research by the Home Office suggested that one half of prisoners discharged from prison in 1994 were reconvicted of a standard list offence within two years of release (White, 1998).

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Labour governments and prison policy, 1997–2010

Many of the initial policies pursued by the 1997 Labour government were similar to those of their Conservative predecessors. The aim of the Prison Service was redrafted in 1999,

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becoming the ‘effective execution of the sentence of the court so as to reduce reoffending and protect the public’. This reflected the view that the prime aim of prisons was to serve the needs of society by protecting it from those who acted anti- socially.

Additionally, the Labour government failed to redress the reliance on custodial sentences that had been the hallmark of Michael Howard’s tenure as Home Secretary so that the prison population stood at 66,000 in December 1998 (or approximately 125 per 100,000 of population). It continued to rise, and when the Labour party left office in 2010 stood at around 85,000 – the largest prison population per capita in Western Europe. This rise did not reflect an increase in rates of crime (which began to decline during the 1990s) but arose from changes in sentencing policy that resulted in the increased use of custodial sentences for certain offences.

However, there was a new emphasis on constructive prison regimes which indicated an important change in the rationale for the use of custodial sentences after 1997. It entailed a shift to the desire to use prisons to reform and rehabilitate prisoners. As is argued below, this emphasis was promoted by Charles Clarke (Home Secretary 2004–6) in his attempts to lower the rates of recidivism.

Constructive prison regimes

It has been argued that prisons ‘work’ if they do something useful with offenders (Matthews and Francis, 1996: 19). Jack Straw (Labour’s Home Secretary in 1997) emphasized that prisons constituted ‘one element in a radical and coherent strategy to protect the public by reducing crime’, but he was especially concerned to ensure that prison regimes were constructive (Straw, 1998). He argued that constructive regimes were underpinned by prison communities that were

- safe – in the sense that bullying, drug dealing and violence had to be regarded as anathema to what prison stood for;
- fair – so that the government’s commitment to human rights became translated into fairness in the way in which prisoners were treated;
- responsible – which meant that prisoners should be encouraged to make choices and be given some responsibility for the conduct of their own affairs, and that trustworthiness should be rewarded.

He further announced in 1997 that the prison budget would be increased by £660 million spread over three years, £200 million of which would be spent on the development of prison regimes.

Question

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To what extent, and in what ways, can it be argued that 'prison works'?

THE REHABILITATION OF PRISONERS

A key issue concerning imprisonment is whether it is primarily designed to serve the interests of society or those of the prisoner. The former belief suggests that prisons may serve as 'warehouses that quarantine or incapacitate those men and women who either cannot be deterred by the threat of sanctions or those whose actions are so harmful to society that they are best kept away from the rest of us' (Andrews, 2003: 120). The latter view emphasizes the role of prisons to bring about the reform and rehabilitation of those who have broken the law. Throughout much of the twentieth century, emphasis was placed upon the reductivist role of prisons. This was a prominent concern of the rehabilitative ideal, the loss of faith in which was an important aspect of what has been referred to as the 'penal crisis' of the second half of the twentieth century (Raynor and Vanstone, 2002: 73). Nonetheless, the new retributive emphasis placed on prisons did not result in attempts to reform and rehabilitate offenders being totally abandoned by the 1979–97 Conservative governments. As Chapter 3 indicated, this aim remains as an aspect of the mission statement for Her Majesty's Prison Service.

The following section examines whether the impact of imprisonment on individual offenders undermines the capacity of these institutions to reform and rehabilitate inmates. Other issues discussed in a later section concerned with the maintenance of order in prisons are also relevant to this discussion since factors that contribute to instability within prison regimes might also create an environment in which reform and rehabilitation become difficult objectives to achieve.

Coping with confinement

Sociologies of imprisonment emphasize the impact that the prison environment exerts on the mental processes of its inmates. For many prisoners, its consequences reduce the potential for prisons to secure their reform and rehabilitation.

Imprisonment has been described as entry to a 'total institution' (Goffman, 1961; 1968) in which all aspects of the lives of inmates are played out. Confinement involves a series of assaults upon the self that have the effect of contradicting or failing to corroborate previous self- conceptions (Cohen and Taylor, 1972). Prisoners are poorly prepared for the experiences they will face in prison and are forced to pick up the prison routine from other inmates (Ramsbotham, 2005: 5–6). They are subject to a number of basic deprivations (Matthews, 1999: 54) and attempts to compensate for the denials of liberty, access to goods and services, heterosexual relationships, autonomy and personal security have been argued to exert considerable influence over the behaviour of prisoners (Sykes, 1958). They have been depicted as 'lonely individuals' (Mathiesen, 1965: 12) in a position of psychological and material weakness, subordinate to the power wielded by prison staff which may give rise to anger, frustration, bewilderment, demoralization or stress. Psychological disorders including

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anxiety, depression, withdrawal and self- injury may make reform or rehabilitation difficult to accomplish (Cooke et al., 1990: 55–66).

Problems which include mental illness (which was traditionally viewed as a disciplinary issue by the Prison Service), inadequate care and treatment of those undergoing drug and alcohol detoxification programmes and the inability to adapt to prison regimes are major factors explaining prison suicides. On 30 January 2005, an editorial in the *Observer* newspaper stated that there had been 571 prison suicides since Labour came to power in 1997, and it has been argued that prisoners are seven times more likely to commit suicide than the general population, with young inmates being most at risk (Howard League for Penal Reform, 1993). A Suicide Awareness Unit was established in 1991 to help prepare a national strategy to combat this problem but its immediate impact was limited. In excess of 40 suicides occurred in both 1991 and 1992.

Depression, personality changes and psychological deterioration may be influenced by factors that include whether a prisoner is given a fixed or indeterminate sentence and the length of time served. A study of the effects of long- term imprisonment on male life sentence prisoners in Durham's 'E' Wing drew attention to the fear of deterioration among such prisoners (Cohen and Taylor, 1972). Although this fear may exceed the actuality of the problem, it suggested that prisoners' energies were concentrated on matters such as survival rather than on self-improvement. The former may be achieved through coping strategies such as time management or adapting to the prison environment (which may result in 'institutionalization' and the inability to adapt to life on the outside) (Goffman, 1961), by pursuing activities designed to aid the passing of the sentence (Sapsford, 1978), by prisoners cutting themselves off from their families (perhaps pretending that established relationships are over), or by fantasy (King and McDermott, 1995).

One problem in assessing whether or not deterioration occurs concerns the indicators that are used to measure it. Tests which seek to establish whether or not changes occur in a prisoner's intellectual or cognitive abilities may not reveal personality changes which make it difficult to subsequently adapt to the outside world. It is officially accepted that the fundamental nature of the prison environment tends to reduce an offender's self- reliance and feelings of responsibility (Home Office, 1990). Aspects of the 1991 Criminal Justice Act (which included the requirement for enhanced prisoner participation in sentence planning in training prisons) were designed to offset these problems and were compatible with the desire to improve the individual.

In 1999 a survey into the mental health state of prisoners suggested that 95 per cent of male remand and sentenced prisoners displayed symptoms consistent with psychiatric disorders and almost all female remand and sentenced prisoners displayed symptoms common to one or more psychiatric disorders. Although some of these were evident prior to sentence, the high prevalence of psychiatric disorders could to some extent be related to the environment of prisons (Woolf 1999). Concern regarding the physical and psychological welfare of exceptional escape risk category A prisoners contained in Special Service Units was expressed by the human rights organization, Amnesty International (1997).

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Prisoners with mental health problems

Prison is not always the right environment for persons with mental disorders since it may exacerbate these disorders and increase the risk of self- harm and suicide. A report in 2009 thus sought to divert offenders with particular mental health problems away from prison and into more appropriate services. It made 82 recommendations which included better assessment at the earliest possible opportunity involving schools and primary healthcare, and improved continuity of care for people with mental health problems or learning disabilities within the criminal justice system. It was recommended that neighbourhood policing teams should work with local agencies to help identify people with mental health problems (especially those at risk of offending/reoffending) and that all agencies using sections 135 and 136 of the 2007 Mental Health Act should agree joint protocols which recognized the unsuitability of police custody as a 'place of safety' (Bradley, 2009).

In 2009, a Health and Criminal Justice National Programme Board was established to develop a national delivery plan for meeting the challenges outlined in the Bradley Report which especially focused on skills and workforce development. It was argued that practitioners across the system needed learning and skills development in mental health and learning disability so they could recognize and deal appropriately with people who had mental health and learning disabilities. Multi- agency approaches (including information-sharing between agencies) to tackle mental health and learning difficulties were advocated to ensure that individuals were treated consistently and fairly as they went through the system. The reforms entailed a greater level of engagement by health services and healthcare providers at police stations (Department of Health, 2009).

The operation of prison regimes

Although many prisoners will be able to cope with confinement without experiencing long-term psychological deterioration, the environment of prisons may not be conducive to reform. This section considers how aspects of the prison environment hinder the reform and rehabilitation of prisoners. Some accounts of this nature also discuss the impact of the prison environment on prison officers (Crawley, 2004) and some consider the relationship between officers and prisoners, especially within the overall theme of the maintenance of order in these institutions.

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SECURITY

The emphasis placed on security within prisons may not be compatible with the reform and rehabilitation of prisoners. The escape of a number of top security inmates including Charles Wilson (1964), Ronald Biggs (1965) and George Blake (1966) prompted the Home Office to commission a report into prison escapes and security, chaired by Earl Mountbatten. It reported

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in 1966 and made a number of recommendations, including the early categorization of prisoners while held in local prisons. The resultant A, B, C, D categorization related to a prisoner's security risk and was reviewed during the course of the sentence. Category A prisoners were those who required maximum security since an escape would pose a high danger to the public or to national security. Category D prisoners were those who could be trusted to wander freely around a prison (Mountbatten, 1966). This indicated that the key rationale of prisons was to provide secure internment to protect society from dangerous criminals, thereby placing society's needs above those of the prisoner. This new thinking was embodied in a White Paper that subordinated treatment and training to the aim of holding those committed to custody in conditions that were acceptable to society (Home Office, 1969).

The view that security considerations should dominate the operations of prisons implied that their prime role was that of incarceration. This required an environment that was not necessarily conducive to the rehabilitation of prisoners. The extent or availability of training or education was considerably influenced by a prisoner's security categorization, and prison officers were primarily concerned with the security aspects of prison life rather than with its reforming role. Security needs could lead to prisoners remaining locked in their cells for long periods so that they were unable to improve themselves through training.

This situation was aggravated by the way that prisoners deemed to pose a high security risk were housed throughout the prison system. The Mountbatten Report had suggested that one ultra- high security prison should be built. This recommendation, subsequently resurrected by Learmont (1995), was not acted upon, and instead the dispersal policy proposed by the Radzinowicz Committee in 1968 was implemented. This resulted in dangerous prisoners being placed in several prisons, in the belief that mixing dangerous and non- dangerous criminals would make the former easier to handle. In practice, however, this policy resulted in enhanced security and surveillance throughout the entire system, to the detriment of rehabilitative objectives, and also posed the possibility of prisons becoming 'universities of crime'.

The emphasis on prison security was increased following the publication of the Woodcock Report (1994) and the Learmont Report (1995). The latter placed security at the forefront of prison policy and put forward 127 recommendations; these included bringing all prisons up to minimum standards of security by strengthening perimeter fences and installing closed- circuit television, replacing all dormitory accommodation with cells, introducing electronic and magnetic locking systems and making visitor searching more rigorous (Learmont, 1995: 139–42). This approach was criticized for placing security considerations above the obligations of the Prison Service to treat prisoners humanely and to seek their rehabilitation. It was alleged that the Learmont philosophy pointed towards concentration camps and shooting prisoners who attempted to escape (Tumim, 1995).

The security situation might be ameliorated to some extent by reversing the policy of dispersal. Following an attempted breakout from Whitemoor in 1994 and an escape from Parkhurst in 1995 moves were undertaken to place the most dangerous prisoners in a smaller number of jails. The possibility of building a 'super- maximum' prison was also considered, since this would enable all dangerous prisoners to be concentrated in one institution (Learmont, 1995: 132–8). Subsequently the Prison Service unveiled a £130 million anti- escape package, which included the use of sensitive alarms linked to perimeter fences, and additionally the number of

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prisons housing category A prisoners was reduced from 21 to 13.
The issue of security also exerted considerable influence over prison visits from family and friends. These are widely regarded as important influences on the behaviour of inmates while in prison: they also perform a major role in the subsequent rehabilitation and resettlement of prisoners. While it is important to stop visitors smuggling contraband into prisons, an overemphasis on security considerations can greatly affect the quality of these visits and thus the useful consequences that derive from them.
It might be concluded that if increased emphasis was placed on activities such as education and job training, which prisoners found useful, there would need to be less emphasis on security – at least in prisons housing low- risk offenders. The emphasis on security thus suggests that prisons are primarily designed as places of punishment rather than rehabilitation.
In 1997, a Parliamentary committee recommended that improving the quantity and quality of purposeful activity should be the government's priority for the Prison Service, and suggested developing performance indicators and targets for purposeful activity (Home Affairs Committee, 1997).

Positive custody

It would be wrong, however, to assert that the emphasis placed on security totally displaces the rehabilitation ideal. In 1979 the May Report coupled security considerations with rehabilitation by suggesting that Prison Rule 1 should be redrafted to state that the purpose of detaining convicted prisoners was to keep them in custody that was both secure and positive. To this end it directed the behaviour of the authorities and staff to create an environment which could assist prisoners to respond and contribute to society as positively as possible, would preserve and promote their self- respect, would minimize the harmful effects of their removal from normal life, prepare them for discharge and help them re- enter society (Home Office, 1979).
Although some dismissed this philosophy as 'zookeeping' (Fitzgerald and Sim, 1980: 82), it found official support in the mission statement for the Prison Department published in 1988, the first sentence of which stated that 'HM Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and help them lead law abiding and useful lives in custody and after release.' Although the paramount need for security was recognized in subsequent official pronouncements, it was later argued that the time had arrived for a more prominent focus on the rehabilitative functions of prison (Prison Service, 1997).

BRUTALIZATION

Prisons are violent places. Explicit violence gains credit for its perpetrators in both male and female prisons and a known capacity for such behaviour is the necessary currency for efficient and healthy survival (O'Dwyer and Carlen, 1985). This suggests that prisoners may either need to develop violent traits while in prison or risk being the victims of violence from other inmates. The latter is illustrated by the growth of bullying in the 1990s that may lead to suicide.

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Those subjected to violent treatment within prisons, especially if carried out by prison staff (or abetted should staff turn a blind eye to it), may leave prison with a grudge against society resulting in the commission of further, and more violent, criminal acts in the future.
Although the Prison Service introduced a strategy to counter bullying in 1993, later research revealed that 'victimisation was pervasive'. A sample of young offenders and adult prisoners revealed that 46 per cent of the former and 30 per cent of the latter had been assaulted, robbed or threatened with violence the previous month (O'Donnell and Edgar, 1996: 1–2).
One aspect of this problem has been the rise of prison gangs who exert their control over other inmates through methods that include bullying, intimidation and, in some cases, murder. Much of this violence is associated with the prison drugs trade, but it may involve other aspects including racial violence (Thompson, 2005).

Violence by prison staff

Allegations of violence by prison staff towards inmates have been occasionally made. One problem is that such allegations are investigated by the Prison Service that may be seen as insufficiently independent to secure the confidence of prisoners in the system. In March 1998 a coroner's court jury determined that staff in a privately managed prison had unlawfully killed an inmate, Alton Manning. However, a particularly serious allegation of such brutality involving the systematic beating of inmates was made at Wormwood Scrubs. In 1999, following a police investigation which entailed the biggest ever criminal investigation at a British jail examining allegations of assault and brutality mainly between January 1997 and May 1998, 25 prison officers were suspended in connection with assault-related allegations, 12 of whom were subsequently charged with assaulting inmates. A second investigation looking at cases that dated back to 1991 was also mounted.

The need for staff to show consideration towards those in their charge was referred to by the Chief Inspector of Prisons in 1999. He called for some older officers to end the 'old-style culture' which treated a prisoner as 'somebody who is subordinate to you' and argued that the culture of 'domination and intimidation' should give way to a situation in which officers should have 'the same responsibility of care for a prisoner that a nurse has for a patient in hospital' (HM Chief Inspector of Prisons, 1999).

'UNIVERSITIES OF CRIME'

Prisons are sometimes popularly viewed as places in which relatively minor offenders learn the 'tricks of the trade' from seasoned inmates and thus return to society as more accomplished criminals. It is in this sense especially that prisons have been described as constituting an expensive way of making bad people worse (Home Office, 1990). The current problem of prison overcrowding has tended to accentuate this problem by placing violent and dangerous prisoners in the same institutions as relatively minor offenders. The former may serve as role

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models for the latter in the absence of alternative influences. This was cited as the key explanation for the riot at Wymott Prison in 1993 (HM Chief Inspector of Prisons, 1993).
One further explanation for prisons serving as institutions that 'educate' offenders in criminal habits is the negative image associated with them. The routine of prisons (which commences with routine removal of personal possessions, stripping and showering and – for men – being dressed in prison uniform) emphasizes that society views prisoners as deviant and in need of a disciplined regime to remedy their personal failings. Such negativity may not be conducive to self- improvement. Additionally, the stigma of imprisonment may make it hard for prisoners to find gainful employment upon release. The knowledge of this (which is especially acute in periods of high unemployment) may serve to further isolate those who are already marginalized (Fleisher, 2003: 110) and perhaps encourage prisoners to make the best use of their time while inside to build contacts in the criminal underworld and learn skills which will better equip them for a life of crime upon release.

PURPOSEFUL ACTIVITY

The term 'purposeful activity' describes a wide range of pursuits conducted within prisons that are designed to aid the reform and rehabilitation of prisoners. These include prison work, education and training courses, physical education, programmes to tackle substance abuse, anti- bullying initiatives, family visits and the taking of responsibilities in prison gardens and workshops (Home Affairs Committee, 2005). These are designed to provide prisoners with constructive use of their time while in prison and are integral to the maintenance of order within these institutions and an essential aid to the rehabilitation of inmates when released.
Until 2004, a Prison Service Key Performance Indicator set a target of 24 hours a week to be spent in purposeful activities. However, targets of this nature did not measure the quality of the activities delivered in this period (Ramsbotham, 2005: 83). Additionally, the consistent failure of prisons to meet this target resulted in its abandonment from 2004/5 onwards and its subsequent downgrading to a Key Performance Target.
The inadequacy of the provision of purposeful activities in prisons was highlighted by the Home Affairs Select Committee in 2005. Based on data derived from a prison diaries project, it stated:

> disturbingly high proportions of prisoners are engaged in little or no purposeful activity. Very few prisons provide for adequate amounts of purposeful activity across all, or most, of the main categories of such activities. The reasons for this include overcrowding and disruptions to education, vocational and treatment programmes caused by prisoner transfer, reducing prison staffing and generally poor administration. The consequences for prisoners are too many hours 'banged up' in their cells, with an adverse impact on their mental and physical health, and missed opportunities for rehabilitation.

The Committee thus urged the reinstatement of the 24 hours per week purposeful activity Key Performance Indicator (Home Affairs Committee, 2005).
The following section discusses some aspects of purposeful activity that have an obvious

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bearing on prisoners' reform and rehabilitation.

Treatment programmes

In addition to programmes that seek to tackle the manifestations of criminal behaviour derived from problems such as alcohol and substance abuse, other programmes seek to identify the attitudes and thinking patterns that underpin offending behaviour and replace these with alternative values which exert a positive influence on an individual's awareness, thought processes and judgement, thereby reducing the likelihood of criminal behaviour. These are referred to as cognitive behavioural programmes and may be delivered within the community or within those prisons offering therapeutic treatment regimes (Joyce and Wain, 2010: 30). Historically, therapeutic treatment was available for a limited number of violent psychiatric prisoners in specialist institutions such as Grendon (the only prison in Europe to operate wholly as a therapeutic community) or in therapeutic units in prisons such as Hull. In these regimes, the traditional emphasis on work, education and physical exercise is replaced by therapeutic groupwork where prisoners are challenged to face up to their offending behaviour within a supportive environment in which doctors play a key role. Such regimes are costly but achieve success in terms of subsequent reconvictions of those with violent and sexual offences (Genders and Player, 1995), although there was a need for inmates to spend at least 18 months within them to achieve positive results that were evidenced by reconviction rates of around one- fifth to one- quarter (Marshall, 1997:1).
Subsequently, accredited sex offender, anger control and drug rehabilitation programmes have been introduced to address the offending behaviour of prisoners. This is especially important regarding sex offenders as programmes such as the sex offender treatment programme (SOTP) are designed to make them face up to the crimes for which they have been committed. However, programmes seeking to address all forms of offending behaviour are not universally available within the Prison Service which means that a number of prisoners are not able to benefit from them to aid their reform. Intensive programmes to combat alcohol abuse, for example, are, in general, poorly provided in prisons and psychiatric problems have traditionally been responded to by a heavy reliance being placed on drugs.

Drug rehabilitation policy in prisons

It has been reported that 80 per cent of prisoners declare drug misuse prior to prison with around 55 per cent admitting to a serious drug problem (Home Office, 2004b: 5). The prisons drug strategy of the Labour government was initiated in 1998, based upon the publication entitled *Tackling Drugs in Prison* (1998). This was formulated following a review of the Conservative government's 1995 policy document *Drug Misuse in Prisons* . This strategy embraced:

- action to prevent drugs being smuggled into prisons;
- clinical detoxification as the first step to help prisoners to get off drugs while in

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prison;
- the availability of drug rehabilitation programmes in prison and an increase in the number of therapeutic communities which offer intensive programmes to prisoners with severe dependency problems;
- the development of integrated counselling, assessment, referral, advice and throughcare services (termed CARATS);
- improved staff training on drugs issues;
- the provision of a wide range of incentives to encourage prisoners to avoid using drugs: these include prisoners signing voluntary drug testing compacts to help them stay clean.

The Prison Service's Drug Strategy Unit commenced commissioning drug treatment programmes towards the end of 1998, and by 2000 all prisons provided access to some form of treatment programme. Emphasis was also placed (in the wake of the Blakey Report, NOMS, 2008) on the disruption of the supply of drugs into prisons through measures such as those contained in the 2007 Offender Management Act whereby smuggling items such as drugs or mobile phones into prisons carried a prison sentence of up to ten years.

Drug rehabilitation was also aided by more general improvements in prison healthcare. In 2000 a formal partnership between the Prison Service and the NHS was entered into to secure improved standards of healthcare in prisons and in April 2003 the Department of Health (and in Wales, the Welsh Assembly government) assumed national funding responsibility for prison health services. Responsibility for commissioning health services for prisoners was fully devolved to the local NHS in 2006 (Home Office, 2004b: 6).

Education programmes

The rehabilitation of many prisoners, however, is heavily dependent on the acquisition of skills that will boost employment prospects upon release. However, prisons have not consistently offered medium- and long-term offenders meaningful educational or training opportunities. Education (which is essential not simply to boost employment prospects but also to enhance a prisoner's self- esteem) has traditionally been viewed as a privilege rather than a right whose provision varied from one prison to another. It was formerly provided by local authorities but since 1993 has been contracted out. The nature of the subjects taught might not necessarily be appropriate to prisoners, many of whom require basic skills in literacy and numeracy (Tumim, 1993).

This issue was addressed by the 1997 Labour government that concentrated prison education resources on basic skills. In 2002/3 over 41,000 basic skills qualifications were gained by prisoners (Home Office, 2004b: 4). In 1998 reforms introduced by the Labour Home Secretary included the introduction of targets against which education provision could be assessed for both the prison and prisoner, and the new draft of Prison Rules in 1999 specifically affirmed

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the right of prisoners to be given reasonable facilities to improve their education by distance learning through courses offered by institutions such as the Open University.

Prison work and vocational skills programmes

Work conducted within prisons was traditionally associated with menial tasks that seemed more concerned with aiding the passage of time than with providing work- relevant skills. There was a reluctance to expand this form of activity significantly as this might be perceived as rewarding prisoners and providing unfair benefits to those companies that are able to undercut their competitors by taking advantage of cheap prison labour. Accordingly, it was argued that 'production and manufacture in prison is likely to be inefficient and in many respects is "primitive" and "pre- capitalist"' (Matthews, 1999: 44).

However, changes to this situation have been introduced. Initiatives were pursued during the 1990s enabling prisoners to earn above the average 'prison wage' by performing work for outside companies. Examples of successful competition in the 1990s include the award to Coldingley Prison, Surrey, of contracts to provide laundry services for the NHS. Developments of this nature were aided by the 1996 Prisoners' Earnings Act that provided for the payment of realistic wages.

Post-1997 developments to aid prisoners to find work upon release included the provision of facilities (within both prisons and the community) to obtain key work and training skills qualifications, and the Custody to Work initiative that was launched in 2000. By 2002/3 30 per cent of prisoners were released with a job or training place to go to. In excess of 14,000 unemployed prisoners attended their local Jobcentre on release under the Fresh Start initiative and it was estimated that between April and October 2002, 14 per cent of those attending under Fresh Start got a job within 13 weeks of release from prison. Others received help from the New Deal or other training places (Home Office, 2004b: 5).

In 2003, an Offenders' Learning and Skills Service was created (managed by the Learning and Skills Council) to provide a single, integrated service for offenders in custody or in the community as an initiative designed to reduce reoffending rates. However, problems were observed with the provision of such services, including a large number of prisoners slipping through the net in connection with assessment for learning and skills needs and the absence of a core curriculum which meant that prison transfers disrupted an offender's learning experience (Public Accounts Committee, 2008: 5).

Conclusion

In general, offending behaviour programmes, education facilities, and prison work and work experience programmes are most poorly provided in local prisons which are intended to house short- term prisoners and those remanded in custody. Additionally, the programmes available where these are on offer have been historically influenced more by Key Performance Indicators than by a prisoner's need: this may mean, for example, that courses offering anger therapy take precedence in securing resources over prerelease development courses. The success of such programmes is also likely to be most effective if backed up by courses

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available to prisoners on release. One example of such a programme is the Creative and Supportive Trust which was established by education officers at Holloway Prison in 1982 which caters for women who have served a prison sentence or have been in drug or alcohol rehabilitation or psychiatric care. A key objective underpinning the formation of NOMS (a reform which is discussed below) was designed to ensure the continuity of measures designed to rehabilitate offenders conducted in prison and following release.

Question

What aspects of imprisonment make it difficult for these institutions to secure the **V** rehabilitation of offenders?

The impact of privatization

Privatization was underpinned by an attempt to establish a purchaser–provider relationship between the Prison Service and private sector, and entailed subjecting the running of a prison to a process of competitive tender. Most of these have been won by the Prison Service but private organizations have fared better in securing contracts to run newly built prisons. Additionally the conduct of specific prison services at some or all prisons (which in 1999 included education, health, information technology, industries, catering and prison shops) may be transferred to the private sector.

The rationale for the running of prisons being placed in private hands was that they operate at lower running costs than those controlled by the Home Office to the detriment of the number of staff employed, staff wages, conditions of employment (especially pension entitlement) and working conditions.

It was initially estimated that the running costs of private prisons were 15–25 per cent below those of state prisons (Tilt, 1995), a figure which was broadly endorsed by a review in 1997 which stated that on average privately run prisons offered an operational cost saving of 8–15 per cent. Later research, however, has indicated that the gap between the running costs of private and publicly operated prisons was diminishing. Increased efficiencies in public sector prisons had led to 'a continuous narrowing in the operating cost saving offered by privately operated prisons'. The differential in 1994/5 of private prisons being 13–22 per cent cheaper had fallen by 1997/8 to –2–11 per cent (Woodbridge, 1999: 30). The continued expansion of the private sector was thus urged in order for the full benefits of competition to be obtained (Home Affairs Committee, 1997). In 1999, a report supported 'the maintenance, and where appropriate, the extension of contractorization in terms of whole prisons, services and the relationship between Prison Service Headquarters and establishments' (Prison Service, 1999). The involvement of the private sector in running prisons was intended to be a feature of the operation of NOMS (a reform which is discussed later in this chapter). There were 11 privately managed prisons in mid-2011 but this number was likely to increase later that year when contracts to run eight prisons currently managed by the Prison Service became subject to

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competition for the first time.
A major concern with privatization was that increased emphasis was placed on security to the detriment of attempts to reform or rehabilitate prisoners. This arose as performance measurements and sanctions in the contracts awarded to private prisons stipulate that an escape can contribute to a large fine being levied on the contractor. Between February 1994 and January 1999 fines that totalled £600,000 had been levied on private contractors due to performance failures (Prison Report, 1999: 15).

THE MAINTENANCE OF ORDER WITHIN PRISONS

As has been indicated above, the maintenance of order within prisons has formed an important emphasis in the sociology of imprisonment. Foucault put forward an 'analytics' of power as a framework within which to discuss the power relationships within prisons that give rise to control strategies within these institutions (Foucault, 1982).
Attention has been devoted to factors such as the role played by prison subcultures in providing stability (Clemmer, 1940) and the way in which prison officers shy away from coercive methods and instead develop strategies that seek to secure the cooperation of inmates (Sykes, 1958). It has been observed that it is impossible to run a prison around 'a simple dichotomy of coercion and consent' (Matthews, 1999: 79). 'Staff and prisoners live in a state of mutual dependence within prison' and prison officers (who are heavily outnumbered by inmates) are aware that they require the consent of prisoners to get them through the day (Liebling and Price, 2003: 79). Accordingly, prisons employ systems of reward and punishment to maintain order rather than relying on crude forms of coercion (Sykes, 1958). Prison officers often under- use the formal powers to control prisoners which they have at their disposal as this might undermine the 'order' or 'peace' which officers view as essential to the smooth running of these institutions (Liebling and Price, 2003: 88).
However, the balance struck between enforcement and non- enforcement of prison rules to secure institutional harmony is a delicate one since an extreme version of this scenario would be that the prisoners effectively end up in charge of the prison, with prison staff being unwilling or unable to intervene in activities since this could lead to a major escalation of violence. In 1997 the Chief Inspector of Prisons, Sir David Ramsbotham, argued that this situation existed at HMP Lincoln, where one wing had effectively become a no- go area for prison officers.

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Prison officers

The Prison Officers' Association (POA) has historically exerted a considerable degree of control over the running of prisons, and it has been argued that in some prisons the POA rather than management was effectively in charge (Infield, 1997: 4).

Fresh Start, introduced in 1987, sought to undermine the power of the POA, and it was also assumed that privatization would also reduce its power (although in an attempt to

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counter this, in 1998 the POA resolved to seek members in private prison establishments). The first Director General of the Prison Service described the POA as the last bastion of 1960s trade unionism whose stubborn defence of restrictive practices coupled with its threatening and often belligerent demeanour resulted in deep public prejudice against prison officers and an image of a service rooted in the past (Lewis, 1997), and this view was repeated by a Chief Inspector of the Inspectorate of Prisons (Ramsbotham, 2005: 105 and 232–3).

One of Lewis's reforms was to enforce a legal ban on the right of the POA to take industrial action. In 1999 a report by the Chief Inspector of Prisons condemned conditions at Exeter Prison as disgraceful and blamed the POA for causing the maximum disruption of the jail and for being responsible for actions which led to inmates being locked up several times a day. Ramsbotham stated that the situation was not industrial relations, but industrial anarchy (Ramsbotham, 1999).

This section discusses factors that may have a prejudicial impact on the maintenance of order within prisons.

Overcrowding

Overcrowding is not a new problem faced by the Prison Service and has resulted in a number of Home Secretaries introducing piecemeal interventions to solve particular crises. These included the 1982 Criminal Justice Act (which permitted the release of non- serious offenders up to six months before they had served their sentence), the introduction of changes in the parole system to facilitate the release of non- serious offenders (1984) and an increase in remission of sentence for good behaviour (1987).

The level of overcrowding within Britain's prisons was significantly affected by the penal policy commenced by the Conservative government after 1993 and continued by their Labour successors. It was argued that despite the building of over 20,000 prison places since 1997, the system remained overcrowded, and had been so since 1994. In October 2004, 82 of the 139 prisons in England and Wales were overcrowded (Home Affairs Committee, 2005). In February 2008, the number of prisoners exceeded even the 'safe overcrowding' limit, despite the introduction in June 2007 of an early release scheme allowing low- risk prisoners to be released 18 days early.

Overcrowding may undermine order within prisons in a number of ways.

Ecological theories related to the causes of crime suggest that aggression is likely to occur when large numbers of people are concentrated in small spaces. An excessive number of persons in one institution may thus aggravate this situation. Prisoners begin to squabble with each other and this could lead to rioting. Overcrowding also disrupts the prison routine and undermines the processes used to maintain order (Matthews, 1999: 68).

Overcrowding has a number of detrimental effects on the prison environment. It may result in the cancellation of prisoners' association time, a denial of their access to communication with those on the outside by telephone and the serving of meals at 'impossible' times (Ramsbotham,

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2005: 7). This problem also hinders the effective delivery of rehabilitative programmes and has had a particularly detrimental effect on the nature and stability of the regime by creating a control problem and contributing towards a tense and volatile prison atmosphere, one symptom of which was indiscipline. In 1993, 100,000 offences against prison discipline were recorded, a rise of 13 per cent over the figures for the previous year. In 2003 this figure had risen to around 108,000.

Overcrowding also resulted in prison officers having to devote much of their time to finding places for prisoners and escorting them around the system at the expense of providing constructive activities in workshops and classrooms, or developing relations with them to aid rehabilitation.

A further consequence of overcrowding was that minor offenders sent to local or community prisons found themselves being bussed to other institutions (termed the 'ship out') to make way for the latest influx from the courts. There were practical difficulties with this arrangement (for example, family visits became more difficult) and this sometimes led to violence whereby local offenders fought with inmates they regarded as 'outsiders' encroaching on 'their' prison.

Prison officers also suffer adversely from this situation. They are required to work longer hours (in return for time off *in lieu*) and may regard the enhanced role played by control and security in their professional lives as less rewarding than rehabilitative work.

Overcrowding has been an important explanation for disorders within prisons. The disturbance at Strangeways Prison in 1990 occurred at a time when in excess of 1,600 prisoners occupied space designed for fewer than 1,000. The problem has been described as a 'corrosive influence' in the prison system (Woolf, 1994) which Lord Woolf sought to address in his 1991 report by suggesting that no establishment should exceed certified capacity by more than 3 per cent for more than seven days in any month save in exceptional circumstances.

Remand prisoners

Since the mid-1990s the number of prisoners on remand has steadily grown. These fall into two categories – those awaiting trial and those convicted but awaiting sentence. The remand prison population rose by 20 per cent between 1985 and 1995 (Matthews, 1999: 87) and constituted around 12,000 prisoners at the start of Labour's period of government in 1997. In 2010 there were over 13,000 remand prisoners, constituting 15 per cent of the total numbers of persons in custody.

Remand prisoners thus contribute significantly towards prison overcrowding. They include a number of juveniles aged 15–17 who (in spite of the intentions of the 1991 Criminal Justice Act) were remanded into Prison Service custody. Various factors account for the size of the remand prisoner population that include the delay in bringing an arrested person to trial and the overuse by the courts of custodial remands. The latter issue is a major problem since a small proportion of those detained in custody (less than half of males detained in custody and less than one- third of females) (Shaw, 1997: 21) eventually receive a custodial sentence.

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Composition of the prison population

Although it has been argued that the existence of an internal culture within prisons offsets disruption that may arise from the make- up of prison populations at any one point in time (Clemmer, 1940), the changing composition of individual prison populations has been advanced as a further factor influencing the maintenance of order. There is, however, no consensus as to the ideal make- up of such a population. The existence of a large number of short- term prisoners in one institution makes for a rapid turnover of inmates and has been identified as a possible cause of disturbance (Home Office, 1987).

Alternatively, the 'toxic mix' of life sentence prisoners, politically motivated inmates and mentally disturbed persons in physically poor and insecure conditions has been cited as a major cause of the prison 'crisis' which may result in disorders (Evans, 1980). This problem was aggravated by initiatives embarked upon by Conservative governments between 1979 and 1997 (particularly 'Care in the Community') that resulted in mentally ill persons eventually finding their way into the prison system. By the early years of the twenty- first century it was estimated that 70 per cent of inmates in Britain's jails had mental health disorders and that a prime role of prison had become that of 'warehousing the sick' (Davies, 2004) or those who were unable to cope with life outside of prison (Ramsbotham, 2005: 72).

Overcrowding has also been blamed for unstable prison populations. The transfer of prisoners as a result of overcrowding disrupts the composition of the prison population. In 2003/4 there were 100,000 prison transfers (Home Affairs Committee, 2005). These undermine constructive sentence planning and disrupt a prisoner's participation in rehabilitative programmes. The official investigation into the Wymott riot suggested that overcrowding resulted in violent and volatile prisoners ending up in low security units as there was nowhere else for them to go. The design was inappropriate with too much freedom of movement being accorded to prisoners that enabled them to carry out acts of vandalism and display brutality towards other inmates (HMCIP, 1993: 31–2). Similarly the disorders at Everthorpe prison in 1995 were partly attributed to category B prisoners having their security categorization lowered so that they could be accommodated at a jail designed for category C and D prisoners. Such prisoners were difficult to manage and proved to be a major control problem for the prison (Prison Reform Trust, 1995: 7).

Understaffing

Order within prisons may also be affected by staffing levels. Understaffing enhances the opportunity for breaches of security that result in contraband such as drugs, alcohol and mobile phones being brought into prisons and which facilitate prisoners in open prisons absconding. It also has implications for the conditions of work of prison officers since it requires them to work overtime. The introduction of Fresh start in 1987 sought to solve this problem by enabling prison officers to opt to work either 39 or 48 hours per week. Overtime would be eliminated in return for higher pay.

However, it was alleged that partly due to budgets being allocated to individual prisons after 1985, insufficient prison officers were recruited to make good the shortfall of staffing which

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had previously been supplied through overtime (Cavadino and Dignan, 1992: 15). The disorder at Wymott prison in 1993, for example, took place at a time when 7 members of staff supplemented by 11 auxiliary night staff (termed 'night patrols') were available to supervise in excess of 700 prisoners (HMCIP, 1993: 1–2). Similarly, the riot in Ford open prison on 1 January 2011 occurred at a time when there were only six members of staff (of whom only two were fully qualified prison officers) to supervise 496 inmates.

Managerial weaknesses

The Prison Service has traditionally operated in a highly bureaucratic manner in which governors were effectively tied to their desks by the volume of paperwork generated from the Prison Service Headquarters to which they needed to respond. This situation affected their ability to manage their prison staff and prisoners and may have contributed towards problems that undermined order in these institutions such as the abuse of prisoners (Ramsbotham, 2005: 105) or the development of a climate which undermined the constructive purpose of prisons. It has been argued that the emphasis placed by the Prison Service Headquarters on bureaucracy has been to the detriment of the provision of strategic and tactical direction to prison governors and this coupled with the government's preference for 'knee-jerk reactions' to problems rather than strategic planning (Ramsbotham, 2005: 112) had significantly contributed to the contemporary difficulties faced by prisons.

Prison riots

Prison riots evidence the breakdown of order within these institutions. They have been defined as 'part of the continuum of practices and relationships inherent in prisons, which involves dissenting and/or protesting by individuals or groups of prisoners which interrupt their imprisonment, by means of which they take over all or part of the prison resources and either express one or more grievances or a demand for change, or both' (Adams, 1994: 13–14). This definition asserts that such events are not acts of mindless violence but are seen as purposeful actions by those involved in them. Numerous actions of this nature have occurred since 1945: a wave of riots occurred in 1961, 1972 and 1986 and major disturbances occurred at Parkhurst in 1969, Hull in 1976 and Gartree in 1978.

Several disorders within prisons have occurred since the 1990s, including a riot and subsequent siege at Strangeways Prison, Manchester, in 1990, which stretched over a period of 25 days, and a riot in September 1993 at Wymott Prison which resulted in £20 million of damage and the loss of 800 prison places. In 2010, a riot in Moorland Prison, South Yorkshire, resulted in £1 million of damage and in 2011 £3 million of damage occurred at a riot in Ford open prison (see Figure 8.2).

Such disturbances are often triggered by seemingly trivial reasons. The 2002 riot at Lincoln Prison (in which £3 million damage was caused) arose over the replacement of hot meals by sandwiches on the canteen's lunch menu. However, these episodes are influenced by more significant underlying causes. These include deteriorating conditions and overcrowding and perhaps the enhanced politicization of prisoners (especially through the organization

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Preservation of the Rights of Prisoners which was formed in 1972) who seek to establish their rights in an environment that has traditionally operated away from the public gaze.
Additionally, the transfer of prisoners involved in riots to other institutions may abet the spread of this problem throughout the prison regime.
This section discusses a range of issues connected with the prison regime which may help to account for such occurrences.

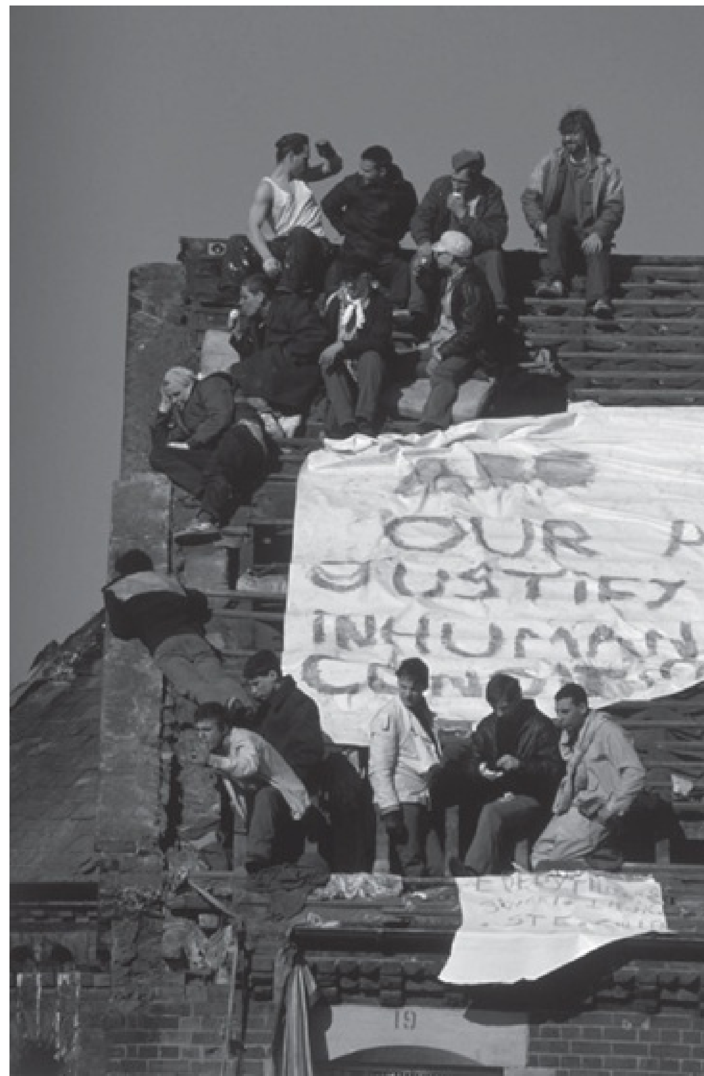

Figure 8.2 The Strangeways Prison riot, 1990. Lord Woolf subsequently emphasized the importance of balancing security, control and justice in order to maintain order within prisons.

Source: Getty Images

LACK OF JUSTICE

The perception that inmates are treated unjustly either by the system itself or through the conduct of individual officers may result in disorder. Prison provides a disciplined regime whose regulations (contained in Prison Rules which were written in 1964) provide for a

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system of summary justice that may be regarded as overly harsh by prisoners. A particular source of concern in these Rules was the 'catch- all' provision that penalized conduct by a prisoner that 'in any way offends against good order and discipline'. This was, however, removed in the 1999 redrafting of these Rules. A system of punishments is necessary for the maintenance of control over prisoners but those on the receiving end may resent the imposition of this discipline upon them, particularly if they view it to be unfair or arbitrary. Perceptions of injustice may divert the energy of prisoners into rebellion while in prison.

Lord Woolf identified overcrowding and idleness as the two main causes of the Strangeways Prison riot. To tackle these problems he argued there was the need for a balance to be struck within prisons between security, control and justice (Woolf, 1991: 17). He argued that justice required prisoners to be treated fairly and humanely. Other accounts have emphasized the importance of legitimacy. It has been argued that 'a defensible and legitimated prison regime demands a dialogue in which prisoners' voices … are registered and have a chance of being responded to'. Further, legitimacy demands reference 'to standards that can be defended externally in moral and political argument' (Sparks et al., 1996: 330).

Lord Woolf (1991) made a number of recommendations to bring about the improvement of prisons, many of which were designed to promote a regime that was seen as just by its inmates. These included:

- the introduction of a national system of accredited standards for prisons;
- the establishment of a prison ombudsman as an ultimate court of appeal to safeguard prisoners' interests;
- the end of the practice of 'slopping out' through the provision of access to sanitation by all inmates by 1996;
- improved links with families (which might be achieved through the use of local prisons) coupled with more prison visits and the liberalization of home leave and temporary release provisions;
- the introduction of contracts for each prisoner outlining their expectations and responsibilities;
- the improvement of conditions for remand prisoners, including lower security categorizations.

The government responded to this report with a White Paper that endorsed some of these recommendations, including those related to contracts for prisoners, accredited standards and the establishment of an ombudsman (Home Office, 1991). Following the publication of the report prisoners were given access to telephones (which enabled them to maintain contacts with families which was seen as an aid to rehabilitation) and the practice of 'slopping out' finally ended on 12 April 1996, although some examples remained after that date (Sparks, 1997: 17), in particular in Scottish prisons.

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Disruptive prisoners

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Disruptive prisoners pose a particular problem for establishing a proper balance in prisons between control and justice. The introduction of Prison Service Headquarters circular Instruction 37/90 led to such prisoners being transferred from one prison to another at regular intervals. Subsequently a small number of special units (Close Supervision Centres) were opened in 1998 to replace this 'roundabout' scheme and deal with such prisoners.

Their purpose was to enable seriously disruptive prisoners to be removed from high-security or training prisons and be contained in small highly supervised units where their behaviour could be stabilized in order for them to return to the mainstream prison system. However, the regime of these units is important. It is important that austerity (or a 'hardline' approach) does not take precedence over therapeutic objectives, and there is a danger that already violent prisoners will feel themselves to be unjustly treated and become brutalized and made worse, especially if the criteria for being sent to such a unit are not clearly understood.

PRISONERS' RIGHTS

The response to prisoners' complaints (individual or collective) has traditionally been poor. Neither the government nor the Prison Service seemed eager to remedy shortcomings when they were made aware of them (Ramsbotham, 2005: 8). The Inspectorate of Prisons was concerned with issues affecting efficiency and propriety but was not empowered to investigate grievances.

Instead prisoners could utilize a variety of mechanisms to ventilate their problems including:

- making representations to Independent Monitoring Boards (formerly known as Boards of Visitors) for each prison;
- addressing petitions to the Home Secretary;
- presenting complaints to the Parliamentary Commissioner for Administration;
- pursuing prosecutions (dealing with issues such as seeking to assert the rights of the prisoner or seeking compensation for injuries suffered allegedly as the consequence of negligence by the authorities).

However, the absence of adequate institutionalized channels through which inmates could articulate their needs or grievances may legitimize disorder as the only available way to achieve such purposes. The introduction of a prison ombudsman in 1994 was regarded as a particularly important mechanism to secure justice within prisons and thus avoid the occurrence of disorders by providing a mechanism through which grievances could be channelled. Five hundred cases were fully investigated in 1996.

There were, however, weaknesses initially associated with this innovation. The office was not based in statute and, additionally, there were areas that this official was not allowed to examine, which initially included complaints made by the families of those who had died while in custody. Thus the only public forum in which the death of a prisoner could be

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examined was that of the Coroner's Court Inquest whose remit extended only to the medical causes of death. Additionally, the ombudsman's terms of reference were re- drawn in May 1996 to prevent the investigation of decisions made by a minister that formed the basis of a prisoner's complaint. He further lost unlimited access to Prison Service papers and was required to submit reports to the Prison Service prior to publication. Finally, recommendations made by the ombudsmen in response to complaints submitted by a prisoner could be rejected by the prison governor.

Reforms introduced by post-1997 Labour governments helped to buttress the role of the ombudsman. In 2001 the ombudsman's remit was extended to the Probation Service, in 2004 he was given the responsibility for investigating suicides in prison and probation hostels in place of the former mechanism of a prisons inquiry and in 2006 immigration detainees were given the right to refer complaints to this official. The Prisons and Probation Ombudsman's office is now sponsored by the Ministry of Justice but is operationally independent of this department and of the prison and probation services. The ombudsman reports to the Secretary of State. The current terms of reference of this office enable the ombudsman to investigate complaints from prisoners, offenders under the supervision of the Probation Service or immigration detainees relating to decisions and actions relating to their management, supervision, care and treatment (Prisons and Probation Ombudsman, 2010). In 2009/10, 4,538 complaints were referred to this official (Blunt, 2010).

There are two main difficulties associated with attempts to ensure that prisoners' interests are properly safeguarded.

- *Opposition of prison staff* . The enhancement of prisoners' rights may evoke a 'crisis of authority' among prison officers who become concerned that their need to control and wield power over prisoners is threatened (Fitzgerald and Sim, 1982).
- *Political constraints* . The defence of prisoners' interests is likely to encounter political backlash from those who endorse the penal populist response to crime and who believe that prisons should be austere institutions and that prisoners should be denied all but basic human rights.

The Prison Service and the Human Rights Act

The 1998 Human Rights Act made it expressly unlawful for public authorities to act in a way that was incompatible with the Convention and could serve to enhance the just treatment of prisoners. The implementation of this measure in October 2000 had significant repercussions for those in prison and seemed likely to result in the Prison Service facing increased legal challenges.

A number of aspects of the prison regime potentially conflicted with the 1998 legislation (Prison Reform Trust, 2000). These included:

- *The right to life* (Article 2). This implies a duty on the Prison Service to actively prevent suicides and the transmission of potentially fatal communicable diseases such as AIDS, and not to undertake actions likely to result in a prisoner being harmed (for

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example, placing a prisoner in a cell with another with a long record of violence or mental instability).

- *Outlawing torture, inhuman or degrading treatment* (Article 3). This might affect prison policies such as segregation, the use of restraints and alleged assaults by prison staff on inmates.
- *The right to a fair trial* (Article 6). Prisoners may allege that internal disciplinary proceedings before a governor (who is not legally qualified) empowered to increase the length of their sentence by up to 42 days, in which they are not legally represented, does not constitute an 'independent and impartial tribunal'.
- *The right to privacy* (Article 8). This concerns issues such as correspondence between a prisoner and those on the outside world which may be subject to vetting.
- *The prohibition of all forms of discrimination* (Article 14). This could result in challenges to prison disciplinary procedures if these were felt to be unfair to members of minority groups.

The Prison Service found it difficult to win cases since it was required to demonstrate 'necessity' for its actions as opposed to 'reasonableness' that was formerly the position.

The 1998 Act and the European Convention on Human Rights have subsequently resulted in a number of changes being introduced into the operation of prison regimes. One of these was the removal of the power of prison governors to add additional days to a sentence for cases of breach of prison disciplinary rules. This situation was condemned by the European Court of Human Rights in 2002 in the case of *Ezeh and Connors* v. *United Kingdom* . Serious breaches of prison rules that could result in an additional sentence being imposed are now heard by visiting district judges with prison governors being confined to the adjudication of cases where a lesser penalty will be applied.

In 2004 the European Court ruled (in the case of *Hirst* v. *UK*) that the blanket ban on convicted prisoners being allowed to vote contravened Article 3 of the 3rd Protocol regarding the right to free and fair elections. However, in 2011, the House of Commons rejected amending the 1983 Representation of the People Act to allow some prisoners to vote in future elections.

Women in prison

Between 1993 and 1998, the average population of women in prison rose by almost 100 per cent, as against 45 per cent for men (Home Office, 1999: 1). In June 1998 there were 3,100 women in prison, which represented a percentage increase of 21 per cent compared with the figure 12 months previously. It was the first time since 1905 that the figure of 3,000 had been reached (Sparks, 1998: 24). This figure subsequently rose to 4,529 in December 2005 and has subsequently stabilized around this figure, amounting to 4,327 in August 2010 (Ministry of Justice, 2010a). This justifies the development of prison regimes specific to the requirements of female prisoners.

The deaths in custody of eight women in Scottish prisons between 1995 and 1997 prompted a

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review by a team from the Prison and Social Work Services Inspectorate into community disposals and the use of custody for women offenders in Scotland. The team found that the background of women in prison was marked by ‘experience of abuse, drug misuse, low educational attainment, poverty, psychological distress and self- harm’. This made the prison experience for such women difficult to manage, increasing the risk of suicide (Sparks, 1998: 24).

In 1997 the Chief Inspector of Prisons published the findings of a thematic review on women’s prisons entitled *Prisons for Women in England and Wales* . In this report he challenged the view that the needs of women were the same as those of men and put forward 160 recommendations. These included:

- the establishment of a Director of Women’s Prisons who would be in overall charge of the female establishment;
- specific training for staff working in women’s prisons to enable them to meet the special needs of female prisoners;
- particular care was required at the reception and induction stages since many women had not been in prison before and in excess of 50 per cent of women offenders had experienced sexual or physical abuse as either children or adults (Ablitt, 2000). This made searching procedures especially harrowing.

Following this report, the Prison Service was reorganized to provide for the separate management of men’s and women’s prisons. Additionally, a Women’s Policy Unit was established in the Prison Service Headquarters. In 2004, however, the management of both men’s and women’s prisons reverted to a geographic management structure. The Prison Service Women’s Team became responsible for developing a consistent and proportionate operational policy for women’s public sector prisons (Dustin, 2006: 13).

Further reform arose against the background of the new gender equality duty derived from the 2006 Equality Act. This led the National Offender Management Service to develop a set of gender- specific standards for the women’s prisons. These standards were published in a Prison Service Order on Women Prisoners issued in 2008 and were implemented in April 2009. They covered all areas of regime provision and were designed to enhance the aid, care and management of female prisoners and help to plan for their resettlement.

A more fundamental approach, however, is to question the relevance of custodial sentences for most female offenders. Few have committed violent crimes and most are imprisoned for offences such as theft, handling stolen goods and drug offences. Female offenders are frequently ‘victims of circumstances they have failed to cope with’ (Neustatter, 2000), and therefore community sentences may be more appropriate.

THE CORSTON REPORT

This report called for a radical change based on a woman- centred approach in the way in which women were treated throughout the criminal justice system. It put forward 43 recommendations and in connection with prisons urged that the government should replace within ten years existing women’s prisons with geographically dispersed, small, multi-

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functional centres. It also argued that custodial sentences for women should be confined to serious and violent offenders who posed a risk to society and that community sentences should be the normal penalty imposed on female offenders. Other proposals included reducing the extent of strip searches and setting up an inter- departmental ministerial group for women who had offended or who were at risk of offending which would superintend a Commission for Women in these categories with a remit to provide care and support for them. The report also recommended coordination of the 'seven pathways to resettlement' (Social Exclusion Unit, 2002; Home Office, 2004a) and proposed a further two should be added to provide support for women who had been raped, abused or who had suffered from domestic violence and for women who had been involved in the sex industry. It was also advocated that a greater priority should be placed on life skills in the education, training and employment pathway (Corston, 2007).

In response to the report, the government set up a Reducing Reoffending Inter- Ministerial Group to advance the recommendations contained in the report and a new cross- departmental Criminal Justice Women's Strategy Unit was set up in 2008 to exercise responsibility for women in criminal justice that would drive forward and monitor the work on behalf of the Ministry of Justice, in particular the implementation of gender-specific standards for women's prisons. These were introduced by Prison Service Order (4800) issued in 2008 and sought to ensure that prisons provide regimes, programmes and support that were sensitive and appropriate for the requirements of women. It would report to the Reducing Reoffending Inter- Ministerial Group. The proposals regarding 'pathways to resettlement' were accepted. It was also accepted in principle that custodial sentences for women should be confined to serious and violent offenders who posed a threat to the public (Ministry of Justice, 2007). One way to achieve this was to increase the use of conditional charging for female offenders (Ministry of Justice, 2008).

A short project – *The Future of the Women's Custodial Estate* – was established to explore the report's recommendations relating to the creation of small custodial units. However, this project suggested that standalone units of the size suggested were 'neither feasible nor desirable' and, additionally, that it would not be possible to deliver the range of services required to meet the full range of women's specific needs. Alternatively, it was suggested that the design of a new wing at HMP Bronzefield would provide an opportunity to test and embed a new approach to the physical environment and delivery of regimes that could test out Corston's principles (Ministry of Justice, 2008).

SECURITY IN WOMEN'S PRISONS

Although few female prisoners pose a serious threat to society, security also dominates the regime to which they are subjected. In 1995, for example, an inspection team led by the Chief Inspector of Prisons, General Sir David Ramsbotham, abruptly terminated a visit to Holloway Prison in reaction to what he regarded as overzealous security arrangements which involved women being locked in their cells for up to 23 hours a day.

Public outcry over security issues in women's prisons was occasioned by revelations in *The Guardian* on 11 January 1996 that a pregnant prisoner spent most of her labour in shackles,

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including being chained to a bed for ten hours. This eventually prompted the Home Secretary to amend the rules so that, in future, no woman who was taken to hospital to give birth would be restrained once she arrived there. However, in December 1996 a female remand prisoner was handcuffed while attending hospital for breast cancer surgery. These incidents implied that security considerations could be used as a mechanism to humiliate prisoners.

Security considerations may outweigh the provision of specialized facilities for female prisoners. A significant number of female prisoners are mothers of children below 18 (Caddle and Crisp, 1996) and need facilities such as mother- and-baby units and the ability to spend 'quality time' with their children. However, these requirements are unevenly provided for across the country. In 1999 a national review pointed out that only 64 mother- and-baby places were available in England, spread across four prisons, and called for the appointment of a national coordinator for such units (HM Prison Service, 1999). In 2000 there were only 72 places available, although in excess of 1,000 women prisoners had children under five; in 2008 this figure had increased to 75, located in eight institutions (Aynsley-Green, 2008: 8).

ALTERNATIVES TO IMPRISONMENT

Some interventions made by the police service in connection with crime do not involve an offender being taken to court. These include on- the-spot fines (which are discussed in Chapter 5), informal warnings and cautions.

An informal warning is given by a police officer and may apply to a relatively minor offence (such as a motorist who marginally exceeds the speed limit).

The cautioning system was initially introduced on an informal basis as a response to juvenile offending. Following the issuance of new guidelines in 1994 (Home Office, 1994b) it could be used for offenders of all ages who admitted their guilt to an offence. Formal cautions are given by a police officer in uniform and are recorded so that they can, if relevant, be cited to a court in the future if the offender is found guilty of a subsequent offence. The 1998 Crime and Disorder Act introduced important changes to the cautioning of juvenile offenders (which are discussed in Chapter 9).

The 2003 Criminal Justice Act introduced a new penalty, that of conditional cautions, which (with the agreement of the CPS) are given to low- risk adult offenders and are linked to requirements contained in the community order introduced in the 2003 legislation (Home Office, 2004b: 12).

If offenders are taken to court, sentences that are alternatives to custodial sentences may be imposed. There are two main categories of alternatives – those without any element of supervision and those that include this (Joyce and Wain, 2010: 227–31).

Sentences lacking supervision

There are a number of non- custodial sentences that lack supervision. These include the following.

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CONDITIONAL DISCHARGE

The conditional discharge was introduced by the 1948 Criminal Justice Act.
It is a sentence of the court, non- compliance with which can lead the offender to being sent to prison. The requirement to attend court and be sentenced may have a preventive effect on an offender's future behaviour, although such a sentence is open to the charge that the offender has been allowed to escape meaningful penalty and has effectively been let off.
The courts may also impose a suspended sentence order or a deferred sentence – but in both of these cases an element of supervision is imposed as an alternative to custody.

FINES

Fines are the most common sentence of the court. The money extracted from offenders goes into the Treasury. Non- payment of fines traditionally resulted in prison sentences, although the 1914 Criminal Justice Administration Act introduced the ability to pay them in instalments.
The major problem with fines was the failure to pay them and by 2002/3 the payment rate for these and similar impositions fell to 55 per cent (Home Office, 2004b: 4).
This prompted the Department of Constitutional Affairs to introduce reforms that included targeted interventions to improve performance in the worst court areas and new measures in the 2003 Courts Act that included automatic deductions from earnings or benefits for defaulters. Subsequently the collection of fines exceeded 73 per cent in the first half of 2003, and it was anticipated that the creation of the Unified Courts Agency would make further improvements in this area of activity by providing for a national focus on, and management of, fine enforcement (Home Office, 2004b: 4). It was envisaged that a revitalized fines system would replace 'a very substantial number' of community sentences which were currently given to low- risk offenders (Home Office, 2004b: 12) which would be coupled with the extended use of fixed penalty notices to counter low- level criminal behaviour.

BINDING OVER

The procedure of binding over originated in the 1361 Justice of the Peace Act. This entails a verbal undertaking by a defendant to be of good behaviour or to keep the peace. This penalty is used, for example, in minor episodes of public disorder. Non- compliance with this undertaking will result in a financial forfeit.

Sentences which include supervision

There are numerous non- custodial sentences that include an element of supervision. These comprise a range of community- based interventions.
The vigorous advocacy of the use of alternatives to prison commenced in the 1970s, and this approach was developed by the emphasis that was placed on punishment within the community during the 1980s. The latter objective was boosted by the 1991 Criminal Justice Act which promoted the bifurcation principle. This sought to distinguish between those serious crimes (particularly involving violence against a person) which merited a loss of liberty, and those

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lesser offences which could be dealt with in ways which included discharges, financial penalties and what were termed 'community sentences', a generic term which was introduced by this legislation covering punishments that included attendance centre orders, probation orders, supervision orders, community service orders, combination orders and curfew orders. Further attempts to popularize community sentences were subsequently made in a Green Paper (Home Office, 1995).

THE HISTORICAL DEVELOPMENT OF COMMUNITY SENTENCES

Community sentences for adult offenders are now governed by the provisions of the 2003 Criminal Justice Act. This section traces the origins of community sentences.

Probation orders

Probation orders were introduced by the 1972 Criminal Justice Act and re- titled community rehabilitation orders by the 2000 Criminal Justice and Court Services Act. They were historically viewed not as a form of punishment but as 'a form of conditional liberty … a form of social work with offenders to help them overcome personal difficulties linked with offending' (Raynor and Vanstone, 2002: 1). Before the passage of the 1991 Criminal Justice Act they were legally viewed as an alternative to sentencing and, until 1997, the imposition of a probation order required the offender's approval. These orders could be applied to a wide range of adult offenders and, following the passage of the 1991 Criminal Justice Act, might also be applied to any offender over the age of 16 (although 16- and 17-year- olds could alternatively be subject to the existing supervision order). Following the implementation of the 1998 Crime and Disorder Act, the community rehabilitation order was supervised by the Youth Offending Team in the case of young offenders.

The 'standard' probation order lasted from six months to three years and imposed requirements on the offender which included being under the supervision of a probation officer, keeping in touch as instructed, and being of good behaviour and leading an industrious life. Additional conditions (known as 'probation plus') could be attached to the order, such as imposing a requirement on an offender to reside in a hostel or to undertake treatment programmes designed to confront the behaviour which resulted in an offence being committed. As with community service, probation orders were discharged within the framework of national standards.

The 1991 Criminal Justice Act for the first time permitted up to 100 hours of community service to be combined with a probation order in what was termed a 'combination order' (subsequently renamed community punishment and rehabilitation orders by the 2000 Criminal Justice and Court Services Act). This provision was initially targeted at the more serious offenders, but the use of combination orders subsequently became more widespread (Whitfield, 1998: 81), rising from 1,400 in 1992 to 17,000 in 1996. Such an order, however, entailed two different objectives (seeking help and advice and engaging in reparation) (Worrall, 1997: 93) and was supervised by two different sets of people who might possibly have different perspectives. There were other combined sentences available to the courts, including the payment of compensation and tagging.

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Community service orders

Community service orders (CSOs) were introduced in England and Wales in 1973 under provisions of the 1972 Criminal Justice Act. These orders (and Day Training Centres which were also provided for in this legislation) were put forward as alternatives to custodial sentences and were supervised by the Probation Service (thus requiring good working relationships to be constructed between this agency and sentencers). CSOs were renamed community punishment orders by the 2000 Criminal Justice and Court Services Act. These orders were subsequently required to conform to national standards set by the Home Office that stipulated the criteria that placements should meet. CSOs were initially applied to adult offenders, but were extended to 16-year- olds by the 1982 Criminal Justice Act. In 2003, enhanced community punishment (ECP) was introduced so that all offenders placed on CSOs would be placed on an ECP scheme.

The ethos underpinning community service orders differed from that of probation orders by emphasizing the concern to punish offenders rather than assisting them (Raynor and Vanstone, 2002: 2). Punishment administered within the community was an important aspect of the bifurcation principles that were introduced by the 1972 legislation that simultaneously proposed lengthier prison sentences for serious offences such as armed robbery.

Community service orders required offenders to perform constructive tasks of unpaid work for a period of time that now ranges between 40 and 240 hours (the limit of 120 hours for 16-year-olds being scrapped by the 1991 Criminal Justice Act) that were designed to provide tangible benefits to the community. In this sense the orders were reparative. Breach of the CSO resulted in the offender being returned to court. In 1997 around 52,000 such orders were imposed which resulted in 17,000 individuals or groups being assisted by six million hours of unpaid activity (Whitfield, 1998: 22). Seventy- five percent of CSOs were successfully completed (Whitfield, 1998: 78). Since the late 1990s some progress has been made to combine the work and discipline of a CSO with a basic vocational qualification.

Curfew orders and tagging

The origins of electronic monitoring date to the Home Office (1988) Green Paper *Punishment, Custody and the Community*, and tagging as a condition of bail was introduced on a trial basis in 1989/90. The 1991 Criminal Justice Act (as amended by the 1994 Criminal Justice and Public Order Act) introduced a new sentence of a curfew order enforced by tagging which was available for offenders aged 16 and above. This was initially implemented on a trial basis in three areas (Norfolk, Greater Manchester and Berkshire) in 1995 (see Figure 8.3).

The 1997 Labour government extended the use of tagging by the home detention curfew scheme which was initially introduced in 1999. This is discussed in Chapter 7.

The drug treatment and testing order

This disposal was introduced in October 2000 and enabled offenders to address their drug problems through their participation in intensive community- based rehabilitation programmes.

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Regular tests were conducted to detect illicit drug use, and failure to comply with the order or testing positive will normally result in breach proceedings being taken. These orders were usually managed on behalf of the Probation Service by drug treatment agencies.

Figure 8.3 Electronic tagging devices come in several forms and can be worn about the wrist or ankle. Their use includes enforcing community penalties.

Source: Shutterstock

THE 2003 CRIMINAL JUSTICE ACT

The operation of community sentences was significantly affected by the 2003 Criminal Justice Act that incorporated a number of existing community sentences as 'requirements' of the new community order introduced by this legislation.

Community orders (which are discussed more fully in Chapter 7) enabled sentencers to impose a combination of penalties on all offenders aged 18 and above. One intention of this approach was to enhance the demanding nature of community sentences since no restrictions were imposed on sentencers regarding the volume of penalties ('requirements') that they prescribed. However, this is not always done: in 2006 the courts issued 121,690 of these orders, and the most common (comprising 32 per cent of the total number of orders issued) contained only the unpaid work requirement (National Audit Office, 2008: para. 1). It was further observed that some community orders such as alcohol treatment were either not available or rarely used in some Probation Areas which meant that orders might not be addressing the causes of offending behaviour as fully as they could. Additionally, there were long waiting lists for other order requirements such as group programmes on domestic violence which posed the problem that requirements could remain unfinished when the order ended (National Audit Office, 2008: paras 1–2 and 8.)

Community orders are administered by the National Probation Service, although the 2007 Offender Management Act enabled outside providers to deliver probation services, commissioned at national, regional or local level.

Under the 2003 legislation, a number of existing community sentences became requirements of

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the new community order:

- Community rehabilitation orders became the supervision requirement of the new community order for those aged 18 and above.
- Community punishment orders became the unpaid work requirement of the new community order. In the wake of the Cabinet Office review (Casey, 2008: 55), this was renamed Community Payback. In 2009 intensive community payback was introduced for the offence of being in possession of a knife and this scheme was extended in 2010 to other offences. Intensive community payback required unemployed offenders who had been sentenced to over 200 hours of community payback to complete their sentences intensively, entailing 18 hours spread over three days.
- The drug treatment and testing order (DTTO) became the drug rehabilitation requirement of the community order. However, the latter is aimed at a wider target group then the former DTTO and treatment is more closely matched to the needs of individual offenders. The agreement of the offender is needed for the application of this requirement.

Advantages of community-based sentences

There are a number of advantages of community- based, non- custodial sentences. These are considered below.

RECIDIVISM

Community sentences possess the potential to be more effective than prisons in reducing reoffending and their effectiveness was enhanced when they adhered to a set of 'What Works?' principles which included matching the level of risk posed by an individual with the level of intervention and recognizing that specific factors were associated with offending which should be treated separately from other needs (Home Affairs Committee, 1998).

Research suggested that the reconviction rates for imprisonment and community penalties were similar. Home Office research suggested that sentenced prisoners who were reconvicted of a standard list offence within two years fluctuated between 51 and 57 per cent between 1987 and 1994 (Kershaw, 1999: 1) and it was argued that 'when adjustments are made to reconviction rates for community penalties to achieve comparability with prison, these have been within two percentage points of the figures for prison throughout the period 1987–1995' (Moxon, 1998: 90). It was argued that community sentences could reduce convictions proportionally more than a custodial sentence, although it was argued that more evidence was required on the effectiveness of individual requirements (National Audit Office, 2008: para. 4).

Subsequent research asserted that the gap between custodial and community penalties had widened in relation to recidivism: 'the rate of reoffending by offenders following a short custodial sentence is 59.9 percent … The reoffending rate following a community sentence is 36.1 per cent'. It was thus concluded that for some offenders, community sentences 'could be more effective at reducing reoffending than short custodial sentences' (Ministry of Justice, 2010b).

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REDUCED STRAIN ON THE PRISON SERVICE

The importance of non- custodial sentences was emphasized by an investigation of the Home Affairs Committee in 1998. It argued that the rise in the prison population witnessed over the previous five years was 'unsustainable' and thus prisons should be reserved for dangerous and persistent offenders with other offenders being given non- custodial sentences (Home Affairs Committee, 1998). Sentiments of this nature were re- echoed by the 2010 Coalition government in the context of the need to reduce the overall level of spending on the criminal justice system.

MAINTAIN SOCIAL TIES

Community sentences enable offenders to remain with their families and retain their jobs, thereby avoiding the disruptions to the pattern of family and work ties that a custodial sentence would involve (National Audit Office, 2008: para. 4).

Problems with community-based penalties

There are, however, difficulties associated with community- based penalties.

COST

Although cheaper than a custodial sentence, the costs of implementing a community order are variable, being affected by a range of factors that include variations in staff grades responsible for certain tasks and local procedures which vary from one probation area to another. For example, the probation staff cost of managing a drug rehabilitation requirement ranged from £1,000 to £2,900 across the five areas whose operations were examined by the National Audit Office (National Audit Office, 2008: 6). Additionally the costs of the different requirements vary. However, it has been estimated that it costs around £2,800 to administer a community sentence (McFarlane, 2010).
In 2006/7, the 42 probation areas in England and Wales estimated that the cost of supervising offenders in the community (which embraced those on community orders, those released from prison on licence or given other sentences to be served in the community) amounted to £807 million (National Audit Office, 2008: para. 8).

'SOFT ON CRIME'

Public opinion, fuelled by media views derived from a penal populist perspective, often regard community penalties as a 'soft option' which falls short of real punishment for criminal behaviour. In 1999 an organization, Payback, was launched to counter this perception and to cut the prison population (Payback, 1999).

EFFECTIVENESS

Community- based penalties sometimes offer ineffective responses to offending behaviour. An

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evaluation of the former drug treatment and testing orders suggested that although they were cheaper than custodial sentences (costing £6,000 per place as opposed to £30,000), they were relatively ineffective in securing sustained reduction in drug misuse and offending behaviour. Only 25 per cent of those who accepted the programme completed it successfully, with very wide variations across the country (National Audit Office, 2004: paras 3.2 and 3.32).

LAXITY OF ENFORCEMENT

Those who fail to adhere to the conditions imposed by a community order are deemed to be in breach of them and will be returned to court, although historically 'probation officers were notoriously reluctant to institute "breach proceedings" against offenders who fail to comply with the requirements of probation orders' (Worrall, 1997: 14; Home Affairs Committee, 1998: xxvi). This issue was tackled in successive editions of National Standards that sought to limit the discretion which probation officers exercised in connection with breaches (Raynor and Vanstone, 2002: 104).

Although it was subsequently argued that the establishment of the National Probation Service resulted in breach proceedings being undertaken in the majority of cases (Home Office, 2004b: 3), this did not inevitably happen and not all breaches of community sentences resulted in the early termination of the sentence. The 2007 National Standards for the Management of Offenders stipulated that an offender who failed to comply with the terms of his or her supervision in the community could be given one formal warning in any 12-month period relating to a community order (and up to two warnings within a 12-month period related to a post- release licence) before breach or recall action was required. In 2008/9, the breach rate for offenders on community orders or released on licence was 25 per cent (Justice Committee, 2011: para. 168).

LACK OF CONFIDENCE BY SENTENCERS

Sentencers are often reluctant to utilize community- based penalties as they lack confidence in them for reasons which have been discussed above and see their prime role as being that of protecting the public. Scepticism by sentencers may be reflected in their preferred use of short custodial sentences: between 1989 and 1999 sentences of less than 12 months for indictable offences committed by adults over 18 increased from 27,000 to 45,000, an overall increase of 67 per cent (Halliday, 2001: 22). Thus alternatives to custodial sentences will only become widely used when sentencers are convinced that they offer an appropriate response to crime.

AN EXTENSION OF THE CONTROLLED SOCIETY

The rise of what has been described as the 'decarcerated criminal' (Cohen, 1985) may arise through the use of community programmes. The main danger with this development is that far from reducing the restrictions on criminals who might otherwise have been sent to prison they create a new clientele of criminals who are controlled by other mechanisms. The boundaries between freedom and confinement become blurred. The 'net' of social control is thus thrown ever wider into the community, its thinner mesh designed to entrap ever smaller 'fish'. Once

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caught in the net, the penetration of disciplinary intervention is ever deeper, reaching every aspect of the criminal's life (Worrall, 1997: 25).

Question

Evaluate the strengths and weaknesses of responding to crime through non- custodia sentences

THE PROBATION SERVICE

The previous section has referred to the Probation Service's role in implementing community sentences. This section discusses the development and contemporary operations of the service.

History

The origins of the Probation Service can be traced to a number of voluntary and *ad hoc* experiments conducted during the nineteenth century that were designed to provide a form of intervention intended not to punish offenders but to aid their rehabilitation. The most important of these were the police court missionaries first employed by the Church of England Temperance Society in 1876 to save people from the effects of drink. These numbered around 100 by 1900.

Legislation to provide for a rehabilitative service occurred slowly. The 1887 Probation of Offenders Act was the first major piece of legislation in this field but contained no element of supervision. The key Act, therefore, was the 1907 Probation of Offenders Act. This placed probation work on a statutory footing by empowering the courts to appoint and pay probation officers whose role was to 'advise, assist and befriend' those being supervised. Probation was available to all courts and for almost all offences (murder and treason being exempted), provided the offender agreed and additionally consented to standard conditions. These embraced an undertaking to keep in touch with the probation officer as directed, leading an honest and industrious life and being of good behaviour and keeping the peace (quoted in Whitfield, 1998: 12–13). In 1925 the appointment of at least one probation officer to each court became a mandatory requirement (although this responsibility was sometimes discharged by part- timers).

The local nature of the service was amended in 1936, when as the result of a report by the Departmental Committee on Social Services in Courts of Summary Jurisdiction, the Home Office came to play a more significant role in terms of inspection and training through the establishment of a Central Advisory Committee.

The 1948 Criminal Justice Act repealed all earlier enactments relating to the Probation Service resulting in improved training, strengthened links with the courts, the organization of new probation committees, and approved probation hostels and homes being brought within the

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scope of public funding. However, the organization of the service in England and Wales remained local, being administered through 54 areas, each governed by a Probation Committee composed of magistrates, judges, local authority representatives and independent persons who managed the service in their area. This was answerable to the Home Office which controlled the Probation Service and supplied the bulk of its funding. Each Probation Committee produced its own plan of local objectives and priorities within the framework of the Home Office's national plan. Additionally, the early ethos of rehabilitation through religion gave way to a more secular form of professionalism whereby probation officers formulated interventions based on a social scientific evaluation of offenders on a one- to-one basis.

Milestones in the post- war development of the Probation Service

The following text charts in brief the key developments that have affected the development of the Probation Service.

1961 The Streatfield Report recommended that greater use should be made of social inquiry reports in all courts (which were forerunners of pre- sentence reports).

1966 Work conducted in prisons became an important aspect of the work of the Probation Service.

1968 The introduction of parole whereby parolees were supervised by probation officers following their release from prison. Additionally, in Scotland, the Probation Service was incorporated into the newly created social services departments.

1973 The introduction of community service: this was administered by the Probation Service.

1984 The Probation Service was urged to participate in the multi-agency approach to crime prevention. The first statement of national objectives and priorities was also issued by the Home Office which entailed including the work of local probation areas in regional plans thereby eroding discretion and enhancing the degree of standardization within the Probation Service.

1988 The Green Paper *Punishment, Custody and the Community* was issued, which was followed by the 1990 White Paper *Crime, Justice and Protecting the Public* . This questioned the extensive use of custody (particularly for younger offenders) and suggested that greater use should be made of community- based options for offences that included burglary and theft. Such ideas were latterly incorporated into the 1991 Criminal Justice Act.

1989 The Audit Commission's report, *The Probation Service - Promoting Value for Money*, produced 'a framework for probation intervention' that sought to provide a uniform system which incorporated the evaluation of programmes for dealing with offenders.

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1991	The Criminal Justice Act promoted punishment in the community as an appropriate response to less serious offences that suggested that the focus of the Probation Service should be widened to include a retributive dimension and a concern to protect society from the consequences of crime.
1992	National Standards for the Probation Service were published setting out expected practice in both objectives and the process of supervision. This enhanced the level of central control over the Probation Service.
1999	The Home Office publication, *What Works: Reducing Re-Offending: Evidence Based Practice*, put forward principles by which new initiatives (termed Pathfinder projects) would be evaluated. These would subsequently form the basis of standardized (or 'accredited') programmes through which offending behaviour would be addressed.
2000	Enactment of the Criminal Justice and Court Services Act which established the basis of a National Probation Service. This was set up in April 2001, under the control of the National Probation Directorate whose role was to formulate national policy within which the local boards would operate.
2002	Standardization was developed regarding risk assessment through the use of the Offender Assessment System (OASys) to assess the level of risk of offenders over 18 and to provide for their needs from a repertoire of Pathfinder- agreed programmes. (Goodman, 2003: 211–12). A similar mechanism known as ASSET was developed by the Youth Justice Board for the use of YOTs in connection with offenders under 18.
2004	Creation of the National Offender Management Service which merged the probation and prison services.
2007	The Offender Management Act created Probation Trusts to replace the local Probation Boards.

Role of the Probation Service

The Probation Service performs a wide range of functions some of which (such as work in connection with divorces aimed at ensuring the welfare of the children or in connection with victims of crime following the publication of the Victims' Charter in 1990) are not concerned with offenders. The main functions are discussed below.

CRIME PREVENTION

Activities directed at high crime areas designed to prevent offending behaviour constitute a relatively small aspect of probation work. This is especially achieved by the involvement of the service in multi-agency activities.

PREVENTING RECIDIVISM

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One of the functions of the Probation Service is to work with offenders, seeking to transform their behaviour thereby minimizing the risk of future reoffending. As has been discussed above, this was historically performed through individualized contact between probation officer and offender, but subsequently entailed probation officers directing offenders on to programmes deemed relevant to addressing the offender's behaviour. This development reduced the discretion of individual probation officers and asserted increased central control over their work.

The extent to which programmes of this nature prevent recidivism has been questioned. It has been argued that 'some programmes do work and the best may reduce reoffending by around 25 per cent'. But to achieve this, programmes have to be clearly targeted on offending behaviour, consistently delivered by well-trained staff, relevant to offenders' problems and needs, and equally relevant to the participants' learning styles (Whitfield, 1998: 16). Attempts to stimulate the replication of good practice were attempted by the work of the Probation Inspectorate that resulted in *Strategies for Effective Offender Supervision* (HMIP, 1998) and *Evidence Based Practice: A Guide to Effective Practice* (Chapman and Hough, 1998).

DETERMINATION OF REMAND OR BAIL

The service operates Bail Information Schemes, either 'first remand' or court- based schemes (which are carried out by probation officers), or 'second remand' or prison- based schemes (which are carried out in conjunction with prison staff). These are designed to provide information to prosecutors, and also to suggest what extra conditions (such as living in a hostel run by the Probation Service) should be attached to a decision to grant bail pending a court hearing.

SENTENCING

A key role of probation officers is to gather information and write reports for the courts in relation to offenders in order to inform sentencing decisions. These take the form of pre-sentence reports and specific sentence reports. Currently the Probation Service writes around 220,000 pre- sentence reports (Justice Committee, 2011: para. 1) and in excess of 20,000 specific sentence reports each year. Probation Service National Standards require that pre-sentence reports should be prepared within 15 working days, although in some probation areas these are produced only if custody or a community sentence are the likely outcomes (National Probation Service, 2004). Specific sentence reports are prepared more quickly and may be delivered verbally to the court. Additionally the Probation Service prepares over 20,000 bail information reports for the Crown Prosecution Service.

ADMINISTRATION OF COMMUNITY PENALTIES

This work originated in the administration of probation orders and subsequently extended to other forms of community penalties including the community order which was established in the 2003 Criminal Justice Act. The number of community sentences given by the courts increased 50 per cent between 1995 and 2005 and constituted 14 per cent of the 1.5 million

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sentences imposed in 2005 (National Audit Office, 2008: para. 1.11). Additionally, the Probation Service is involved, via Youth Offending Teams, in interventions directed at the offending behaviour of young people.

WORK WITHIN PRISONS

Work undertaken by the Probation Service in prisons dates from the 1960 report of the Advisory Council, *The Organisation of Aftercare*, and involves taking over functions formerly carried out by prison welfare officers. It was initiated in 1966 and was enhanced by the introduction of parole in 1967, the supervision of those on parole becoming a responsibility of the Probation Service in 1968. The role of the Probation Service was particularly affected by the 'seamless sentence' provisions of the 1991 Criminal Justice Act which focused on activities undertaken both in prison and following release designed to address offending behaviour. This meant that a prison sentence was partly served in prison and partly in the community involving prisoners being released on licence and supervised by the Probation Service. Serious offenders (including those sentenced to life imprisonment and some sex offenders) might be required to maintain long- term contact with the Probation Service. Towards the end of the 1990s, over 500 probation officers were seconded to prisons (Whitfield, 1998: 23), working there with prison staff in sentence planning, making plans for resettlement after release, liaising with probation staff in the offender's home area and running a range of programmes within the prison which seek to address the underlying causes of offending. Probation staff would often make assessments concerning release. One consequence of prison governors securing control over their own budgets was the decline in the number of prison probation officers (Home Office, 1998). The number of seconded probation officers working in prisons declined by 25 per cent between 1995 and 1997 (Whitfield, 1998: 91) but the introduction of the home detention curfew increased demand for their services to assess those who could be eligible for the scheme. There was thus the danger that the compiling of risk assessments would detract from the time available for probation officers to work with prisoners (Goodman, 1999: 28).

Changes affecting the Probation Service

The work of the Probation Service has been subjected to a number of important changes. These are discussed below.

THE MOVE AWAY FROM INDIVIDUALIZED TREATMENT

The 'nothing works' pessimism of the 1970s (Martinson, 1974) questioned the role performed by the Probation Service in dealing with offenders on a one-to-one basis in order to bring about a change in their behaviour and attitudes through individualized treatment. It was suggested that the role of the service should be reoriented away from treatment and towards the provision of appropriate help to offenders (Bottoms and McWilliams, 1979).
This change in the role of the Probation Service was especially influenced by the 'What

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Works?' movement of the 1990s. This had the effect of moving the service away from individualized case work which sought to divert offenders from custody and towards the utilization of structured programmes which were designed to alter behaviour patterns and whose ability to achieve this was capable of evaluation. Localized programmes (such as the straight thinking on probation (STOP) programme which was introduced by the Mid-Glamorgan Probation Service in 1990) could be more widely utilized once National Standards were introduced in 1992 whereby examples of good practice became disseminated. This approach was developed by later changes to scrutinize programmes that included the formation of a Joint Prison/Probation Accreditation Board in 1999. The centralized provision of programmes to address offending behaviour reflected an important departure from the perception of probation work being an aspect of social work and reoriented the role of probation officers to that of managing the progress of offenders through programmes of this nature.

It has subsequently been estimated that around three-quarters of probation officers' time is spent on work that does not involve direct contact with offenders. A Parliamentary Committee found this situation 'staggering' and urged Probation Trusts to ensure that more time was devoted to this aspect of probation work (Justice Committee, 2011: paras. 36 and 40).

Accredited programmes

The allocation of offenders to accredited programmes has become an important aspect of the work of the contemporary Probation Service.

In 1989 the Audit Commission published a report, *The Probation Service – Promoting Value for Money*, which produced 'a framework for probation intervention' designed to provide a uniform system that incorporated the evaluation of programmes for dealing with offenders.

In 1999, a Home Office publication (Home Office, 1999) put forward principles by which Pathfinder projects would be evaluated and these subsequently formed the basis of standardized (or 'accredited') programmes through which offending behaviour would be addressed. They are based on evidence of success in reducing reoffending before being rolled out nationally.

This had the effect of standardizing the work of the Probation Service and this principle was subsequently developed in 2002 regarding risk assessment whereby all offenders over 18 were assessed by the Offender Assessment System (OASys), after which probation officers slotted offenders into standardized programmes. These were accredited by the Correctional Services Accreditation Panel and were used both in prisons and within the community to tackle offending behaviour.

A key role of the Probation Service thus became that of managing the progress of offenders through accredited offending behaviour programmes: in 2004 there were 16 programmes of this nature either accredited or provisionally accredited for use within the Probation Service. Accredited programmes are structured and planned interventions with offenders, and are often based on group work. Examples include the Sex Offenders Group Work Programme, the Integrated Domestic Abuse Programme and Controlling Anger and Learning to Manage It. Participation is included as the condition of a sentence. In 2003/4, 13,136 offenders completed accredited programmes (National Probation Service, 2004).

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The assessment of risk entailed reorienting the Probation Service's role whereby the protection of society was ranked above caring for the needs of offenders. The change has been summarized as a shift 'from one of coaxing change in people to the "management" of risky people' (Justice Committee, 2011: para. 48).

Evaluation

The emphasis on 'What Works?' placed evaluation centre stage of the crime-fighting agenda. It has become the basis underpinning the national rolling out of responses to crime such as accredited programmes.

Various models exist which outline the processes that evaluation entails (such as SARA - scanning, analysis, response and assessment). The importance attached to evaluation is displayed through the initiation of pilot schemes or projects whose impact can be analysed before a policy is rolled out nationally, thereby seeking to ensure that public policy is fashioned on the basis of informed decisions. The aim of evaluation of this nature is to assess both the outputs and outcomes of a particular intervention with a view to improving its effectiveness and enabling the dissemination of good practice where this is found. Evaluation can also be an important tool to enhance the accountability of agencies to their stakeholders.

There are, however, a number of problems associated with good evaluation. Data can be manipulated by evaluators to produce the results wanted by those who commission it. It is also an extremely complex and costly undertaking to conduct rigorously, often beyond the means or capacity of those seeking assessment of their activities.

Other problems connected with evaluation include issues arising from the cause and effect dilemma - a desirable effect might have happened regardless of the specific intervention that is being assessed in the evaluation process. For example, a project aiming to reduce the level of street crime through the installation of CCTV may claim success if the level of crime of this nature falls in the locality where this intervention occurred. However, good evaluation requires data from other localities to be included in the assessment to guard against the possibility that there was a downward national trend in crime of this nature and that the installation of CCTV in a selected neighbourhood made little or no difference to the reduction of this form of crime. Random control trials have thus been utilized to guard against problems of this nature.

Further difficulties arise in connection with attempts to more widely apply the benefits arising from what has been evaluated as a successful intervention in a specific area. It cannot be assumed that because something has worked successfully in one area that it will work equally effectively elsewhere. There may have been unique factors affecting the success of an intervention that will be difficult to repeat in other localities. For example, if evaluation discovers that the establishment of a youth club had a significant effect in reducing the level of juvenile crime and anti-social behaviour in a specific area, it cannot be deduced with any certainty that this form of intervention will be universally as effective. It may be that the success of this intervention derived from the

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calibre of the staff working in that youth club as opposed to the formation of a youth club per se. Similarly, there may have been characteristics peculiar to a particular locality to explain the success of an intervention there and it may not thus be capable of wider replication. Evaluation thus needs to go beyond an assessment as to whether something has 'worked' to provide an understanding as to *why* this beneficial effect has arisen. Nor can it be assumed that a similar activity will consistently produce similar results or reactions. It may be possible to assert, on the basis of evaluation, that an intervention has worked but it cannot be concluded from this with any degree of certainty that what has worked today will necessarily work in the future.

ENHANCED CENTRAL CONTROL OVER PROBATION WORK

The introduction of National Standards in 1992 established what was expected of probation officers regarding objectives and the process of supervision. They covered a wide range of issues that included detailed instructions concerning the administration of order and were subsequently revised in 1995. It has been argued that National Standards sought to make probation officers more accountable to management which was in turn more accountable to the government – 'the overriding point about the introduction of National Standards was that they limited the discretion of the individual probation officer and focused on the management of supervision rather than on its content' (Worrall, 1997: 73). The target of National Standards (and the Key Performance Indicators that were related to the Standards) was thus the individualized interventions conducted by probation officers: their new role was to be that of managing offenders through the term of their sentence rather than actually carrying out interventions themselves.

The introduction of National Standards was therefore an important step in bringing changes to the role of probation officers whereby they became case managers as opposed to case workers (Goodman, 2003: 201). A third version of National Standards (published in April 2000) further reduced the discretion of probation officers regarding their interrelationship with offenders and changes to the way probation officers worked with offenders were subsequently published (National Probation Service, 2001).

Alterations to both the role and accountability of probation officers initiated by Conservative governments were coupled with other actions to broaden the base of recruitment and include persons with experience and skills deemed relevant to the nature of the work rather than those who had undertaken professional training. The aim of these changes was supplemented by the role of Her Majesty's Inspectorate of Probation that initiated thematic reviews and the inspection of individual services after 1992. Its work included the advocacy of effective practice within the service.

PROTECTION OF THE PUBLIC

The traditional focus of the Probation Service on the care and support of offenders was adjusted to incorporate the need to protect the public against offending behaviour. This

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development arose against the background of the rise of populist punitiveness in the 1990s at the expense of the rehabilitative commitment of 'penal modernism' (Garland, 1985; 1990). The service was now required to redefine its purpose in line with the new philosophy of 'just deserts' so that the focus of the Probation Service was widened to include a retributive dimension and a concern to protect society from the consequences of crime.

This change sought to shift the service 'centre stage' of the criminal justice system. Although the central role of the Probation Service was undermined by the appointment of Michael Howard as Home Secretary in 1993 (who desired to move prisons into the centre stage of the criminal justice system), it did entail a move away from the 'traditional social work basis and individual offender focus towards a more disciplinary correctionalist agency with a wider focus, incorporating victims' perspectives and public safety issues' (Crawford, 1999: 37).

Subsequent changes brought about by post-1997 Labour governments further shifted the service away from its historic functions. It was alleged that Labour viewed the service as a social control agency that should be concerned with punishment, control and surveillance (Goodman, 2003: 204). Increasingly the needs of the community dominated the probation work agenda: probation officers became concerned with assessing the risk which offenders posed. This focus posed an additional problem since the needs of offenders who posed a low risk to society (which included most female offenders) became marginalized in probation work (Justice Committee, 2011: para. 60).

The assessment of risk in order to protect the community coupled with the enhanced role of accredited programmes in probation work was at the expense of the individualistic treatment that probation officers formerly provided to offenders. It has been concluded that changes of this nature meant that 'the early ethos of "advise, assist and befriend" has been put to rest and in its place are the central tasks of assessing and managing risk' (Goodman, 2003: 209). Risk assessment was at the heart of the role now performed by the service, 'supplanting ideologies of need, welfare or. .. rehabilitation' (Kemshall, 1998: 1). It marked the demise of the 'old penology' that emphasized the rehabilitation of individual offenders and its replacement by a 'new penology' based on the assessment of risk (Feeley and Simon, 1992; 1994) that was concerned with predicting future behaviour.

Changes affecting the way in which the service would work with offenders were published in 2001 (National Probation Service, 2001), and were subsequently incorporated into the service's strategic framework for 2001–4. This asserted the central role of the management of risk to the work of the Probation Service.

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Assessment tool

An assessment tool seeks to establish the future risk that an offender poses to society and is used to guide the courts and agencies such as the National Probation Service regarding an appropriate response to an offender's criminal behaviour.

The Offender Assessment System (OASys) is the key tool of end-to-end offender management for adult offenders in England and Wales. It is conducted at the commencement of a sentence to evaluate the risk posed by offenders and to assess their

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individual needs in order to prevent reoffending behaviour. It is also conducted at the end of a sentence thus enabling changes to the offender to be assessed (Joyce and Wain, 2010: 11–13). An electronic version of OASys (called eOASys) is used by both the Prison Service and Probation Service and is an improvement on the practice that preceded the establishment of NOMS whereby separate OASys assessments were performed by both services.

Youth Offending Teams use a different risk assessment tool, ASSET, in connection with evaluating juvenile offenders.

PARTNERSHIP WORK

In 1984 the Probation Service was urged to participate in the multi-agency approach to crime prevention (Home Office, 1984). This entailed it moving into activities other than working with individual offenders and this change in role was subsequently emphasized when the Probation Service's first operational goal was stated to be 'reducing and preventing crime and the fear of crime by working in a partnership with others' (Home Office, 1992: 12). Partnership was subsequently developed in a number of ways. In 2002 multi-agency public protection agreements (MAPPAs) entailed the Probation Service working in partnership with the police to protect the public from sexual and violent offenders by assessing the risks posed by high-risk sexual and violent offenders before they were released from prison and to manage that risk once they were released. The Prison Service was incorporated into MAPPA arrangements following the enactment of the 2003 Criminal Justice Act.
Approaches of this nature are compatible with the 2010 Coalition government's policy which views such forms of crime prevention work as a cost effective response to crime.

Question

To what extent, and why, has the historic role of the Probation Service to 'advise, assist and befriend' offenders been subject to change in recent years?

RELATIONSHIP OF THE PRISON AND PROBATION SERVICES

Ideally the activities of the probation and prison services would be closely intertwined, enabling the former to reinforce the rehabilitative activities of the latter. But this was not traditionally the case, and was unlikely to be achieved as long as 'one service continued to define its mission as saving people from the other' (Raynor and Vanstone, 2002: 62). The desirability of cooperation underpinned the concept of 'throughcare' which was introduced in the 1970s, emphasizing the importance of acquiring education and vocational skills while in prison and the close cooperation of the two agencies was envisaged in the 'seamless sentence'

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provisions of the 1991 Criminal Justice Act. This legislation also coordinated the activities of the two agencies by reorienting the focus of community penalties, whereby they became regarded as forms of punishment rather than alternatives to custody (Raynor and Vanstone, 2002: 62).

Further efforts to bring the two services closer together resulted in an attempt to spell out their respective roles in the 1993 document, *National Framework for Throughcare of Offenders in Custody to the Completion of Supervision in the Community*. However, the perception remained that the two services had different priorities, perspectives and structures. The extent of inter-agency cooperation was limited; for example, although many probation officers work inside prisons, the Prison Service computer was unable to exchange information with that of the Probation Service (Prison Report, 1998: 3). Thus further initiatives to secure a more coordinated approach by the two agencies were required.

In 1997 a prisons–probation review was established, and in 1998 the Home Secretary urged the need for a closer working relationship between the two services (Straw, 1998). Additionally, in 1998 the Labour government published proposals related to these two agencies within the context of the government's Comprehensive Spending Review. The issues raised in the review (Home Office, 1998: para. 4.12) included:

- replacing the 54 probation areas with a new national service;
- introducing joint planning between the prison and probation services – this was urged in a number of areas which included common training, shared key performance indicators, joint accreditation of offender programmes, information-sharing, a common approach to risk assessment and joint research projects;
- consideration of renaming the Probation Service in the belief that its present name was associated in the public eye with tolerance of crime. Among the alternatives put forward were the 'Justice Enforcement and Public Protection Service'.

A key problem posed by this document was that it envisaged moving the Probation Service away from its initial role in connection with the reform and rehabilitation of offenders and increasingly immersing it in the objective of safeguarding community security through the process of conducting risk assessments and exercising surveillance over those subject to community penalties. In this latter context it was argued that probation officers may develop into 'soft cops' (Goodman, 2003: 219), an approach that has been conceptualized as 'polibation' (and is fully examined by Nash, 1999; 2004; and Mawby and Worrall, 2004).

The formation of the National Offender Management Service

The 2000 Criminal Justice and Court Services Act established the basis of a National Probation Service, which was set up in April 2001, under the control of the National Probation Directorate. Its organizational boundaries coincided with those utilized by the police service, the Crown Prosecution Service and the courts. It was subsequently observed that the creation of a national service brought greater consistency and innovation to a previously fragmented service and enabled a greater focus to be placed on performance management (Carter, 2003: 3 and 33). New programmes were introduced which were underpinned by joined-up government

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and risk management.
Although these reforms (and others which have been discussed previously) went some way towards reorienting the functions of the Probation Service, it was felt that further steps were needed 'in order to break down the silos of prison and probation and ensure a better focus on managing offenders' (Carter, 2003: 1). Arguments put forward to support this proposal included the allegations that information-sharing between the two services was often poor (a difficulty compounded by organizational boundaries raising data protection issues), that programmes and interventions received in prison were not always followed up in the community and that no single organization was ultimately responsible for the offender which meant 'there is no clear ownership on the front line for reducing reoffending' (Carter, 2003: 35).
Accordingly the merger of the prison and probation services into a new body, the National Offender Management Service (NOMS), was called for. This would focus on the management of offenders throughout the whole of their sentence, 'driven by information on what works to reduce offending' (Carter, 2003: 5), which was compatible with the appointment of a Commissioner for Correctional Services in 2003 to be responsible for managing and overseeing the government's targets for reducing reoffending. The new service would be charged with a clear responsibility to reduce reoffending (which would be measured two years after the end of the sentence), making use of a system based on improved information to provide for the risk-assessed use of resources. It was also suggested that improved service delivery could be achieved through greater contestability, whereby contracts for programmes to prevent reoffending could be made the subject of competition by the public, private and voluntary sectors (Carter, 2003: 35). Contestability would enable value for money considerations to be applied to decisions related to the provision of services to aid offenders and protect the public.
It was proposed that the two separate services should be restructured with a single chief executive accountable to ministers for the delivery of outcomes. One person (the National Offender Manager) would be responsible for the target to reduce reoffending, and would have complete control over the budget for managing offenders. This official's work would be aided by Regional Offender Managers (nine in England and one in Wales) who would be responsible for the end-to-end management of offenders in their region. Their main work would be contracting with the providers of prison places, community punishment and interventions such as basic skills or health whether in the public, private or voluntary sectors. They would fund the delivery of specified services based on the evidence of what worked to reduce reoffending rather than leaving the services themselves to determine what should be delivered (Carter, 2003: 5 and 35–6).
The task of supervising offenders would be carried out by offender managers who could be appointed from a range of providers in the public, private or voluntary sectors. Although it was envisaged that initially most offender managers would be from the public sector (chiefly probation officers – Blunkett, 2004: 2), it was anticipated that over time new providers would emerge (Carter, 2003: 37).
The government's response to the Carter Report was delivered in early 2004. This welcomed progress made by the Prison Service and National Probation Service in reducing the level of

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reoffending (which was in line with the 5 per cent reduction target set by the government), but it was argued that the establishment of a National Offender Management Service was also required to ensure that offenders were placed ‘at the centre of a single system rather than falling in the gap between the two different services’ (Blunkett, 2004: 2). The two objectives for this new service were to punish offenders and to reduce reoffending (Home Office, 2003: 10). It would provide ‘end-to-end management of offenders, regardless of whether they are serving their sentences in prison, the community or both’ (Home Office, 2004b: 14). Continuity of this nature was designed to ensure, for example, that an inmate who commenced a skills course while in prison would be able to continue with it upon release.

To secure this reform, the government proposed the immediate appointment of a chief executive of NOMS who would set up the organization and lead the new service (Home Office, 2004b: 10) which was established on 1 June 2004. The legal framework for the merger of the two services was provided in the 2005 Management of Offenders and Sentencing Bill. This Bill failed to become law before Parliament was dissolved on 11 April 2005, but this reform was proceeded with following the Labour victory. The new arrangements entailed the headquarters of both services being brought together under one organizational umbrella although both retained their separate identities. NOMS assumed its present structure in 2008. The prime purpose of NOMS was to tackle recidivism by reasserting the rehabilitative function of prisons and punishment and it was given the target of achieving a 10 per cent fall in the level of reoffending by 2010. This objective would be achieved by the new sentencing structure introduced by the 2003 Criminal Justice Act, the improved management of offenders both within and outside of prisons and the provision of effective programmes to address offending behaviour in order to secure their reform. It further entailed measures that were designed to secure the resettlement of offenders. The issues are considered in more detail below.

PROGRESS AND EFFECTIVENESS OF REFORM

However, although the Prison Service had increasingly been involved in joined-up government in which the Chief Inspectors of Prisons, Probation, Social Services, the Constabulary, the CPS and the Magistrates’ Courts Service began to unofficially meet to discuss issues of common concern (a development that was evidenced by a joint review published in 2000) (HM Inspectorates Review, 2000), the creation of NOMS posed a number of problems. The reform required ‘a full integration of the hitherto independent Prison and Probation Services and the establishment of a regulated market place for independent (non-statutory) organizations to become increasingly involved in the delivery of services to offenders’ (Pycroft, 2005: 135). However, these developments were not immediately forthcoming.

The pursuance of a coordinated approach to the management of offenders required an effective form of data-sharing to be developed. To achieve this, it was intended that a National Offender Management Information System (NOMIS) would be in place by July 2006. This was to consist of a database of offender profiles available to all those who work with them and in November 2007 it was further intended to incorporate OASys into this system. However, following a series of technical problems and spiralling costs, it was decided in 2007 that this

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system (renamed C-NOMIS) would be available only to the public sector prison service (and also to those probation officers who worked within prisons), replacing its existing case management system known as LIDS. A more limited application – Data Share – enabled information relating to offenders to be shared by both agencies to aid offender management. The existing case management system used by the Probation Service – Crams – was continued with until being replaced in 2011 by a new single national case management system known as Delius.

A further difficulty affecting the creation of NOMS was that the cultures of the prison and probation services were different. NOMS required the Probation Service to abandon its anti-incarceration stance and adopt a new one that viewed custodial sentences as an important aspect of rehabilitation (Gough, 2005: 91). The cultures of the two agencies were also influenced by the Prison Service being nationally managed whereas the Probation Service was subject to local direction.

Question

What objectives did the Labour government seek to achieve in creating the National Offender Management Service (NOMS)? What problems is this reform likely to encounter?

FURTHER REORGANIZATION OF THE NATIONAL PROBATION SERVICE

The aim of the government's reform was to scrap the 42 local boards and focus administration of the new service at the regional level whereby Regional Offender Managers would coordinate the work performed by the service. However, this reform was contentious. The National Probation Service in particular desired to retain the existing structure, and in July 2004 the government decided to continue for the time being with the 42 area boards. Although this decision could be justified by the desire to emphasize the relevance of the work performed by the National Probation Service to community safety, and in particular the need to relate risk assessment to the attainment of local crime reduction targets, it was likely to have been based on political expediency since the retention of the 42 probation area boards had a considerable degree of political support within Parliament.

Reorganization was eventually provided for by the 2007 Offender Management Act. This measure created Probation Trusts whose role was to implement the principle of contestability into probation work by commissioning services related to offender supervision, tackling offending behaviour and providing other forms of specialist support. This reform was rolled out slowly so that by the end of 2010 the National Probation Service was administered by 36 local Probation Boards and 6 Probation Trusts that operated under contract from the Ministry of Justice. The reason for slow progress was that Probation Boards were not convinced of the rationale for the change. In 2012, however, there were 35 Probation Trusts in England and Wales.

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Further change affecting the National Probation Service will be implemented in 2011–12, entailing the reorganization of NOMS. This will result in the creation of four national directors whose respective roles will entail commissioning services, managing public sector prisons, managing contracts in probation and delivering central services (including IT) across the system (Justice Committee, 2011: para. 22).

TACKLING RECIDIVISM

A particular objective of the early twenty-first century Labour governments was to tackle recidivism (or reoffending). As has been argued above, this was a key consideration behind the creation of NOMS in 2004 (although a subsequent Parliamentary investigation suggested that there was no evidence that this had led to any appreciable improvement in the joined-up treatment of offenders (Justice Committee, 2011: paras 108 and 110)) (see Table 8.1).
This need to tackle recidivism was justified by figures which suggested a significant number of those who received custodial sentences (which comprised over half of adult offenders, around three-quarters of juveniles offenders under the age of 21 and 88 per cent of child offenders aged 15–18) (Home Office, 1994a, Ramsbotham, 2005: 70) were reconvicted within two years. In total, more than one million crimes – around 18 per cent of the total that were committed each year – were carried out by released prisoners (Ramsbotham, 2005: 69) and the cost of recorded crime committed by ex-offenders was estimated to be £11 billion per year (Social Exclusion Unit, 2002). This implied that prisons were failing in their attempt to adjust the behaviour of offenders to that of 'respectable society' (Giddens, 1997: 187) and were alternatively serving as a mechanism to enhance the social exclusion of offenders, thereby increasing their commitment to offending behaviour (Matthews and Francis, 1996: 19).

Table 8.1 Prisoners as a socially excluded group: this makes it difficult to effectively tackle recidivism

Characteristic	General population	Prisoners
Run away from home as a child	11%	47% male and 50% female sentenced prisoners
Taken into care as a child	2%	27%
Family member convicted of a criminal offence	16%	43%
Have no educational qualifications	15%	52% male and 71% female sentenced prisoners
Numeracy at or below Level 1	23%	65%
Reading ability at or below Level 1	21–23%	48%
Writing ability at or below Level 1	No figures available	82%
Unemployed	5%	67% (in the four weeks before imprisonment)
Suffer from two or more mental disorders	5% men and 2% women	72% male sentenced offenders and 70% female sentenced offenders
Suffer from three or more mental disorders	1% men and <1% women	44% male and 62% female sentenced prisoners
Drug use in previous year	13% men and 8% women	66% male and 55% female sentenced prisoners (in year before imprisonment)
Hazardous drinking	38% men and 15% women	63% male and 39% female sentenced prisoners

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In receipt of benefits	13.7% of working age population	72% immediately before entry to prison
Homelessness	0.9%	32% not living in permanent accommodation prior to imprisonment

Source: Adapted from Social Exclusion Unit (2002) *Reducing Re-offending by Ex-Prisoners*. London: Cabinet Office

The approach of the Labour government (which was especially identified with Home Secretary Charles Clarke) was to make tackling reoffending the central focus of the government's objective of reducing the overall level of crime. This was to be achieved by emphasizing the role of prisons as institutions that would rehabilitate offenders and reintegrate them into society, thus transforming prisons from being 'universities of crime' to 'colleges of constructive citizenship' (Clarke, 2005). Four interrelated processes – reform, rehabilitation, resettlement and reintegration – were involved in tackling recidivism. These are discussed below.

Reform and rehabilitation of offenders

Reform embraces initiatives that seek to alter an offender's *existing* attitudes and values. Rehabilitation goes further than this and entails programmes that address an offender's *future* behaviour, enabling an ex-offender to assume his or her place as a trusted and valued member of society (Forsyth, 1987). These processes are achieved through means that include the delivery of programmes designed to tackle an offender's behaviour that are delivered within prison or in the community. However, accredited programmes will not produce standardized responses from their participants and additional factors that relate to offending behaviour will need to be addressed within the context of resettlement.

Resettlement

Resettlement was the new term applied to 'throughcare' and 'aftercare' (Raynor and Vanstone, 2002: 111) of offenders within communities upon their release from prison. There are, however, difficulties associated with attaining it.

A previous scheme to facilitate resettlement, the Release on Temporary Licence (by which governors authorized prisoners to spend some time outside of prison), had been effectively abandoned after 1993 following public concern regarding the temporary release of criminals who went on to commit further crime. The new policy might result in dangerous criminals being released into communities who, if subject to insufficient supervision on release, could pose a danger to the public. This posed the question as to what was the nature and content of attention appropriate to this category of offender. Further, the effective resettlement of offenders within communities may not be easily attained. The behaviour of some offenders was shaped by their exclusion from local communities which they did not subsequently wish to rejoin (and in many cases ostracism would prevent this even if they wished to), and other aspects of post-1997 Labour policy (such as Crime and Disorder Reduction Partnerships) have been based, not on rehabilitation and resettlement, but, rather, on stigmatizing and excluding

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those who perform criminal or disorderly acts.

There are additional factors that make resettlement into communities difficult to achieve in practice. Many offenders have a range of social problems that include drug dependency, low educational skills (which hinder future employment prospects), mental health problems and, often, homelessness. Problems affecting ex-prisoners were initially identified by the Social Exclusion Unit as the Seven Pathways to reduce reoffending and were subsequently implemented by NOMS. These were accommodation and support (32 per cent of individuals were not living in permanent accommodation); education, training and employment; health; drugs and alcohol; finance, benefits and debt; children and family; and attitudes, thinking and behaviour (Social Exclusion Unit, 2002). It was estimated, for example, that reconvictions could be reduced by 20 per cent when an ex-offender found stable accommodation (Social Exclusion Unit, 2002). Resettlement thus constituted an important way through which rehabilitation might be secured. Thus resettlement was not an issue that criminal justice agencies alone could tackle but required a coordinated response from a range of agencies not traditionally associated with the criminal justice sector to provide appropriate aid to ex-offenders.

It needs, for example, the development of joined-up thinking between criminal justice agencies and bodies such as housing providers which have traditionally prioritized resources for their 'traditional' clients rather than ex-offenders. The introduction in 2003 of the Supporting People grant programme to fund housing-related support services aided vulnerable people such as ex-offenders to live independently in the community, raised the awareness among local authorities of the needs of ex-offenders and emphasized the importance of partnership work to resettlement. It has been concluded that the key to successful transition from prison to resettlement in the community is 'an integrated multi-agency approach drawn from health, police, probation, prisons, the local authority, Jobcentre Plus, [and] housing associations' (Local Government Association, 2005: 4).

One development that is compatible with this approach in England and Wales is the reform of the 1974 Rehabilitation of Offenders Act in order to reduce the length of time required for a sentence to be considered 'spent' and thus not required to be declared on job application forms (with some exceptions). Although this approach can be criticized for constituting a passive form of redemption in which an offender is forgiven as the result of avoiding further crime rather than having to earn forgiveness though undertaking positive actions (Maruna, 2011: 106), the rationale for the reform of this legislation is that a lengthy period prevents an offender from putting the past before him or her and hinders resettlement in the community (Dholakia, 2011). The 2010 Coalition government expressed interest in examining the reform of this legislation (Ministry of Justice, 2010a: 33–4). However, other criminal justice policy developments run counter to this, including the availability of criminal records relating to child sex offenders (Joyce and Wain, 2010: 134).

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Reintegration

Successful resettlement leads to the reintegration of the offender into the community. To secure reintegration, it is necessary to go beyond treatment and related programmes and tackle other

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key issues. These include addressing the need to 'remove and relieve ex-prisoner stigma' (Maruna, 2011: 97), to devise processes that 'encourage, support and facilitate good behaviour' (Maruna, 2011: 97) rather than the approach adopted by policies that retrospectively reward it (for example, by not requiring offences to be declared after a specified time period has elapsed) and to devise rituals whereby an offender is 'formally forgiven' by society for his or her former crimes – 'if reintegration is to be meaningful (and effective in removing stigma) it. .. requires comparable levels of symbolism and ritual as punishment itself' (Maruna, 2011: 99). The courts – through the process of judicial rehabilitation – can perform an important role in achieving this outcome (Maruna, 2011: 108). An important objective of this process is what has been referred to as the 'restoration of reputation' (Maruna, 2011: 104).

Desistance

The success – or otherwise – of issues that have been raised above in connection with tackling recidivism needs to be considered within the context of desistance – the factors that underpin an offender's decision to abandon his or her criminal behaviour. Accredited programmes that are designed to address the root causes of this behaviour and interventions that offer help and support to an ex-prisoner upon release (that include aid in finding employment and accommodation) may be beneficial to this process but are not guaranteed to succeed. An individual's desire to alter his or her behaviour underpins the abandonment of offending behaviour.

Desistance literature dealing with an individual's transition from prison to the community (such as Zamble and Quinsey, 1997, and Immarigeon and Maruna, 2004) discussed the importance of factors such as motivation and argued that this needs to be sustained (often in the face of setbacks) in order to ensure the permanent abandonment of offending behaviour. This suggested that desistance is a gradual process of turning away from crime rather than an abrupt decision to end such behaviour (Laub and Sampson, 2001: 11) and emphasized the importance of mentoring (often on a one-to-one basis) delivered by probation officers or third sector providers to reinforce an offender's initial desire to stop offending and to help the offender acquire new values that help achieved this outcome permanently.

THE 2010 COALITION GOVERNMENT POLICY

The main features of Coalition government policy concerning punishment and sentencing are considered below.

Tougher responses to crime

Penal populism remained an underpinning of the government's response to crime whereby those who broke the law would face 'robust and demanding' and 'rigorous' punishments (Ministry of Justice, 2010c: 14) which would entail prisoners facing the 'tough discipline of

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regular working hours' and making community sentences 'tougher and more intensive' (Ministry of Justice, 2010c: 1).

Coalition prison reform was based upon the concept of the 'working prison' in which prisons would instil the ethos of hard work into prisoners by using the discipline and routine of regular working hours whereby prisoners were subject to a structured and disciplined environment where they were expected to work a full working week of up to 40 hours engaged in 'challenging and meaningful work' (Ministry of Justice, 2010c: 14 and 15). This concept would be developed through the involvement of the private, voluntary and community sectors in connection with providing work and training.

Although the Coalition government did not propose to abolish short prison sentences, it was pointed out that two-thirds of custodial sentences that were passed each year were for a period of six months or less and that offenders sentenced to less than six months had a higher conviction rate than those who received lengthier sentences (Ministry of Justice, 2010c: 57). The aim of Coalition government policy was thus to stop offenders getting to a stage when a sentencer believed that a short prison sentence was an appropriate response to crime. This entailed 'developing better community provision aimed at halting persistent, low-level offending' and 'seeking to stop prolific offenders from becoming prolific' (Ministry of Justice, 2010c: 57). Community penalties were an important aspect of this policy, although measures were also proposed that were designed to prevent young offenders from being sucked into the criminal justice system and to tackle the least serious offenders before they got to court through the provision of appropriate drug, alcohol and mental health support services delivered in the community (Ministry of Justice, 2010c: 57).

It was argued that a quarter of offenders on community orders or who had been released from prison on licence failed to complete the sentence due to breaking the conditions of their order or licence. The 2010 Coalition government thus asserted that more could be done to ensure offender compliance with community sentences. Its proposals for community penalties entailed making them 'credible and rigorous', 'robust and effective' (Ministry of Justice, 2010c: 17 and 58). This approach involved making community payback 'more intensive and more immediate' with communities being able to influence the type of projects undertaken by offenders and being able to provide feedback on the quality of the work undertaken. Unemployed offenders should be made to work a total number of hours closer to a normal working week. It was further proposed that the role currently performed by prisons of 'giving the public a break from offenders' would be achieved by making curfew and exclusion requirements enforced by electronic monitoring tougher for prolific offenders (Ministry of Justice, 2010c: 1, 17 and 19). The government also announced it was considering extending the maximum hours of a curfew to 16 hours a day and increasing its maximum duration from the current six months to one year (Ministry of Justice, 2010c: 18). The Coalition government also sought the more imaginative use of requirements in the community order (Ministry of Justice, 2010c: 59).

The specific policies that were subsequently put forward to reform community penalties included the introduction of a punitive disposal termed intensive community punishment. This embraced community payback, restrictions on liberty (such as curfews and electronic monitoring), a driving ban and a fine and would last for a maximum period of 12 months (Ministry of Justice, 2012: paras 22–4).

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Decentralization

Coalition government criminal justice policy also emphasized the importance of decentralization. This embraced two related reforms – the relaxation of central (or ‘bureaucratic’) reform to enhance the discretion of front-line professionals at the expense of centrally imposed targets and also the ceding of a greater degree of power from central government to local communities.

Decentralization sought to enable front-line professionals to exercise greater freedom to manage offenders in their communities. It further involved ‘a move away from centrally controlled services dominated by the public sector, towards a more competitive system that draws on the knowledge, expertise and innovation of a much broader set of organizations from all sectors’ (Ministry of Justice, 2010c: 8); would enable local people to play a more central role in criminal justice (perhaps through the use of Neighbourhood Justice Panels); and be better able to hold criminal justice services to account through the provision of better information regarding the delivery of justice and the development of new mechanisms of transparency and public accountability (Ministry of Justice, 2010c: 13).

Reforms to specific services that were designed to deliver this objective included reviewing the performance arrangements for probation to provide a focus on outcomes as opposed to process and input measures and reviewing the Probation National Standards to give front-line professionals greater discretion in handling offenders (Ministry of Justice, 2010c: 47). One aspect of this was to reduce the bureaucracy imposed on the Probation Service associated with the administration of community orders (Ministry of Justice, 2010c: 59–60). A Parliamentary Committee also criticized the micro-management of Probation Trusts by NOMS (including through targets such as the Specification, Benchmarking and Costs Programme which remained following the abolition of most Probation Trust Rating System targets) and urged that they should be given an enhanced degree of autonomy, including financial autonomy (Justice Committee, 2011: paras 83 and 102).

Prisons will become subject to similar reforms affecting a focus on outcomes and enhanced discretion to prison officers and, additionally, the government wished to pursue reforms that were designed to connect the prison system to local communities (Ministry of Justice, 2010c: 48).

Rehabilitation

Rehabilitation figured prominently as an objective of Coalition policy towards punishment. The government promised to deliver a ‘rehabilitation revolution’ (Ministry of Justice, 2010d: 5) and partnership approaches were strongly advocated to achieve this aim. The concept of integrated offender management would be developed whereby a partnership approach involving agencies that include the police, probation, prisons, local government and voluntary agencies would monitor and control the behaviour of offenders and ensure that services relevant to their rehabilitation were delivered. This approach was based upon a decentralized approach enabling local determination of offenders to be targeted. It was suggested that this approach would pay dividends if directed at prolific offenders whose behaviour had a

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disproportionate impact on the level of crime in a local area even if these crimes were not of the most serious nature (Ministry of Justice, 2010c: 25–6).

In addition to the role performed by integrated offender management in achieving rehabilitation, other joined-up approaches were advocated in order to tackle crime. Offenders released from prison into the community and those on community sentences would be subject to an integrated approach to offender management, delivered by the probation, police and other services to ensure that they tackled the problems that underpinned their criminal behaviour.

It was also proposed that some of the key causes of criminal behaviour – drug dependency, alcohol misuse, poor education, lack of accommodation and employment and mental health problems – would be addressed either in custody or within the community as aspects of the rehabilitative ideal (Ministry of Justice, 2010c: 8 and 24). This involved the introduction of drug recovery wings in prison and the roll out of a 'virtual campus' across prisons whereby IT-based individualized learning and employment services would be delivered in custody that could also be available following release. Rehabilitation also involved programmes derived from the cross-Government Drugs Strategy that aims to join up services so that an offender can recover and become drug free. It also entailed initiatives designed to tackle the availability of drugs in prison and to reform the law relating to the sale of alcohol at below cost.

Payment by results

The application of payment by results to correctional services seeks both to reduce costs and to have an impact on recidivism (Justice Committee, 2011: 205). Payment by results was introduced into aspects of the National Health Service in 2003/4 and is also likely to be utilized by the Department for Work and Pensions in connection with its current Work Programme. This approach focuses on outcomes and provides a stark contrast to the micro-management approach of previous Labour governments. Payment by results also gives service providers wide latitude as to how they achieve specified goals and builds upon evidence-based policy approaches compatible with the 'What Works?' agenda. One consequence of this approach would be the reduced involvement of existing public bodies in the delivery of services (Ministry of Justice, 2010c: 46): the future role of Probation Trusts, for example, would be transformed to that of service commissioners and providers rather than entailing responsibility for the direct delivery of them (Justice Committee, 2011: paras 195–6).

One aspect of the Coalition government's new proposals regarding the introduction of payment by results into the criminal justice service was the piloting of a number of rehabilitation programmes delivered by a diverse range of providers drawn from the public, voluntary and private sectors on a payments by result basis dependent on their success at reducing reoffending rates. This approach would apply to both community and custodial sentences and would ensure that providers were properly held to account for the results they achieved. It would further encourage front-line professionals to innovate in the way in which they worked with offenders in order to achieve successful outcomes.

This approach was based upon competition which would replace the current process of best value for offender management services. It was intended to publish a competition strategy for prisons and probation services in 2011 and all providers would be subject to payment by

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results principles by 2015. The delivery of community payback would also utilize the process of competition between potential providers in order to drive up the quality and standards of the scheme (Ministry of Justice, 2010c: 18 and 38).

However, although payment by results subjects policy to rigorous evaluation procedures, it is likely that the focus of evaluation will be on outcomes that readily lend themselves to measurement as opposed to a more qualitative focus on outcomes that might be considered to be most worthwhile.

'The role of prisons should be to ensure that prisoners are able to lead law-abiding lives when released.'

a) Analyse evidence to suggest whether contemporary prisons succeed in achieving this ideal
b) Identify what measures can be taken within prisons to achieve this ideal
c) Evaluate what challenges the prison environment poses to the attainment of this goal

In your view are prisons 'an expensive way of making bad people worse'?

CONCLUSION

This chapter has charted the development of the Prison Service since the publication of the Gladstone Report in 1895, and in particular has discussed the use of imprisonment in the policies pursued by post-1979 governments to combat crime. Particular attention has been devoted to the objective of rehabilitating offenders and it has been argued that key aspects of the prison environment have made it difficult for this objective to be achieved. The chapter has also considered the strategies used to maintain order in prisons.

In addition to prison, the chapter has considered the range of non-custodial disposals available to sentencers. In this context it considered the role of the Probation Service and has covered the historic role of this agency and the more recent changes that have served to reorient its purpose. The chapter examined the rationale of coordinating the operations of the prison and probation services into the National Offender Management Service in which the goal of reintegrating offenders in order to prevent recidivism is of paramount importance. It concluded with an assessment of the future direction of Coalition government policy towards punishment and sentencing.

This chapter has focused on the range of custodial and non-custodial sentences related to adult offenders. Juvenile offenders (those below the age of 21) are dealt with separately in the following chapter which examines the principles that underpin the juvenile justice system and the manner in which it responds to juvenile criminality.

FURTHER READING

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There are many specialist texts that will provide an in-depth examination of the issues discussed in this chapter. These include:

Cavadino, M. and Dignan, J. (2007) *The Penal System: An Introduction*, 4th edn. London: Sage.
Jewkes, Y. (2007) *Handbook on Prisons*. Cullompton: Willan Publishing.
Jewkes, Y. and Johnston, H. (2005) *Prison Readings*. Cullompton: Willan Publishing.
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Raynor, P. and Vanstone, M. (2002) *Understanding Community Penalties: Probation, Policy and Social Change*. Buckingham: Open University Press.
Ward, T. and Maruna, S. (2007) *Rehabilitation: Beyond the Risk Paradigm.* London: Taylor and Francis.
Winstone, J. and Pakes, F. (eds), (2005) *Community Justice: Issues for Probation and Criminal Justice*. Cullompton: Willan Publishing.

Key events

1361 Enactment of the Justices of the Peace Act that established the basis of the procedure of binding over that is still used for minor cases of public disorder.

1779 Enactment of the Penitentiary Act. This measure promoted a new role for prisons as being concerned with reforming those who had committed crime.

1843 The first modern prison, Pentonville, was built, incorporating many of the features of Jeremy Bentham's panopticon design for prisons. Bentham's design entailed wings (which housed the prisoners) radiating from a central hub from which prison staff could observe and control all movement.

1898 Publication of Herbert Gladstone's report on prisons. The report's insistence that people were sent to prison as (rather than for) punishment influenced a move away from the harsh conditions that dominated the prison environment in the latter decades of the nineteenth century. Many of the report's recommendations were contained in the 1898 Prisons Act.

1907 Enactment of the Probation of Offenders Act. This legislation placed probation work on a statutory footing that would be available in all courts for almost all crimes.

1948 Enactment of the Criminal Justice Act. It provided for a new organizational structure for the Probation Service and also introduced the conditional discharge.

1966 Publication of the report *Prison Escapes and Security*, written by Earl Louis Mountbatten. This made 52 recommendations, one of which was to introduce the A, B, C, D categorization of prisoners.

1972 Enactment of the Criminal Justice Act. This measure sought to introduce the principle of bifurcation into sentencing policy by providing for harsher sentences for serious crimes and introducing the community service order as a non-custodial response to minor ones.

1980 Establishment of the Prison Inspectorate. The role of the Inspectorate is to visit individual institutions and to consider the treatment of prisoners and the

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conditions of the prison.

1982 Enactment of the Criminal Justice Act. This measure formalized cautioning that had previously been used informally in relation to juvenile offenders.

1990 A serious riot occurred at Strangeways Prison, Manchester. This resulted in the appointment of Lord Woolf to write a report (published in 1991) that put forward a number of reforms that were designed to enable a balance to be struck between security, control and justice.

1991 Enactment of the Criminal Justice Act. This measure sought to promote bifurcation in sentencing policy and to broaden the focus of the Probation Service. New disposals to deal with minor crimes were introduced consisting of the combination order (which provided for supervised community service coupled to a probation order) and curfew orders enforced by tagging. The latter were developed by post-1997 Labour governments that introduced the home detention curfew in 1999 whereby some prisoners could be released early if they agreed to a curfew that was monitored by tagging.

1992 Introduction of National Standards for the Probation Service. This innovation eroded the discretion of probation officers and was an important step in the creation of a service that was more centrally controlled. It began the reorientation of probation work to that of managing offenders rather than undertaking interventions themselves.

1993 Michael Howard became Home Secretary. He viewed prisons as the key mechanism to deliver his approach that sought to 'get tough with criminals'.

1993 The Prison Service became an executive agency of the Home Office. It is headed by a Director General, appointed by the Home Secretary.

1995 The contentious dismissal of Derek Lewis as Director General of the Prison Service by Home Secretary Michael Howard. This action occurred following a critical report of prison security written by General Sir John Learmont. In 1996 the High Court ruled that Lewis had been wrongfully dismissed.

1997 Enactment of the Crime (Sentences) Act. This measure introduced a range of mandatory sentences, thereby restricting the discretion of sentencers.

1999 Publication of *What Works? Reducing Re-offending: Evidence-Based Practice*. This emphasized the importance of the use by the Probation Service of accredited programmes.

2000 Enactment of the Criminal Justice and Court Services Act. This measure established the basis of a National Probation Service under the control of a National Probation Directorate (which was set up in April 2001). The measure also renamed the existing community order, combination order and community service order, which respectively became known as the community rehabilitation order, community punishment and rehabilitation order and community penalty order.

2003 Publication of a report by Patrick Carter that recommended the amalgamation of the Prison Service and Probation Service into a new body, the National Offender Management Service. This became operational in 2004.

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2003 Enactment of the Criminal Justice Act. It sought to beef up the fine system by enabling deductions to be automatically taken from earnings or benefits, introduced the disposal of the conditional caution, and provided for Custody Plus and Custody Minus. It also introduced a new multifaceted community order, enabling sentencers to impose a wide range of conditions on a community sentence.

2007 Enactment of the Offender Management Act. This legislation initiated the replacement of local Probation Boards with Probation Trusts.

2010 Publication of the Coalition government's proposals regarding the punishment of offenders, *Breaking the Cycle*. This formed the basis of the 2012 Legal Aid, Punishment and Sentencing of Offenders Act.

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