



New Park Court

## Criminal Briefing

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# Criminal Briefing

by Helen Chapman



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## The Sentencing Act 2026: Policy, Purpose and Practical Impact

The Sentencing Act 2026 marks a significant development in sentencing policy in England and Wales. Emerging from the Independent Sentencing Review chaired by David Gauke, the legislation forms part of a broader governmental attempt to address mounting pressure on the prison estate while maintaining public confidence in the criminal justice system.

Although the Act does not radically restructure sentencing law, it introduces a number of reforms which reflect a clear shift in emphasis: away from short periods of imprisonment and towards more structured supervision in the community, alongside changes to the management of offenders in custody.

For criminal barristers and solicitors and those working alongside the criminal courts, the Act is best understood not simply as a technical amendment to sentencing powers, but as an expression of a wider policy direction.

### The Problem of Short Custodial Sentences

One of the central drivers behind the reforms is the long-recognised problem of short custodial sentences. A substantial body of research has suggested that sentences of a few weeks or months rarely provide meaningful opportunities for rehabilitation. Offenders may lose employment, housing and family stability while in custody, yet receive little in the way of structured intervention before release.

At the same time, the prison population in England and Wales has continued to operate close to capacity. Short sentences contribute to a constant cycle of reception and release which places considerable strain on both prisons and probation services.

Against this background, the Act introduces a presumption against immediate custodial sentences of 12 months or less, encouraging courts to suspend such sentences where appropriate. The intention is not to remove custody entirely from the sentencing framework, but to ensure that imprisonment is reserved for cases where it is genuinely necessary.

The reform reflects an increasing policy consensus that community-based sentences can, in many cases, achieve better long-term outcomes in terms of reducing reoffending.



### Strengthening Community Sentences

If short custodial sentences are to be used less frequently, community sentences must command sufficient confidence to act as a credible alternative. A second objective of the Act is therefore to strengthen the tools available to the courts when imposing community orders.

The legislation expands the range of possible requirements, including the use of restriction zones, exclusion from specified premises, and wider use of electronic monitoring. These measures allow courts to tailor sentences more closely to the circumstances of the offence and the offender.

The policy rationale is twofold. First, such requirements can provide visible and enforceable punishment without the disruptive consequences of short imprisonment. Secondly, they enable a more targeted response to offending behaviour, particularly where offences are linked to particular locations, patterns of association, or lifestyle factors.

In this respect, the reforms reflect an attempt to balance punishment, deterrence and rehabilitation, rather than privileging one purpose of sentencing over another.

### Deferred Sentencing and Behavioural Change

Another measure designed to encourage rehabilitation is the extension of the deferred sentencing power. Courts may now defer sentence for up to twelve months, rather than the previous six.

This mechanism allows a court to observe whether a defendant is capable of making meaningful changes — for example, by engaging with treatment, maintaining employment, or avoiding further offending — before determining the final sentence.

The underlying philosophy is that sentencing should sometimes operate as a catalyst for behavioural change, rather than merely a retrospective punishment for past conduct.

### Incentivising Conduct in Custody

While much of the Act focuses on alternatives to imprisonment, it also addresses the management of offenders within the prison system.

The legislation introduces elements of an earned progression model, linking aspects of release more closely to behaviour in custody. Prisoners who comply with prison rules and engage constructively with rehabilitation programmes may progress more quickly through the custodial system, while those who engage in misconduct may face longer periods before release.

The objective is to encourage prisoners to participate in rehabilitation and maintain discipline within prisons, while also reinforcing the principle that release should be linked to risk management and engagement with reform.

### Recognition of Domestic Abuse

A further provision allows sentencing courts to make a formal finding that an offence involved domestic abuse, even where the offence itself is not charged as such.



The purpose of this measure is largely administrative but potentially significant. Formal recognition of domestic abuse behaviour allows criminal justice agencies to identify perpetrators more reliably, ensuring that appropriate monitoring, risk management and support for victims can follow.

It reflects a broader shift within the justice system towards improved identification and tracking of domestic abuse offenders across different stages of the criminal process.

### A System Under Pressure

Taken together, the reforms contained in the Sentencing Act 2026 illustrate the competing pressures currently facing the criminal justice system.

On the one hand, there remains strong political and public emphasis on punishment and public protection. On the other, the practical constraints of prison capacity and the persistent challenge of reoffending have prompted renewed attention to the effectiveness of community-based interventions.

The Act therefore represents an attempt to reconcile these pressures by encouraging greater use of community supervision while maintaining mechanisms designed to ensure accountability and public safety.

### Conclusion

The Sentencing Act 2026 does not radically alter the structure of sentencing law, but it signals a clear change in emphasis within the criminal justice system. Short custodial sentences are increasingly viewed as a blunt and often ineffective tool, while greater weight is placed on structured supervision, targeted restrictions and rehabilitation.

Whether these reforms achieve their intended objectives will depend in large part on the resources available to probation services and the capacity of the wider criminal justice system to deliver effective community supervision.

What is plain is that the Act reflects a broader policy shift: one that seeks to balance punishment with a more pragmatic focus on reducing reoffending and managing limited custodial resources.