

The wording on discretionary bans in the totting guidance see para 3.8 of paper

Current wording	Proposed wording
<p><u>Discretionary disqualification:</u> In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a ‘totting up’ disqualification if further points were imposed. In these circumstances, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies (see ‘totting up’).</p>	<p>Discretionary disqualification: In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a ‘totting up’ disqualification if further points were imposed. In these circumstances, unless the court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies (see ‘totting up’).</p>
<p><u>Totting up:</u> The court should first consider the circumstances of the offence, and determine whether the offence should attract a discretionary period of disqualification. But the court must note the statutory obligation to disqualify those repeat offenders who would, were penalty points imposed, be liable to the mandatory “totting” disqualification, and should ordinarily prioritise the “totting” disqualification ahead of a discretionary disqualification.</p>	<p>Totting up: The court should first consider the circumstances of the offence, and determine whether the offence should attract a discretionary period of disqualification. But the court must note the statutory obligation to disqualify those repeat offenders who would, were penalty points imposed, be liable to the mandatory “totting” disqualification and, unless the court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies.</p>

Default relevant weekly income amounts see para 3.13 of paper

Current wording	Proposed wording
<p><u>3. Definition of relevant weekly income</u></p> <p>Where there is no information on which a determination can be made, the court should proceed on the basis of an assumed relevant weekly income of £440. This is derived from national median pre-tax earnings*; a gross figure is used as, in the absence of financial information from the offender, it is not possible to calculate appropriate deductions.</p> <p>Where there is some information that tends to suggest a significantly lower or higher income than the recommended £440 default sum, the court should make a determination based on that information. A court is empowered to remit a fine in whole or part if the offender subsequently provides information as to means (Sentencing Code, s.127). The assessment of offence seriousness and, therefore, the appropriate fine band and the position of the offence within that band are not affected by the provision of this information.</p> <p>*(This figure is a projected estimate based upon the 2012-13 Survey of Personal Incomes using economic assumptions consistent with the Office for Budget Responsibility's March 2015 economic and fiscal outlook. The latest actual figure available is for 2012-13, when median pre-tax income was £404 per week details can be found in an HMRC report. (This link goes to an external website. It will not work if you are offline.))</p>	<p>Where there is no information on which a determination can be made, the court should proceed on the basis of an assumed relevant weekly income of £440.</p> <p>Where there is some information that tends to suggest a significantly lower or higher income than the recommended £440 default sum, the court should make a determination based on that information. A court is empowered to remit a fine in whole or part if the offender subsequently provides information as to means (Sentencing Code, s.127). The assessment of offence seriousness and, therefore, the appropriate fine band and the position of the offence within that band are not affected by the provision of this information.</p>
<p><u>5. Approach to offenders on low income</u></p> <p>An offender whose primary source of income is state benefit will generally receive a base level of benefit (for example, jobseeker's allowance, a relevant disability benefit or income support) and may also be eligible for supplementary benefits depending on his or her individual circumstances (such as child tax credits, housing benefit, council tax benefit and similar). In some cases these benefits may have been replaced by Universal Credit. If relevant weekly income were defined as the amount of benefit received, this would usually result in higher fines being imposed on offenders with a higher level of need; in most circumstances that would not properly</p>	<p>The income of an offender whose primary source of income is state benefit (for example, Universal Credit) will have an income related to their level of need. If relevant weekly income were defined as the amount of benefit received, this would usually result in higher fines being imposed on offenders with a higher level of need; in most circumstances that would not properly balance the seriousness of the offence with the financial circumstances of the offender. Similar issues can arise where an offender is in receipt of a low earned income since this may trigger eligibility for means related benefits such as Universal Credit. It will not always be possible to determine with any confidence whether such a person's</p>

balance the seriousness of the offence with the financial circumstances of the offender. While it might be possible to exclude from the calculation any allowance above the basic entitlement of a single person, that could be complicated and time consuming. Similar issues can arise where an offender is in receipt of a low earned income since this may trigger eligibility for means related benefits such as working tax credits and housing benefit depending on the particular circumstances. It will not always be possible to determine with any confidence whether such a person's financial circumstances are significantly different from those of a person whose primary source of income is state benefit.

For these reasons, a simpler and fairer approach to cases involving offenders in receipt of low income (whether primarily earned or as a result of benefit) is to identify an amount that is deemed to represent the offender's relevant weekly income.

While a precise calculation is neither possible nor desirable, it is considered that an amount that is approximately half-way between the base rate for jobseeker's allowance and the net weekly income of an adult earning the minimum wage for 30 hours per week represents a starting point that is both realistic and appropriate; this is currently **£120**. The calculation is based on a 30 hour working week in recognition of the fact that many of those on minimum wage do not work a full 37 hour week and that lower minimum wage rates apply to younger people.

With effect from 1 October 2014, the minimum wage is £6.50 per hour for an adult aged 21 or over. Based on a 30 hour week, this equates to approximately £189 after deductions for tax and national insurance. To ensure equivalence of approach, the level of jobseeker's allowance for a single person aged 18 to 24 has been used for the purpose of calculating the mid point; this is currently £57.90. The figure will be updated in due course in accordance with any changes to benefit and minimum wage levels.

financial circumstances are significantly different from those of a person whose primary source of income is state benefit. For these reasons, a simpler and fairer approach to cases involving offenders in receipt of low income (whether primarily earned or as a result of benefit) is to identify an amount that is deemed to represent the offender's relevant weekly income; this is currently **£120**.

Unlawful act manslaughter see para 3.18 of paper

Section 3 of the PCSC Act 2022 inserts new s258A (re 16 and 17 year olds), s274A (re 18-20 year olds) and s285A (re 21 and older) in the Sentencing Code.

285A Required life sentence for manslaughter of emergency worker

(1) This section applies where—

(a) a person aged 21 or over is convicted of a relevant offence,

(b) the offence was committed—

(i) when the person was aged 16 or over, and

(ii) on or after the relevant commencement date, and

(c) the offence was committed against an emergency worker acting in the exercise of functions as such a worker.

(2) The court must impose a sentence of imprisonment for life 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.

(3) For the purposes of subsection (1)(c) 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) In this section “relevant offence” means the offence of manslaughter, but does not include—

(a) manslaughter by gross negligence, or

(b) manslaughter mentioned in section 2(3) or 4(1) of the Homicide Act 1957 or section 54(7) of the Coroners and Justice Act 2009 (partial defences to murder).

(5) In this section—

“emergency worker” has the meaning given by section 68;

“relevant commencement date” means the date on which section 3 of the Police, Crime, Sentencing and Courts Act 2022 (required life sentence for manslaughter of emergency worker) comes into force.

(6) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

(7) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (1)(b) to have been committed on the last of those days.”

[Possession of a bladed article/offensive weapon guideline](#) see para 3.32 of paper

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 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.**

A 'relevant offence' includes those offences listed above and the following offences:

- threatening with an offensive weapon in a public place;
- threatening with an article with a blade/point in a public place;
- threatening with an article with a blade/point on school premises; and
- threatening with an offensive weapon on school premises.

Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offence or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offence(s) and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls far below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

Football Spectators Act 1989 c. 37 see para 3.52 of paper

Schedule 1 OFFENCES

para. 1

This Schedule applies to the following offences:

(a) any offence under [14J(1), 19(6), 20(10) or 21C(2)]² of this Act [or section 68(1) or (5) of the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) by virtue of section 106 of the [Policing and Crime Act 2009](#)]³ ,

(b) any offence under section 2 or 2A of the [Sporting Events \(Control of Alcohol etc.\) Act 1985](#) (alcohol, containers and fireworks) committed by the accused at any football match to which this Schedule applies or while entering or trying to enter the ground,

(c) any offence under [section 4, 4A or 5 of the [Public Order Act 1986](#)]⁴ ([fear or provocation of violence, or]⁵ harassment, alarm or distress) or any provision of [Part 3 or 3A]⁶ of that Act [(hatred by reference to race etc)]⁷ committed during a period relevant to a football match to which this Schedule applies at any premises while the accused was at, or was entering or leaving or trying to enter or leave, the premises,

(d) any offence involving the use or threat of violence by the accused towards another person committed during a period relevant to a football match to which this Schedule applies at any premises while the accused was at, or was entering or leaving or trying to enter or leave, the premises,

(e) any offence involving the use or threat of violence towards property committed during a period relevant to a football match to which this Schedule applies at any premises while the accused was at, or was entering or leaving or trying to enter or leave, the premises,

(f) any offence involving the use, carrying or possession of an offensive weapon or a firearm committed during a period relevant to a football match to which this Schedule applies at any premises while the accused was at, or was entering or leaving or trying to enter or leave, the premises,

(g) any offence under section 12 of the [Licensing Act 1872](#) (persons found drunk in public places, etc.) of being found drunk in a highway or other public place committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(h) any offence under section 91(1) of the [Criminal Justice Act 1967](#) (disorderly behaviour while drunk in a public place) committed in a highway or other public place while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(j) any offence under section 1 of the [Sporting Events \(Control of Alcohol etc.\) Act 1985](#) (alcohol on coaches or trains to or from sporting events) committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(k) any offence under [section 4, 4A or 5 of the [Public Order Act 1986](#)]⁸ ([fear or

provocation of violence, or]⁹ harassment, alarm or distress) or any provision of [Part 3 or 3A]⁶ of that Act [(hatred by reference to race etc)]⁷ committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(l) any offence under [section 4, 5 or 5A of the Road Traffic Act 1988]¹⁰ (driving etc. when under the influence of drink or drugs or with an alcohol concentration above the prescribed limit [or with a concentration of a specified controlled drug above the specified limit]¹¹) committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(m) any offence involving the use or threat of violence by the accused towards another person committed while one or each of them was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(n) any offence involving the use or threat of violence towards property committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(o) any offence involving the use, carrying or possession of an offensive weapon or a firearm committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(p) any offence under the Football (Offences) Act 1991,

(q) any offence under [section 4, 4A or 5 of the Public Order Act 1986]¹² ([fear or provocation of violence, or]¹³ harassment, alarm or distress) [...] ¹⁴ –

(i) which does not fall within paragraph (c) or (k) above,

(ii) which was committed during a period relevant to a football match to which this Schedule applies, and

(iii) as respects which the court makes a declaration that the offence related to that match or to that match and any other football match which took place during that period,

(r) any offence involving the use or threat of violence by the accused towards another person–

(i) which does not fall within paragraph (d) or (m) above,

(ii) which was committed during a period relevant to a football match to which this Schedule applies, and

(iii) as respects which the court makes a declaration that the offence related to that match or to that match and any other football match which took place during that period,

(s) any offence involving the use or threat of violence towards property–

(i) which does not fall within paragraph (e) or (n) above,

(ii) which was committed during a period relevant to a football match to which this Schedule applies, and

- (iii) as respects which the court makes a declaration that the offence related to that match or to that match and any other football match which took place during that period,
- (t) any offence involving the use, carrying or possession of an offensive weapon or a firearm—
 - (i) which does not fall within paragraph (f) or (o) above,
 - (ii) which was committed during a period relevant to a football match to which this Schedule applies, and
 - (iii) as respects which the court makes a declaration that the offence related to that match or to that match and any other football match which took place during that period.
- (u) any offence under [section 166](#) of the [Criminal Justice and Public Order Act 1994](#) (sale of tickets by unauthorised persons) which relates to tickets for a football match [,]¹⁵
- (v) any offence under any provision of [Part 3 or 3A](#) of the [Public Order Act 1986](#) (hatred by reference to race etc)—
 - (i) which does not fall within paragraph (c) or (k), and
 - (ii) as respects which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,
- (w) any offence under [section 31](#) of the [Crime and Disorder Act 1998](#) (racially or religiously aggravated public order offences) as respects which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,
- (x) any offence under [section 1](#) of the [Malicious Communications Act 1988](#) (offence of sending letter, electronic communication or article with intent to cause distress or anxiety)—
 - (i) which does not fall within paragraph (d), (e), (m), (n), (r) or (s),
 - (ii) as respects which the court has stated that the offence is aggravated by hostility of any of the types mentioned in [section 66\(1\)](#) of the Sentencing Code (racial hostility etc), and
 - (iii) as respects which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,
- (y) any offence under [section 127\(1\)](#) of the [Communications Act 2003](#) (improper use of public telecommunications network)—
 - (i) which does not fall within paragraph (d), (e), (m), (n), (r) or (s),
 - (ii) as respects which the court has stated that the offence is aggravated by hostility of any of the types mentioned in [section 66\(1\)](#) of the Sentencing Code (racial hostility etc), and
 - (iii) as respects which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation.

¹⁵1

Notes

- 1 Existing Sch.1 substituted for a new Sch.1 consisting of paras.1 to 4 by Football (Disorder) Act 2000 c. 25 [Sch.1 para.5](#) (August 28, 2000: as 2000/2125)
- 2 Words inserted by Policing and Crime Act 2009 c. 26 [Pt 8 c.2 s.107\(a\)](#) (April 1, 2010)
- 3 Words inserted by Policing and Crime Act 2009 c. 26 [Pt 8 c.2 s.107\(b\)](#) (April 1, 2010)
- 4 Word inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(3\)\(a\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 5 Words inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(3\)\(b\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 6 Words substituted by Criminal Justice and Immigration Act 2008 c. 4 [Sch.26\(2\) para.26\(a\)](#) (July 14, 2008)
- 7 Words substituted by Criminal Justice and Immigration Act 2008 c. 4 [Sch.26\(2\) para.26\(b\)](#) (July 14, 2008)
- 8 Word inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(4\)\(a\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 9 Words inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(4\)\(b\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 10 Words substituted by Crime and Courts Act 2013 c. 22 [Sch.22 para.15\(a\)](#) (March 2, 2015: substitution has effect as SI 2014/3268 subject to savings and transitional provisions as specified in 2013 c.22 s.15 and Sch.8)
- 11 Words inserted by Crime and Courts Act 2013 c. 22 [Sch.22 para.15\(b\)](#) (March 2, 2015: insertion has effect as SI 2014/3268 subject to savings and transitional provisions as specified in 2013 c.22 s.15 and Sch.8)
- 12 Words inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(5\)\(a\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 13 Words inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(5\)\(b\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 14 Words repealed by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(5\)\(c\)](#) (April 28, 2022: repeal has effect subject to 2022 c.32 s.190(12))
- 15 Added by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(6\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))

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