**Written Evidence from the Sentencing Council of England and Wales (ppp038)**

**About the Sentencing Council for England and Wales**

1. The Sentencing Council for England and Wales is an independent non-departmental public body of the Ministry of Justice and was set up under the Coroner and Justice Act 2009 to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. The primary role of the Council is to issue guidelines on sentencing, which courts must follow unless it is in the interests of justice not to do so.

2. The Council is currently chaired by Lord Justice Treacy and in total there are 14 members (including the Chairman) with the qualifications for appointment laid out in statute. Eight are judicial members, appointed by the Lord Chief Justice with the agreement of the Lord Chancellor, who together represent the full range of courts responsible for sentencing in criminal cases – from the lay magistracy through to the Court of Appeal. There are six non-judicial members, who are appointed by the Lord Chancellor with the agreement of the Lord Chief Justice, and together they represent a broad cross section of those who work within the criminal justice system or are impacted by it.

3. The Sentencing Council has focussed its submission on the question: “what has led to the current size and make-up of the prison population”, which is the most relevant area within the inquiry’s terms of reference to the Council’s area of expertise. The Council’s response is also focussed specifically on the ‘sentenced’ population in prison as again this is the most relevant to its role.

**Executive summary**

4. The prison population has increased significantly over the last 70 years with that acceleration being most rapid since 1993. Within the overall figures, the proportion of those serving sentences of four years or more has increased in particular and this is likely to have been a factor driving the increase in the prison population.

5. The factors responsible for this increase are complex and many of them are outwith the direct control of those within the criminal justice system. It is difficult to say with any certainty which of them, individually or in combination with others, will have had the most significant effect. Nonetheless there are a number of factors that seem likely to have contributed to the increase, the vast majority of them legislative in nature. These include: the increase in minimum terms for murder and the consequential impact on other serious offences; the increased emphasis on ‘harm caused’ as a specific factor to be taken into account in sentencing; the introduction of indeterminate sentences for public protection and then their replacement by extended determinate sentences; changes to the licence conditions for some prisoners released from custody; the range of new offences coming onto the statute books and the tendency to increase the statutory maximum sentences or to introduce minimum terms; the lack of confidence in some non-custodial sentence options; and the changing case mix coming before the courts.

6. The Sentencing Council does not believe it would retain public confidence were it unilaterally to take on a role to reduce sentences either in general or for specific offences. Generally, the Council approaches an individual guideline with the intention, broadly, of
following existing sentencing practice and focussing instead on achieving transparency and consistency. There are cases where the Council has been led by the evidence to take a different approach – for example significantly increasing fines for environmental offences, or decreasing sentences for so-called ‘drug mules’.

7. Overall, there has been a general increase in sentencing severity across most offences – much of which will be separate from any impact that sentencing guidelines have had. For some early guidelines it is possible that, for some of the offences covered, some of the recent increases in sentence length may have been as a result of the guideline. Where those increases were different from those expected, or intended, the Council will be revisiting the guidelines.

**Overall factors influencing the current make-up and size of the current prison population**

8. Ministry of Justice (MoJ) data show that the prison population as a whole has been increasing steadily since the end of the Second World War from around 15,000 in 1945 to around 85,000 in 2016. The rise has been most rapid from 1993 (when the population was below 45,000) to the present.¹

9. In recent years the population has broadly stabilised at current levels but with a shift in that, though fewer offenders are sentenced to immediate custody than before, they are sentenced for longer. Within the overall figures, the MoJ data show that the biggest shift has been from those serving sentences of four or more years: in 1993 over half of the ‘sentenced prison population’ were serving sentences of ‘less than four years’, whereas by 2016 this had reduced to about a third.²

10. It is not easy to articulate fully all the various factors that may have contributed to this state of affairs, nor to identify which of those factors may have had the biggest effect. The causes of offending, and reoffending, are complex and many of them are as a result of issues that are outside the direct control of those working within the criminal justice system. Headline statistics that identify the likelihood of an offender being sentenced to custody for a particular type of offence, or that show the average sentence length handed down for that type of offence, are broad brush. The individual cases heard day in and day out at the criminal courts are each unique. Cases that on the face of it may share many similar characteristics will have very different factors that need to be brought to bear when the sentencer makes her or his decision as to whether the threshold for custody has been passed and, if so, what level of sentence is appropriate.

11. Nonetheless, there appear to be a number of broad drivers for both the increase in the prison population as a whole, as well as the shift towards those offenders who are in custody serving longer sentences. The majority of the factors listed below are legislative in nature but there are some non-legislative factors. It is important to be clear that what follows is not intended to be taken as criticism of any measures introduced, or changes


² Ibid.
that have occurred, but to identify factors that appear to have influenced the current make-up and size of the prison population.

Schedule 21 Criminal Justice Act 2003

12. In terms of legislative changes, one of the most significant is that brought in by Schedule 21 of the Criminal Justice Act 2003 (CJA 2003), which sets the tariffs for murder. As a result of this legislation, sentences for the vast majority of murder cases increased substantially. A case that may previously have attracted a life sentence with a tariff of 10 years before the change might attract a tariff of double that afterwards.

13. The effect of this increase has not impacted murder sentences alone. Many serious offences carry a maximum term of up to 14 years or of life imprisonment. While the courts recognise that there is no express link between the sentences in Schedule 21 CJA 2003 and sentences for other serious offences, nevertheless when sentencing courts will consider issues of comparability and proportionality. When the tariff for the most serious of offences increased so significantly, inevitably over time there has been some recalibration of the sentencing of those offences closest to it in gravity. In particular, sentences for manslaughter have risen as a result of the changes brought about by CJA 2003

Increased focus on ‘harm’ as a specific factor to be taken into account when sentencing

14. The Criminal Justice Act 2003 also sets out in statute that in sentencing a court must consider both the offender’s culpability in committing the offence and the harm caused. In recent years there has been an increased focus on victims in general and, in particular, a greater emphasis on the effect of an offence on a victim when sentencing. The particular focus on harm has contributed to higher sentences across a wide range of offences including sexual offences, offences resulting in death or serious injury, and acquisitive offences where the loss to the victim is more than just financial.

Indeterminate Sentences for Public Protection and Extended Determinate Sentences

15. Brought in by the same Act, were the creation of Indeterminate Sentences for Public Protection (IPPs). This legislation will not necessarily have increased the numbers of offenders being sentenced to custody, nor the length of the custodial term imposed. But given the test for release of an IPP prisoner is set at a high threshold, IPPs significantly increased the length of time actually served by such prisoners. Although IPPs were restricted by the Criminal Justice and Immigration Act 2008 and then finally abolished by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012), the changes did not apply retrospectively and a significant proportion of IPP prisoners remain in custody.

16. When IPPs were abolished by LASPO 2012, that Act introduced new extended determinate sentences (EDS) for offenders deemed ‘dangerous’. Initially under this

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3 In R v Wood [2009] EWCA Crim 651 the court stated: ‘a vast disproportion between sentences for murder and the sentences for offences of manslaughter which sometimes come very close to murder would be inimical to the administration of justice’.

4 S143(1) Criminal Justice Act 2003
legislation those offenders sentenced to an EDS with a custodial term of 10 years or more were not eligible for release until the two-thirds point, at which time the Parole Board would need to be satisfied that they no longer posed a risk to the public, and would only become eligible for automatic release at the end of the custodial term. The Criminal Justice and Courts Act 2015 extended this regime to all offenders serving an EDS. Although removing much of the inflationary impact of the IPP scheme, the new approach still means that those considered dangerous will be serving a sentence at least a sixth longer than would otherwise be the case. Given that the number of those serving sentences of four years or more has also increased, this group of offenders are naturally those who are more likely to attract the dangerousness provisions and so the impact is twofold: people are being given longer custodial sentences and they are serving a larger proportion of those sentences in custody.

Changes to licence arrangements for short term prisoners

17. The Offender Rehabilitation Act 2014 brought in new arrangements relating to the release under licence of offenders serving fixed-term custodial sentences of more than 1 day but less than 12 months. It also introduced new supervision arrangements for all offenders released from fixed-term custodial sentences of less than 2 years, with the effect that all offenders are now supervised in the community for at least 12 months after release from custody. The Act also created a new court process, with sanctions for the breach of supervision requirements for offenders serving fixed-term custodial sentences of less than 2 years.

18. Taken together, these changes mean that more prisoners are subject to recall under licence or face potential sanctions (including 14 days committal to prison) for breach of post sentence supervision.

Legislative changes to introduce new offences or increase sentence lengths

19. There are significant numbers of individual offences where Parliament has chosen either to raise the statutory maximum term of imprisonment for an offence, or to set out a minimum term to be served in certain circumstances. This is something of a trend and, alongside the increased emphasis on harm outlined above, reflects a growing emphasis on a more punitive approach to sentencing. For example, The Sexual Offences Act 2003 introduced new offences and raised the maximum sentence for many sexual offences. This legislation is part of a growing recognition that sexually abusive conduct is unacceptable and of a need to protect vulnerable groups from abusive and predatory behaviour. This has led to an increase in sentence severity for sexual offences (including for historic cases where the statutory maximum sentence is lower).

20. More recently, the Protection of Freedoms Act 2012 added two offences of stalking to the Protection from Harassment Act 1997. Initially those offences carried the same maximum sentences as the offences of harassment created under the earlier act. The Policing and Crime Act 2017 then increased the maximum sentences for stalking and harassment offences from five to 10 years.

21. To show more fully how such changes evolve over time, the following examples show how, for two areas of offending, the number of offences and the maximum sentences for those offences have increased in the last 30 years. These are not comprehensive lists of
all the legislative changes and their inclusion in this document does not indicate approval or disapproval of the changes, it is merely designed to illustrate the trend.

Driving:

- In 1989 the Road Traffic Act 1988 (RTA 1988) came into force; s1 is the offence of causing death by dangerous driving which has a maximum sentence of 14 years, and s2 is the offence of dangerous driving which has a maximum sentence of two years. These have remained unchanged although they are currently subject to a Government review.
- In 1992 the Road Traffic Act 1991 inserted s3A RTA 1988, causing death by careless driving while under the influence of drink or drugs, which has a maximum sentence of 14 years.
- In 2007 the Road Safety Act 2006 increased the maximum sentence for careless driving, s3 RTA 1988, from a level 4 fine to a level 5 fine and created the offence of causing death by careless driving, s2B RTA 1988 with a maximum sentence of five years.
- In 2008 The Road Safety Act 2006 introduced the offence of causing death by unlicensed, disqualified or uninsured driving with a maximum of 2 years, s3ZB RTA 1988.
- In 2015 The Criminal Justice and Courts Act removed disqualified driving from s3ZB RTA 1988 and created a new offence of causing death by disqualified driving with a maximum sentence of 10 years, s3ZC RTA 1988. It also created a new offence of causing serious injury by disqualified driving with a maximum sentence of four years, s3ZD RTA 1988.

Possession of knives:

- In 1988 the Criminal Justice Act 1988 (CJA 1988) created the offence of possession of an article with a blade/point in a public place, s139, with a maximum sentence of two years.
- In 1996 the Offensive Weapons Act 1996 inserted s139A CJA 1988 which created the offence of possession of an article with a blade/point on school premises, with a maximum sentence of two years.
- In 2007 the Violent Crime Reduction Act 2006 increased the maximum sentence for s139 CJA 1988 and s139A CJA 1988 from two years to four years.
- In 2012 the Legal Aid, Sentencing and Punishment of Offenders Act created s139AA CJA 1988, threatening with an article with a blade or point on school premises, with a maximum sentence of four years and a minimum sentence of six months.
- In 2015 a minimum sentence of at least 6 months for a repeat s139 or s139A CJA 1988 offence was introduced by the Criminal Justice and Courts Act 2015.
- There are parallel offences relating to possession of an offensive weapon, which have followed a similar pattern.

22. The effect of these incremental changes is twofold. First, they inevitably cause a degree of upward shift in sentences for those offences for which the maximum has been raised, or for which a minimum term has been specified. Second, it means that the messaging
coming from Parliament on sentencing is always that maximum sentences need to be raised – never lowered – and this helps contribute to a culture that normalises higher sentences more generally.

Further proposals for new offences or higher sentences

23. The above trend is likely to continue. Currently the Government has announced that it is considering bringing forward legislative proposals that would potentially increase penalties for some terrorism offences. Similarly, as it prepares to make revisions to its Assault guideline, the Council has been noting the progress of the Assaults on Emergency Workers (Offences) Bill, which proposes increased maximum sentences for assaults on emergency workers.

Perceived lack of confidence in non-custodial options

24. Currently we are going through a period where we hear of a lack of confidence in some non-custodial sentence options, no doubt exacerbated by coverage of the perceived failings of some aspects of the CRC regime. In addition, there is lack of awareness of community orders amongst the public and a perception that they are in some way a ‘soft touch’. Many community orders will in fact have onerous conditions attached to them with elements that are punitive in nature. But sentencers minded to hand down a community order will want to know that the quality of any associated programme is high; that offenders will be properly and fully supervised; and that, where the terms of the sentence are not complied with, that the offenders will be brought back promptly to court. For those cases on the cusp of custody, increased confidence in non-custodial sentence options may well result in a reduction of custodial sentences being given.

25. The Sentencing Council has taken what steps it can to encourage best practice in this area with the publication of its Imposition of Community and Custodial Sentences Definitive Guideline and on its forthcoming Breach Offences Guideline.

Expansion of the Unduly Lenient Sentences scheme

26. A further factor is likely to be the increased use of the Unduly Lenient Sentences (ULS) scheme. Originally introduced in 1988, this allows the Attorney General to refer cases to the Court of Appeal for reconsideration of the sentence handed down if he or she considers it unduly lenient. Over the years Government has added greater numbers of offences to the scheme. There is a clear impact on those individual sentences that may be uplifted (press reports cited ‘record numbers’ of sentences increased via the ULS in the last reporting year) but the effect is likely broader than this given that, in appropriate cases, the Court of Appeal may well use a case brought to them under the ULS scheme to set a precedent for future cases.

Case mix

27. In terms of non-legislative factors, the case mix coming before the courts has shifted in recent years and we are now seeing a trend towards more serious offences coming before them – particularly in relation to sexual offences, drug offences, and violent offences against the person. These types of offence tend to attract higher sentences and a shift in proportion to more of these offences will lead to higher numbers of offenders being
sentenced to custody and for longer. But within each broad offence category there have also tended to be increases in the average length of custodial sentence handed down, suggesting that within each type of offending there is also an additional shift towards more serious cases coming through the system.

**Overall Effect**

28. Overall, these factors all pull in one direction: towards a greater number of offenders receiving an immediate custodial sentence and for the sentences imposed to be longer. It is difficult to say which of the range of factors above are the most relevant, or how much one may exacerbate or influence the others. Certainly, with the exception of the abolition of IPPs, there appear to be few significant influences in recent years that are acting downwards on the sentenced prison population. Quite aside from the cumulative impact each of the above factors has on increasing sentence lengths, together they contribute to a consistent overarching narrative that normalises the imposition of longer prison sentences.

**The Role of the Council in influencing the make-up of the prison population**

29. There is a question about the extent to which the guidelines issued by the Sentencing Council have influenced, or ought to have influenced, the current make-up of the prison population. The Council is aware that there is a view that, during a period when – for whatever reason – sentence lengths have increased, it ought to have taken on an explicit role in ‘damping down’ any inflationary pressures. But this is not the Council’s role. The Council does have a duty to have regard to the cost and effectiveness of sentencing. This it does and each guideline is accompanied by a resource assessment of its likely impact on the prison population. But the Council is mindful, when producing its guidelines, that there are a number of statutory aims of sentencing and its guidelines must have regard to the ‘effectiveness’ of sentencing in meeting all those aims. Absent an explicit statutory remit, the Council is of the strong view that were it to seek, artificially and unilaterally, to raise or lower sentence levels without good cause – whether in general or for specific offences – it would rapidly lose the confidence of sentencers, a broad range of public opinion, and no doubt a significant body of opinion within Parliament.

30. The Council does of course have a role in ensuring that the imposition of sentences is in line with statutory requirements. Thus, the Council’s ‘Imposition’ guideline reflects that the statutory threshold for a custodial sentence is high and that a custodial sentence must not be imposed unless the court is of the view that the offence (or combination of the offence and one or more offences associated with it) was so serious that neither a fine alone, nor a community sentence, could be justified. Similarly, the Council’s Sentencing Children and Young People Guideline makes clear that, for children and young people in particular, a custodial option can only be imposed as a measure of last resort. It also makes clear that, when sentencing, the court must have regard to the principal aims of the youth justice system of reducing reoffending and to the welfare of the child or young person involved.

31. The Council will therefore rarely approach the drafting of a new offence-specific guideline with an explicit intention to change overall current sentencing practice to make sentencing for those offences more or less ‘severe’. The overarching aims that the Council tends to have in mind when approaching new guidelines are those of consistency
and transparency, and the Council does not generally see its role as being to ‘push’ average sentences one way or another. That is not to say that, on occasion, it has not been led by the evidence to frame some guidelines in such a way as to encourage some form of shift. For example, the Environmental and Health and Safety Offences guidelines put in place very harsh financial penalties for the most serious types of offending than had previously been the case. Conversely, the ‘Drugs’ guideline proposed more lenient sentences for so called ‘drug mules’ after the Council was persuaded that very often such offending was as a result of very serious coercion or manipulation of the persons concerned. Nonetheless, such departures from existing practice are rare.

What impact have Sentencing Council guidelines issued to date had on the make-up and size of the current prison population?

32. The Council publishes a resource assessment each time it publishes a guideline to assess the potential impact on correctional resources. Often, given the difficulty of making precise predictions, this assessment will take the form of a range of potential predicted outcomes. As outlined above, the Council generally intends its guidelines to reflect current practice rather than change sentence levels significantly and it would therefore be rare for an assessment to predict a substantial change.

33. Once in force, the Council then evaluates the guideline to provide an assessment of whether it is having the intended impact on sentencing outcomes, as predicted by the initial resource assessment, or whether there are any other implementation issues. The evaluations employ a methodology that compares data from before a guideline came into force with data from after. Evaluations therefore help distinguish between the normal fluctuations inherent in all sentencing data, and changes in sentencing that can reasonably be attributed to the new guideline. In this way, it is possible to assess whether it was likely that the observed changes would have occurred if no guideline had been released.

34. However, the evaluations do not account for fluctuations in the average severity of sentencing over time due to changes in practice which are unrelated to guidelines – e.g. the changing number and seriousness of cases coming before courts, changes in charging practice etc. To help understand this, one can look at the custody rate and the average custodial sentence length (ACSL), both for offences covered by Sentencing Council guidelines and those not covered by guidelines. This can provide information on how the custody rate and ACSL might have changed over time for a range of different offences. It is important to be clear that this analysis is still not able fully to isolate the effect of other, non-guideline, related factors on the prison population so the analysis provided below is indicative.

35. To date, the Council has produced evaluations on three of the earliest guidelines that it has published: assault, burglary, and environmental offences. These evaluations indicate that in some areas the guidelines appear to have had an impact on sentencing both in terms of increasing some sentence lengths and decreasing others. Where those impacts are different to those that the Council expected in the initial resource assessment, the Council has committed to reviewing those guidelines. More detail on these evaluations is provided below.

36. Significant further work is currently ongoing to evaluate the other guidelines that the Council has produced. Fieldwork and analysis for a number of guidelines has been
completed and the final reports are now being finalised and quality assured prior to publication. Those next in line to be published include the guidelines covering: drug offences; sexual offences; fraud; theft offences; health and safety offences; robbery; and the overarching guideline on the allocation of cases. Two other overarching guidelines, guilty plea and imposition, have been published more recently. These guidelines could potentially have a much wider impact than an offence-specific guideline might have. The Council has therefore commissioned some early analysis, in advance of the full evaluations, in order to identify any early issues that those guidelines might throw up. For the guilty plea guideline in particular, a working group has been set up, buttressed by a virtual panel of solicitors, to provide evidence from the ground as to how it is operating in practice and what impact it is having. Were these early findings to indicate that it is having a significant unintended impact, the Council would consider revisiting the guideline sooner than would usually be the case.

Overall trends

37. The overall custody rate for adult offenders has changed only very slightly from 2006 to 2016, starting at 7% in 2006, increasing slightly to 8% in 2010, and decreasing back to 7% in 2015, remaining stable thereafter. However, for indictable only and triable either way offences, the rate increased by 5 percentage points overall to 32% in 2016 - the highest rate of the last decade.

Offences for which there is no Sentencing Council guideline\(^5\)

38. A number of offences not currently covered by a Sentencing Council guideline have seen increases in both the custody rate and ACSLs. Particularly notable increases have been seen for possession of or threatening with a bladed article (an increase in the custody rate from 20% in 2006 to 36% in 2016, and in the ACSL from 3.3 months to 6.6 months) and possession of or threatening with an offensive weapon (an increase in the custody rate from 16% in 2006 to 30% in 2016, and in the ACSL from 4.9 months to 6.9 months). Other offences have also seen increases in their custody rates, including dangerous driving (from 40% in 2006 to 46% in 2016) and perverting the course of justice\(^6\) (from 41% in 2006 to 54% in 2016). For some of the most serious offences, where the majority of offenders receive an immediate custodial sentence, the ACSL has been increasing, such as manslaughter\(^7\) (from 5.6 years in 2006 to 9.6 years in 2016) and attempted murder (from 11.8 years to 15.8 years). This indicates an overall propensity for increased custodial sentencing, over and above the influence of any sentencing guideline.

Assault

39. For the five highest volume assault offences covered by the guideline\(^8\), the overall custody rate has remained fairly stable from 2006 to 2016 fluctuating at around 20%;

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\(^6\) Perverting the course of justice includes offences such as intimidating, threatening or harming a witness or juror, and a member of the jury carrying out/sharing research.

\(^7\) In the dataset, this includes the offences of ‘Manslaughter’ and ‘Manslaughter due to diminished responsibility’.

\(^8\) Includes adult offenders sentenced for wounding with intent to cause grievous bodily harm, wounding/inflicting grievous bodily harm, assault occasioning actual bodily harm, common assault or beating (including...
however, the ACSL has risen from 0.88 years to 1.11 years.\textsuperscript{10} This suggests that whilst the proportion of offenders receiving custody has not changed considerably over time, for those who are sentenced to custody, the length of this has increased.

40. The Council’s evaluation indicated an overall drop in sentencing severity for assault offences. This is likely to be due to the downward impact of the guideline on common assault, which makes up the largest group of assault offences and where there were fewer Suspended Sentence Orders (SSOs) and Community Orders (Cos) and more fines and discharges.

41. However, for GBH with intent, there was a rise in the average custodial sentence length of 17\% in the 12 months after the guideline came in, compared with the 12 months before (5.9 to 6.9 years and the proportion of sentences over 7 years increased). For ABH (s47), there was greater use of custody (both immediate and suspended) and less use of community orders.

42. As a result of the findings, the guideline is due to be revised, with work starting in spring 2018.

\textit{Burglary}

43. The custody rate for burglary\textsuperscript{9} increased from 49\% in 2006 to 64\% in 2016 and the ACSL increased from 1.5 to 1.8 years over the same period.\textsuperscript{10} This reflects steady increases over the decade, both before and after implementation of the guideline. This suggests the guideline was unlikely to be the only factor impacting on the prison population (for example, in relation to domestic burglary, the third strike sentencing provisions may have had an effect and the proportion of offenders to which this applies has been increasing over recent years). In addition, for all offences, the changing use of COs and SSOs as a result of the LASPO Act 2012, may have contributed.

44. The Council’s evaluation of the burglary guideline does, however, suggest that the guideline has contributed slightly to increasing sentences. This is particularly the case for non-domestic burglary offences, with the increase in severity being primarily driven by an increase in severity in magistrates’ courts, where both the ACSL (from 4 months to 4.5 months before and after the guideline’s introduction) and the custody rate (30\% to 37\%) have been increasing.

45. For domestic burglary, the guideline may also have had a slight effect on increasing severity, largely as a result of Crown Court cases, which comprise the majority of domestic burglary cases. Here, ACSLs have been increasing from 2 years 10 months in

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\textsuperscript{9} Includes adult offenders sentenced for domestic burglary, non-domestic burglary and aggravated burglary. \\
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2010 to 3 years 2 months in 2015 (prior to any guilty plea reduction). In addition, the use of COs has generally been decreasing, while the use of SSOs has been increasing.

46. As a result of the findings, the guideline is due to be revised, with work starting in Summer 2018.

Environmental offences

47. Environmental offences do not largely impact on the prison population as the majority of offences involve organisations, for which the penalty is a fine. The Council has, however, conducted an evaluation of this guideline which indicates that for organisations, the guideline appears to have had the effect anticipated, as some organisations have received higher fines since the guideline came into force.

48. The anticipated increase in fines for some individuals has not transpired; however, this may be due to the type of offences coming before the courts. A small sample of data collected by the Environment Agency also shows that most cases were sentenced within the appropriate guideline category range, implying that the guideline is generally being applied in the manner intended.

49. Due to data issues, it is difficult to conclude definitively whether the guideline has had the effect anticipated. In addition, the removal of the cap on magistrates’ fining powers in March 2015 is another factor which may have affected fine amounts imposed.

50. As a result of the findings the Council is continuing to keep this guideline under review and will consider revising it if further evidence suggests it is necessary.

February 2018