

CRIMINAL LAW UPDATE



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Suspended Sentences

Should sentences of up to three years be suspendable?

The most recent update of the Independent Sentencing Review was published on 22nd May 2025 and addresses a number of issues, in particular highlighting the current pressures the prison estate is under in England and Wales and what could potentially be done to alleviate that.

At present, of course, only sentences of up to two years' imprisonment are capable of suspension, for the same period of up to two years; the Review gives consideration to the possibility of extending that upper limit of the term of imprisonment to three years (the operational period would remain at a maximum of two years).

It is a broadly spoken-about problem, and indeed a common theme of mitigation over recent years, that the prison estate in England and Wales is stretched to bursting; the case of *Ali* [2023] EWCA Crim 232 was such that the Court of Appeal effectively told Judges to have regard to the prison estate in sentencing. The Review suggests that England and Wales have one of the highest per capita incarceration rates in Western Europe. It is clear that the prison population needs to be reduced and its current rapid growth slowed.

Certainly, extending the maximum sentence that can be suspended to up to three years would go some way to alleviating that problem and mean that far more sentences would be capable of being served in the community as opposed to in custody.

However, there is an argument that it would merely exchange one problem for another: the Probation Service is under equal pressure at the moment with pre-sentence reports taking at least four weeks in the local [Devon and Cornwall] Crown Courts and up to eight in the local Magistrates' Courts. More offenders receiving suspended sentences would add pressure to that problem.

That being said, looking forward to the more long-term results of any prospective sentences, there is much to be said in favour of extending the upper limits of SSOs to three years. A Ministry of Justice analysis found that short sentences of immediate custody were not as effective as suspended sentence orders/community orders in preventing reoffending: those serving short sentences of a few weeks or months are more likely to reoffend upon release. Although there are many rehabilitative classes and programmes available to prisoners, the shorter the sentence of imprisonment, the less likely they are to be able to engage effectively with those services before release.

Therefore, although greater numbers of suspended sentences being imposed may create more work in the short term for the Probation Service, the long-term effect could well be that the number of re-offenders is, overall, reduced, thereby reducing the pressure on both the Probation Service and the prison estate.

The Review also explores ways in which sentencing courts could become more creative in their approach to community-based sentences and make them more punitive, so that they become more robust alternatives to immediate custody and therefore remain a deterrent to offenders.

For example, it refers to utilising the ability to impose significant fines more frequently where appropriate, or if such a thing were to be introduced in the near future, internet-based restrictions such as social media bans. In an evolving age where more and more offending is internet-based and linked to social media, (i.e. offences such as malicious communications, harassment and 'revenge porn'), this could prove to be particularly effective. In a world where many people spend a lot of time online, this could be more punitive than a curfew to some individuals.

Further, consideration is given to extending the length of deferred sentences. Sentences can currently be deferred, or postponed, for up to six months following conviction (per s.5(2) Sentencing Act 2020). They are generally utilised to allow an

offender to demonstrate that they can change their circumstances or avoid any further offending, essentially making themselves a more likely candidate for a community sentence; almost like a trial run. It is also of note that under s.4 Sentencing Act 2020, an offender must consent to a deferred sentence, and undertake to perform the rehabilitative elements.

The recommendation currently in the pipeline is for the six-month maximum to be extended to one of twelve months. Extending the length of time a sentence can be deferred, and indeed encouraging courts to utilise them more frequently, could prove to be more effective than increasing the upper limit of a suspended sentence order to three years. Deferred sentences provide the same opportunity for offenders to demonstrate meaningful changes or rehabilitation, but independently. Demonstrating an ability to make changes themselves may result in an eventual shorter or less onerous sentence. A further benefit of this change could be the fact it would give those subject to deferred sentences who are in employment more time to accumulate funds to go towards compensation, if relevant.

In summary, it is clear that some degree of reform is required in England and Wales to reduce the current pressure on the prison system, whether that be by the extension of suspended sentences or an increase in the length of time a sentence can be deferred. Both the proposed changes are realistic and workable amendments which could make a positive difference to the burden on the prison estate at present.

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