Sentencing Council

Sentencing Council meeting:	**22 July 2022**
Paper number:	**SC(22)JUL04 – Miscellaneous Amendments**
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1 ISSUE

1.1 This is the third of three meetings to discuss the miscellaneous amendments prior to consultation in September. The responses to the consultation will be discussed in December and January to enable any changes agreed upon to be made on 1 April 2023.

2 RECOMMENDATION

2.1 The Council is asked to consider what if any action should be taken in relation to the matters set out in the paper and whether these should be consulted on as part of the miscellaneous amendments consultation.

3 CONSIDERATION

Changes to the Sentencing children and young people guideline

3.1 The Police, Crime, Sentencing and Courts Act 2022 (PCSC) makes changes to detention and training orders (DTOs) and youth rehabilitation orders (YROs). Stephen Leake has made some helpful suggestions for this section of the paper.

3.2 For offences **sentenced** on or after 28 June 2022, section 158 PCSC removes the fixed lengths of DTOs so that any length of DTO from 4 months up to 24 months can be given. Section 160 and Schedule 16 makes time spent on remand or on qualifying bail credited as time served rather than being taken into account when setting the length of the DTO (as it was previously).

3.3 The 'Custodial sentences' part in section six of the Children and young people guideline needs to be amended to take account of this change. The opening paragraph currently reads:

> **A custodial sentence should always be used as a last resort. If offence specific guidelines for children and young people are available then the court should consult them in the first instance to assess whether custody is the most appropriate disposal.**
>
> The available custodial sentences for children and young people are:

Youth Court	Crown Court
Detention and training order for the following periods: • 4 months; • 6 months; • 8 months; • 10 months; • 12 months; • 18 months; or • 24 months.	• Detention and training order (the same periods are available as in the youth court) • Long-term detention (under section 250 Sentencing Code) • Extended sentence of detention or detention for life (if dangerousness criteria are met) • Detention at Her Majesty's pleasure (for offences of murder)

3.4 This could be updated by changing the wording in the first column to:

- Detention and training order for at least 4 months but not more than 24 months

3.5 At present the version of the Sentencing Code on legislation.gov.uk has not been updated with these changes, but once it has, a link could be added: (section 236 of the Sentencing Code).

3.6 A further proposed change to this table is to add the following to each column:

- Required special sentence of detention for terrorist offenders of particular concern (under section 252A of the Sentencing Code)

3.7 In the section headed: **Detention and training order (DTO)** the following paragraph requires amendment:

> 6.53 A DTO can be made only for the periods prescribed – 4, 6, 8, 10, 12, 18 or 24 months. Any time spent on remand in custody or on bail subject to a qualifying curfew condition should be taken into account when calculating the length of the order. The accepted approach is to double the time spent on remand before deciding the appropriate period of detention, in order to ensure that the regime is in line with that applied to adult offenders.[35] After doubling the time spent on remand the court should then adopt the nearest prescribed period available for a DTO.

3.8 Following amendment by the PCSC, section 240ZA of the Criminal Justice Act 2003, now reads:

> **240ZA Time remanded in custody to count as time served: terms of imprisonment or detention and detention and training orders**
>
> (1) This section applies where—
>
> (a) an offender is serving a term of imprisonment in respect of an offence, and

(b) the offender has been remanded in custody (within the meaning given by section 242) in connection with the offence or a related offence.

(1A) This section also applies where—

(a) a court, on or after the day on which Schedule 16 to the Police, Crime, Sentencing and Courts Act 2022 came into force, makes a detention and training order in respect of an offender for an offence, and
(b) the offender concerned has been remanded in custody in connection with the offence or a related offence.

(1B) In this section any reference to a *"sentence"* , in relation to an offender, is to—

(a) a term of imprisonment being served by the offender as mentioned in subsection (1)(a), or
(b) a detention and training order made in respect of the offender as mentioned in subsection (1A)(a).

(2) It is immaterial for subsection (1)(b) or (1A)(b) whether, for all or part of the period during which the offender was remanded in custody, the offender was also remanded in custody in connection with other offences (but see subsection (5)).

(3) The number of days for which the offender was remanded in custody in connection with the offence or a related offence is to count as time served by the offender as part of the sentence. But this is subject to subsections (4) to (6).

(4) If, on any day on which the offender was remanded in custody, the offender was also detained in connection with any other matter, that day is not to count as time served.

(5) A day counts as time served—

(a) in relation to only one sentence, and
(b) only once in relation to that sentence.

(6) A day is not to count as time served as part of any automatic release period served by the offender (see section 255B(1))

(6A) Where a court has made a declaration under section 327 of the Sentencing Code in relation to the offender in respect of the offence, this section applies to days specified under subsection (3) of that section as if they were days for which the offender was remanded in custody in connection with the offence or a related offence.

(7) For the purposes of this section a suspended sentence—

(a) is to be treated as a sentence of imprisonment when it takes effect under paragraph 13(1)(a) or (b) of Schedule 16 to the Sentencing Code, and
(b) is to be treated as being imposed by the order under which it takes effect.

(8) In this section *“related offence”* means an offence, other than the offence for which the sentence is imposed (“offence A”), with which the offender was charged and the charge for which was founded on the same facts or evidence as offence A.

(8A) Subsection (9) applies in relation to an offender who is sentenced to two or more consecutive sentences or sentences which are wholly or partly concurrent if—

(a) the sentences were imposed on the same occasion, or
(b) where they were imposed on different occasions, the offender has not been released during the period beginning with the first and ending with the last of those occasions.

(9) For the purposes of subsections (3) and (5), the sentences are to be treated as a single sentence.

(10) The reference in subsection (4) to detention in connection with any other matter does not include remand in custody in connection with another offence but includes—

(a) detention pursuant to any custodial sentence;
(b) committal in default of payment of any sum of money;
(c) committal for want of sufficient distress to satisfy any sum of money;
(d) committal for failure to do or abstain from doing anything required to be done or left undone.

(11) This section applies to a determinate sentence of detention under section 91 or 96 of the PCC(S)A 2000, under section 250, 252A, 254, 262, 265, 266 or 268A of the Sentencing Code or under or section 226A, 226B, 227, 228 or 236A of this Act as it applies to an equivalent sentence of imprisonment.

3.9 Section 242 Criminal Justice Act 2003 reads:

242 Interpretation of sections 240ZA, 240A and 241

(1) [NOT REPORDUCED].

(2) References in sections 240ZA and 241 to an offender's being remanded in custody are references to his being—

(a) remanded in or committed to custody by order of a court,
(b) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
(c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.

(3) In sections 240ZA and 240A, "detention and training order" has the meaning given by section 233 of the Sentencing Code.

3.10 The effect of this is that time spent on remand in custody (but not to local authority accommodation) prior to the imposition of a DTO is automatically deducted and the sentencing court no longer needs to make an adjustment. The court will be required to consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code (as is the case with adult offenders).

3.11 The proposal is to amend paragraph 6.53 to read:

> For cases sentenced on or after 28 June 2022, any time spent on remand in custody to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will automatically be taken into account under section 240ZA of the Criminal Justice Act 2003 and does not need to be deducted from the length of the order. The court must consider whether to give credit for time spent on bail subject to a qualifying curfew in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.
>
> A remand to local authority accommodation under section 91(3) of the 2012 Act is neither a remand in custody for the purposes of section 240ZA of the 2003 Act nor a remand on bail for the purposes of section 240A of the 2003 Act and section 325 of the Sentencing Code. Therefore, if the offender was subject to a qualifying curfew while remanded to local authority accommodation the relevant credit should be given by the court by reducing the sentence as if a direction under section 240 or 325 had been given.

3.12 As these changes apply immediately it may be preferable to make them now, without consulting and add them to the annex of changes made in the consultation document. However, some of the proposed changes (highlighted in yellow at 3.6 and 3.11) are not entirely straightforward or uncontroversial and the Council may consider it appropriate to consult on these.

Question 1: Does the Council agree to the proposed amendments to the C&YP guideline (at 3.4, 3.6 and 3.11) relating to custodial sentences and which changes should be made without consulting?

3.13 A further change is required in respect of DTOs in the Guilty pleas section of the guideline. Paragraph 5.9 currently reads:

> 5.9 A detention and training order (DTO) can only be imposed for the periods prescribed – 4, 6, 8, 10, 12, 18 or 24 months. If the reduction in sentence for a guilty plea results in a sentence that falls between two prescribed periods the court must impose the lesser of those two periods. This may result in a reduction greater than a third, in order that the full reduction is given and a lawful sentence imposed.

3.14 This could be amended to read:

> 5.9 A detention and training order (DTO) must be for a term of at least 4 months but must not exceed 24 months. If the reduction in sentence for a guilty plea results in a sentence that falls below 4 months a non-custodial sentence should be imposed.

3.15 This would reflect what is said later in the guideline:

> 6.43 The term of a custodial sentence must be the shortest commensurate with the seriousness of the offence; any case that warrants a DTO of less than four months must result in a non-custodial sentence. The court should take account of the circumstances, age and maturity of the child or young person.

3.16 Again, it is proposed that this change could be made without consultation.

Question 2: Does the Council agree to make the proposed amendment to the C&YP guideline (at 3.14) relating to guilty pleas without consulting?

3.17 In respect of YROs, the guideline lists the available requirements:

6.27 The available requirements within a YRO are:

- activity requirement (maximum 90 days);
- supervision requirement;
- unpaid work requirement (between 40 and 240 hours);*
- programme requirement;
- attendance centre requirement (maximum 12 hours for children aged 10–13, between 12 and 24 hours for young people aged 14 or 15 and between 12 and 24 hours for young people aged 16 or over (all ages refer to age at date of the finding of guilt);
- prohibited activity requirement;
- curfew requirement (maximum 12 months and between 2 and 16 hours a day);
- exclusion requirement (maximum 3 months);
- electronic monitoring requirement;
- residence requirement;*
- local authority residence requirement (maximum 6 months but not for any period after young person attains age of 18);
- fostering requirement (maximum 12 months but not for any period after young person attains age of 18);**
- mental health treatment requirement;
- drug treatment requirement (with or without drug testing);
- intoxicating substance requirement;
- education requirement; and
- intensive supervision and surveillance requirement.**

* These requirements are only available for young people aged 16 or 17 years old on the date of the finding of guilt.

** These requirements can only be imposed if the offence is an imprisonable one AND the custody threshold has been passed. For children and young people aged under 15 they must be deemed a persistent offender.

Many of the above requirements have additional restrictions.

Magistrates, always consult your legal adviser before imposing a YRO.

3.18 Section 161 and Schedule 17(4) PCSC amends para 18 of Schedule 6 to the Sentencing Code which now reads:

18 Curfew requirement

(1) In this Code *"curfew requirement"*, in relation to a youth rehabilitation order, means a requirement that the offender must remain, for particular periods ("curfew periods"), at a particular place.

(2) A youth rehabilitation order which imposes a curfew requirement must specify—

(a) the curfew periods, and

(b) the place at which the offender must remain for each curfew period.

(3) Different places or different curfew periods may be specified for different days.

(4) The curfew periods must amount to—

(a) not less than 2 hours in any day,

(b) not more than the relevant number of hours in any day, and

(c) not more than 112 hours in any period of 7 days beginning with the day of the week on which the requirement first takes effect.

(4A) In sub-paragraph (4)(b), *"the relevant number of hours"* —

(a) in relation to a youth rehabilitation order in respect of an offence of which the offender was convicted before the day on which paragraph 19 of Schedule 17 to the Police, Crime, Sentencing and Courts Act 2022 came into force, means 16 hours, and

(b) in relation to a youth rehabilitation order in respect of an offence of which the offender was convicted on or after that day, means 20 hours.

(5) The specified curfew periods must fall within the period of 12 months beginning with the day on which the requirement first takes effect.

3.19 This change could be accommodated by replacing the highlighted bullet point at 3.17 above with wording similar to that recently added to the Imposition guideline:

- curfew requirement (maximum 12 months);
  - for an offence of which the offender was convicted on or after 28 June 2022: 2–20 hours in any 24 hours; maximum 112 hours in any period of 7 days beginning with the day of the week on which the requirement first takes effect; or
  - for an offence of which the offender was convicted before 28 June 2022: 2-16 hours in any 24 hours

3.20 Amendments in Schedule 17(4) in relation to education requirements are also in force. It is not considered necessary to make any amendments in relation to them as they are infrequently made and the guideline does not currently give any details but directs the user to the statutory provisions by the words “Many of the above requirements have additional restrictions.”

Question 3: Does the Council agree to make the change proposed at 3.19 without consulting?

3.21 Section 162 PCSC abolishes reparation orders in respect of an offence for which an offender is convicted on or after 28 June 2022. Reparation orders are referenced in the following places in the guideline:

(At paragraph 6.10)

Sentences available by age

	Age of child or young person			
Sentence	**10-11**	**12-14**	**15-17**	**Rehabilitation period**
Absolute or conditional discharge or reparation order	√	√	√	Absolute discharge and reparation: spent on day of sentence Conditional discharge: spent on last day of the period of discharge

Absolute or conditional discharge and reparation orders

6.15 A reparation order can require a child or young person to make reparation to the victim of the offence, where a victim wishes it, or to the community as a whole. Before making an order the court must consider a written report from a relevant authority, e.g. a youth offending team (YOT), and the order must be commensurate with the seriousness of the offence.

6.16 If the court has the power to make a reparation order but chooses not to do so, it must give its reasons.

Breach of a reparation order

7.4 If it is proved to the appropriate court that the child or young person has failed to comply with any requirement of a reparation order that is currently in force then the court can:

- order the child or young person to pay a fine not exceeding £1,000; or
- revoke the order and re-sentence the child or young person using the range of sentencing options that are currently available. However the sentence imposed must be one that could be imposed on a child or young person who was the age that the offender was when in fact convicted.

If re-sentencing the child or young person the court must take into account the extent to which the child or young person has complied with the requirements of this order.

7.5 If the order was made by the Crown Court then the youth court can commit the child or young person in custody or release them on bail until they can be brought or appear before the Crown Court.

7.6 The child or young person or a Youth Offending Team (YOT) officer can also apply for the order to be revoked or amended. There is no power to re-sentence in this situation as the child or young person has not been found to be in breach of requirements.

3.22 In the short term it is proposed to reword paragraph 6.15 to read:

6.15 A reparation order is available only if the offender was **convicted of the offence before 28 June 2022**. It can require a child or young person to make reparation to the victim of the offence, where a victim wishes it, or to the community as a whole. Before making an order the court must consider a written report from a

relevant authority, e.g. a youth offending team (YOT), and the order must be commensurate with the seriousness of the offence

3.23 We could then consult on removing all or most of the references to reparation orders on the basis that by the time the changes are implemented in April 2023, there will be very few if any being made. It could be argued that the section on breach of a reparation order should be left in place for slightly longer – views could be sought on that point.

Question 4: Does the Council agree to make the change proposed at 3.22 without consulting?

Question 5: Does the Council agree to consult on whether to remove all references to reparation orders with effect from April 2023?

Other proposed changes

3.24 There has been a judgment giving guidance on the application of the guilty plea section of the C&YP guideline and the Council may feel it would be helpful to consult on referring to this in the guideline.

3.25 In R v B [2000] EWCA Crim 643 the court held that it will sometimes be appropriate to treat a young person as needing further information, assistance or advice before indicating their plea, and thereby to allow the maximum level of reduction for a guilty plea that was not entered at the first stage of the proceedings, even though it would not do so in the case of an adult.

3.26 The relevant paragraphs in the guideline are:

> 5.5 **Plea indicated at the first stage of the proceedings**: Where a guilty plea is indicated at the first stage of proceedings a reduction of **one-third** should be made (subject to the exceptions below). The first stage will normally be the first hearing in the magistrates' or youth court at which a plea is sought and recorded by the court.[21]
>
> **Exceptions**
>
> **Further information, assistance or advice necessary before indicating plea**
>
> 5.16 Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the child or young person's ability to understand what was alleged, or otherwise made it unreasonable to expect the child or young person to indicate a guilty plea **sooner than was done**, a reduction of one-third should still be made.

3.27 A sentence could be added to the end of para 5.16 such as:

> It may sometimes be appropriate to treat a child or young person as needing such information, assistance or advice, where it would not be needed in the case of an adult.

3.28 Alternatively a similarly worded footnote could be added to para 5.16 (and/or a reference to the case could be footnoted).

3.29 The same case also made it clear that the correct sequence when using an adult guideline to arrive at a sentence for a child or young person is to apply the appropriate reduction for youth, and then apply the guilty plea reduction. This could be accommodated by adding the highlighted sentence to the end of para 6.46:

> 6.46 When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence **the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age**. This reduction should be applied before any reduction for a plea of guilty.

Question 6: Does the Council agree to consult on the proposed changes to the C&YP guideline arising from case law?

Use of the word 'gang' in the bladed articles/offensive weapons guidelines

3.30 The Council has stopped using the word 'gang' in factors in guidelines because of the potential for this to disadvantage certain demographic groups. The Possession of a bladed article/offensive weapon, the Bladed articles and offensive weapons - threats and the Bladed articles and offensive weapons (possession and threats) - children and young people guidelines still have the following aggravating factor:

- Offence was committed as part of a group or gang

3.31 The factor in all three guidelines has the expanded explanation which reads:

> The mere membership of a group (two or more persons) should not be used to increase the sentence, but where the **offence was committed as part** of a group this will normally make it more serious because:
>
> - the **harm** caused (both physical or psychological) or the potential for harm may be greater and/or
> - the **culpability** of the offender may be higher (the role of the offender within the group will be a relevant consideration).
>
> Culpability based on role in group offending could range from:
>
> - Higher culpability indicated by a leading role in the group and/or the involvement by the offender of others through coercion, intimidation or exploitation, to

- Lower culpability indicated by a lesser or subordinate role under direction and/or involvement of the offender through coercion, intimidation or exploitation.

Courts should be alert to factors that suggest that an offender may have been the subject of coercion, intimidation or exploitation (including as a result of domestic abuse, trafficking or modern slavery) which the offender may find difficult to articulate, and where appropriate ask for this to be addressed in a PSR.

Where the offending is part of an organised criminal network, this will make it more serious, and the role of the offender in the organisation will also be relevant.

When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and/or lack of maturity when considering the significance of group offending.

3.32 It is proposed that the factor should be amended to:

- Offence was committed as part of a group

3.33 As this is now standard wording across guidelines it is proposed that the change can be made without consultation, and it can be added to the annex of changes to be included in the consultation document.

Question 7: Does the Council remove the word 'gang' from the bladed articles/ offensive weapons guidelines, without consultation?

Minimum terms for bladed article/ offensive weapon possession and threats offences

3.34 At the June meeting the Council agreed to consult on changes to possession and threats guidelines to take account of changes the threshold for passing a sentence below the minimum term for repeat offenders for certain offences from 'unjust in all the circumstances' to 'exceptional circumstances' for offences committed on or after 28 June 2022. In the interim a note has been added to the guidelines.

3.35 The recent case of Uddin [2022] EWCA Crim 751 clarifies a point of law relating to whether it is permissible to suspend a sentence imposed under the minimum term provisions.

3.36 The Court concluded (at para 25):

> it is lawful to impose a minimum sentence of imprisonment or detention in a young offender institution, pursuant to section 315, but to suspend it. Although not unlawful, however, we are also satisfied that suspending such a sentence will only rarely be appropriate, because in most cases the suspending of the sentence would undermine the punitive and deterrent effect which Parliament plainly intended the minimum sentencing provisions to have. There will be few circumstances in which a court concludes that the imposition of an appropriate custodial sentence would not be unjust but, notwithstanding the clear intention of Parliament, that the sentence can nonetheless be suspended.

3.37 Consideration has been given to adding a note to the Possession of a bladed article/offensive weapon and the Bladed articles and offensive weapons - threats guidelines setting out that it would be lawful to suspend the minimum term but it would rarely be appropriate. However, offence specific guidelines do not generally refer to suspended sentences and there is no obvious way of addressing the point in the guideline without appearing to encourage the practice of suspending the minimum term.

3.38 The wording the Council agreed to consult on for the possession guideline includes:

> **Step 3 – Minimum Terms – second or further relevant offence**
>
> When sentencing the offences of:
>
> - possession of an offensive weapon in a public place;
> - possession of an article with a blade/point in a public place;
> - possession of an offensive weapon on school premises; and
> - possession of an article with blade/point on school premises
>
> a court must impose a sentence of at least 6 months' imprisonment where this is a second or further relevant offence **unless:**
>
> - (If the offence was committed before 28 June 2022) **the court is of the opinion that there are particular circumstances relating to the offence, the previous offence or the offender which make it unjust to do so in all the circumstances**; or
> - (If the offence was committed on or after 28 June 2022) **the court is of the opinion that there are exceptional circumstances which relate to the offence or to the offender, and justify not doing so.**

3.39 Views are sought as to whether and how a reference could be added to the availability of suspending the sentence imposed.

Question 8: Should any further changes be made to the bladed article/ offensive weapon guidelines?

Life sentence for manslaughter of an emergency worker

3.40 At the June meeting the Council considered a proposal to amend the Unlawful act manslaughter guideline to take account of Section 3 of the PCSC which inserts a new s258A (re 16 and 17 year olds), s274A (re 18-20 year olds) and s285A (re 21 and older) in the Sentencing Code. The effect of this is that for unlawful act manslaughter where the victim is an emergency worker acting in that capacity, the court must impose a life sentence (unless there are exceptional circumstances). The proposal was to make only minimal changes to the guideline on the grounds that such cases will be very rare.

3.41 However, the Council felt that more guidance should be provided to sentencers on the consideration of exceptional circumstances in such cases. Accordingly the proposed changes have been amended (new wording in red):

- Firstly, adding the following to the header of the guideline (immediately before the text on the type of manslaughter):

  For offences committed on or after 28 June 2022, if the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court **must** impose a life sentence **unless** the court is of the opinion that there are exceptional circumstances which (a) relate to the offence or the offender, and (b) justify not doing so (sections 274A and 285A of the Sentencing Code). See step 3

- Secondly, in statutory aggravating factors at step 2, changing:

  Offence was committed against an emergency worker acting in the exercise of functions as such a worker

To:

  Offence was committed against an emergency worker acting in the exercise of functions as such a worker. NOTE: For offences committed on or after 28 June 2022, if the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court **must** impose a life sentence **unless** the court is of the opinion that there are exceptional circumstances which (a) relate to the offence or the offender, and (b) justify not doing so. (sections 274A and 285A of the Sentencing Code) see step 3

3.42 Then it is proposed to add a new step 3 to the guideline as follows:

Step 3 – Required sentence and exceptional circumstances

The following paragraphs apply to adult offenders – there is a separate dropdown section below for those aged under 18 at the date of conviction.

Required sentence

1. Where the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court **must** impose a life sentence **unless** the court is of the opinion that there are exceptional circumstances which (a) relate to the offence or the offender, and (b) justify not doing so (sections 274A and 285A of the Sentencing Code)**.**

Applicability

2. The required sentence provisions apply when a person is convicted of unlawful act manslaughter committed on or after 28 June 2022, the offender was aged 16 or over at the offence date and the offence was committed against an emergency worker acting in the exercise of functions as such a worker.

3. The circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying

out functions which, if done in work time, would have been in the exercise of functions as an emergency worker.

4. An emergency worker has the meaning given by section 68 of the Sentencing Code.

5. Where the required sentence provisions apply a guilty plea reduction applies in the normal way (see step 5 – Reduction for guilty pleas).

6. Where the required sentence provisions apply and a life sentence is imposed, the notional determinate sentence should be used as the basis for the setting of a minimum term to be served.

7. Where the required sentence provisions apply, this should be stated expressly.

Exceptional circumstances

8. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:

    - the particular circumstances of the offence **and**
    - the particular circumstances of the offender

    either of which may give rise to exceptional circumstances.

9. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see Criminal Practice Directions VII: Sentencing B.

10. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

11. Circumstances are exceptional if the imposition of the required sentence would result in an arbitrary and disproportionate sentence.

12. The court should look at all of the circumstances of the case taken together, including circumstances personal to the offender. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.

Where exceptional circumstances are found

13. If there are exceptional circumstances that justify not imposing the required sentence then the court should impose the sentence arrived at by normal application of this guideline**.**

Sentencing offenders aged under 18 at the date of conviction [Dropdown]

1. Where the offender is aged 16 or 17 **at the date of conviction**, the required sentence provisions apply only if the offender is aged 16 or over **when the offence was committed** and the offence was committed against an emergency worker acting in the exercise of functions as such a worker (section 258A of the Sentencing Code).

2. Subject to the required sentence provisions, where the offender is aged under 18 **at the date of conviction** the court should determine the sentence in accordance with the Sentencing Children and Young People guideline, particularly paragraphs 6.42-6.49 on custodial sentences.

3. This guidance states at paragraph 6.46: “When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age.”

4. The considerations above on exceptional circumstances relating to the offence or offender apply equally when sentencing offenders aged 16 or 17 at the date of the conviction.

3.43 The proposed wording reflects that in other guidelines (notably firearms and that proposed for terrorism) but omitting some of the wording designed to discourage overuse of exceptional circumstances.

Question 9: Does the Council agree to consult on the proposed additions to the unlawful act manslaughter guideline?

4 EQUALITIES

4.1 No significant issues relating to equality or diversity have been identified.

5 IMPACT AND RISKS

5.1 The impact of majority of the proposals in this paper (and those agreed previously) on prison or probation resources will be relatively minor. The most significant changes are those necessitated by legislative changes. The consultation will be accompanied by a narrative resource assessment which will be circulated to Council members in August.

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