

**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**17 June 2022**  
**SC(22)JUN[04] – Imposition Guideline**  
**n/a**  
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## **1 ISSUE**

1.1 In the May Council Meeting, there was a broad consensus that if we were to make any amendments to the Imposition Guideline, it would benefit from a more comprehensive review and as such, be done as a standalone project. If the Council agrees to this, in advance of this project, there are some technical amendments which we recommend are made immediately.

## **2 RECOMMENDATION**

2.1 That the council:

- Agrees to do the Imposition Guideline as a comprehensive standalone project;
- Agrees to amending references to the *National Probation Service* to the *Probation Service* (three instances in the Guideline);
- Agrees to removing reference to *Attendance centres* (two instances in the Guideline);
- Agrees to amending the *curfew* wording under the Requirements heading to align with the legislative changes in the Police, Crime, Sentencing and Courts Act 2022 (“PCSC Act”);
- Agrees to amending inconsistencies in the *curfew* wording across the different levels under the Community Orders Levels Table;
- and; Agrees to amending the *curfew* wording under the Community Orders Levels Table to align with the legislative changes in the PCSC Act according to *Option 2*, outlined below.

## **3 CONSIDERATION**

3.1 Following the May Council meeting, further discussion within the Office has led to our view that there is merit in taking forward a review of the Imposition guideline and, in line with Council’s view at the May meeting, this should be a more considered separate project. The various factors that have led to this view include: the Analysis and Research team will shortly be concluding their evaluation of this Guideline (due to be completed next month) which may

uncover potential amendments to be made; HMCTS Legal Operations colleagues have suggested some potential amendments to the PSR sections of the guideline; and there are a number of possible further amendments that might usefully be made related to the inclusion of the purposes of sentencing and the wording from the Expanded Explanations relating to the sentencing of young adults, primary carers and old/infirm offenders that have previously been suggested. If Council members agree in principle to this approach, an initial scoping paper for this standalone project will be presented in the July Council meeting.

**Question 1: Is the Council content for Imposition to be a standalone project?**

3.2 Notwithstanding this decision, as discussed in the May Council meeting, there are several technical amendments that are recommended to be made immediately, prior to starting a standalone project. We do not believe they require consultation due to the fact they are based on either legislative change (the enactment of the PCSC Act) or policy change (reunification of the National Probation Service), so have the sole purpose of correcting the now outdated elements of the Guideline.

*Probation Service*

3.3 Probation services in England and Wales reunified on 26 June 2021 which brought together the National Probation Service and community rehabilitation companies into one administration. The new Probation Service is now responsible for managing all those on a community order or licence following their release from prison in England and Wales.

3.4 The three references in the Guideline would therefore be amended from:

*National Probation Service*

To:

***Probation Service***

**Question 2: Is the Council content for these changes to be made?**

*Attendance centres*

3.5 The PCSC Act effectively removed attendance centres as an active requirement by amending the applicability of this requirement only to those convicted of the offence before the day on which section 152 of the PCSC Act came into force, which was 28 April 2022 (and as before, only if the offender was aged under 25 when convicted of the offence).

3.6 Therefore, the following text in the Guideline, under the Requirements heading, would be removed:

~~“attendance centre requirement (12–36 hours. Only available for offenders under 25 when convicted).”~~

3.7 Reference to attendance centres would also be removed from the community order levels table:

*~~“Attendance centre requirement (where available)”~~*

**Question 3: Is the Council content for these changes to be made?**

*Curfew – Requirement section of the Guideline*

3.8 The PCSC Act also increased the maximum daily curfew hours and curfew requirement period. The maximum daily curfew hours has been increased from 16 hours to 20 hours, and the curfew requirement period has been increased from 12 months to 2 years, in respect of an offence of which the offender was convicted before the day on which section 152 of the PCSC Act came into force, which was 28 April 2022.

3.9 The Bill also included a third specification for sentencing curfew hours, specifically that they cannot be *“more than 112 hours in any period of 7 days beginning with the day of the week on which the requirement first takes effect.”*

3.10 To align the Imposition Guideline with these changes, wording in the Guideline, under the Requirements heading, would change, from:

- *“curfew requirement (2 – 16 hours in any 24 hours; maximum term 12 months; must consider those likely to be affected; see note on electronic monitoring below)”*

to:

- ***“curfew requirement (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; maximum term 2 years (or 2 – 16 hours in any 24 hours; maximum term 12 months in relation to a relevant order in respect of an offence of which the offender was convicted before 28 April 2022); must consider those likely to be affected; see note on electronic monitoring below)”***

**Question 4: Is the Council content for these changes to be made?**

*Curfew – community order levels table*

3.11 Before setting out the options for amendments to the curfew wording to the community order levels table in line with the PCSC Act, it is worth noting that the current text between the three levels is inconsistent, so at the very least it is recommended that these are made consistent. These inconsistencies are:

- The words “per day” after the number of hours are written in the ‘low’ and ‘high’ levels but not the ‘medium’ level

**“per day” to be added to the ‘medium’ level curfew wording**

- The words “for example up to...” are in parentheses in the ‘low’ and ‘medium’ levels but not the ‘high’ level.

**parentheses to be added to the ‘high’ level curfew wording**

- The words “within the lowest/middle” range are written in the ‘low’ and ‘medium’ levels but not the ‘high’ level

**“within the highest range” to be added to the ‘high’ level curfew wording**

**Question 5: Is the Council content for these inconsistencies to be corrected?**

Low	Medium	High
Suitable requirements might include:	Suitable requirements might include:	Suitable requirements might include:
<ul style="list-style-type: none"> <li>• Any appropriate rehabilitative requirement(s)</li> <li>• 40 – 80 hours of unpaid work</li> <li>• <b>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</b></li> <li>• Exclusion requirement, for a few months</li> <li>• Prohibited activity requirement</li> <li>• <del>Attendance centre requirement (where available)</del></li> </ul>	<ul style="list-style-type: none"> <li>• Any appropriate rehabilitative requirement(s)</li> <li>• Greater number of hours of unpaid work (for example 80 – 150 hours)</li> <li>• <b>Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months)</b></li> <li>• Exclusion requirement lasting in the region of 6 months</li> <li>• Prohibited activity requirement</li> </ul>	<ul style="list-style-type: none"> <li>• Any appropriate rehabilitative requirement(s)</li> <li>• 150 – 300 hours of unpaid work</li> <li>• <b>Curfew requirement for example up to 16 hours per day for 4 – 12 months</b></li> <li>• Exclusion requirement lasting in the region of 12 months</li> </ul>

3.12 While the amendments to the curfew wording under the Requirements heading (above) are primarily technical to align with the PCSC Act, amendments to the curfew wording under the Community Order Levels Table is not as straightforward, and as such, there are a number of options for the Council to consider.

3.13 To note, as specified by the text “suitable requirements may include”, guidance in the Community Order Levels Table is highly discretionary. However, the council may still wish to reflect the increased maximum daily curfew hours and curfew requirement duration in line with the PCSC Act. We believe there are three main options for how this can be done, which are set out in more detail below. These are:

- Option 1: *Make no changes to the text now beyond correcting the inconsistencies; but include its consideration in the standalone Imposition Guideline project (and subsequent consultation)*
- Option 2: *In addition to correcting the inconsistencies, replace only the new maximum daily curfew hours but do not amend the ranges of the requirement duration;*
- Option 3: *In addition to correcting the inconsistencies, replace the new maximum daily curfew hours and amend the ranges of the requirement duration, either in line with ranges in the exclusion requirement, or using another approach to be agreed.*

3.14 Option 1: *Make no changes to the text now beyond correcting the inconsistencies but include its consideration in the upcoming standalone Imposition Guideline project (and subsequent consultation).* The Requirement section and relevant wording in the current sections of the Community Order Levels Table have been pulled out below.

<b>Requirements</b>		
<ul style="list-style-type: none"> <li>• <i>curfew requirement (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; maximum term 2 years (or 2 – 16 hours in any 24 hours; maximum term 12 months in relation to a relevant order in respect of an offence of which the offender was convicted before 28 April 2022)...)</i></li> </ul>		
<b>Community Order Levels Table</b>		
<b>Low</b>	<b>Medium</b>	<b>High</b>
From:  <i>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</i>	From:  <i>Curfew requirement within the middle range (for example up to 16 hours per day for 2 – 3 months)</i>	From:  <i>Curfew requirement within the highest range (for example up to 16 hours per day for 4 – 12 months)</i>

3.15 If no changes were made to the text in the levels table now, the main disadvantage would be that the maximum number of hours and requirement duration under the Requirements heading and the wording in the Community Order Levels Table would not be aligned. This may be justified by the guidance in the levels table being highly discretionary, and the fact that sentencers can choose to go above the suitable requirement levels.

Advantages of this option would be not pre-judging considerations in the Imposition Guideline consultation of wording in the Community Order Levels Table.

3.16 Option 2: *In addition to correcting the inconsistencies, replace only the new maximum daily curfew hours but do not amend the ranges of the requirement duration.* This option would amend the text in the Community Order Levels Table as per the below (amendments underlined):

<b>Low</b>	<b>Medium</b>	<b>High</b>
<p>From:</p> <p><i>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</i></p> <p>To:</p> <p><b><i>Curfew requirement within the lowest range (for example up to <u>20 hours</u> per day for a few weeks)</i></b></p>	<p>From:</p> <p><i>Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months)</i></p> <p>To:</p> <p><b><i>Curfew requirement within the middle range (for example up to <u>20 hours</u> per day for 2 – 3 months)</i></b></p>	<p>From:</p> <p><i>Curfew requirement for example up to 16 hours per day for 4 – 12 months</i></p> <p>To:</p> <p><b><i>Curfew requirement within the highest range (for example up to <u>20 hours</u> per day for 4 – 12 months)</i></b></p>

3.17 If only the maximum daily curfew hours were changed, this would ensure the correct maximum number of hours was stated in the levels table as per the legislation, and would allow the ranges in the levels table to be consulted on. This option may be the best option to balance aligning updated legislation with the need to consult on more detailed application of that legislation, namely the possible sentencing ranges.

3.18 Option 3: *In addition to correcting the inconsistencies, replace the new maximum daily curfew hours as well as amend the ranges of the requirement duration, either in line with ranges in the exclusion requirement, or using another approach to be agreed.*

3.19 If the Council wishes to take the opportunity to amend the ranges as well, there is a risk that these changes may be considered sufficiently complex that they require consultation. Nevertheless, should the Council wish to amend the ranges, we believe the most logical approach is to bring the wording in line with the exclusion requirement ranges (included below), due to the fact that one of the reasons behind the legislative increase of the maximum duration of the curfew requirement was to bring it in line with the maximum period for the exclusion zone requirement. This would amend the text in the community order levels table as per the below (amendments underlined):

Low	Medium	High
<p data-bbox="193 259 595 327"><i>("Exclusion requirement, for a few months")</i></p> <p data-bbox="193 439 595 461">From:</p> <p data-bbox="193 506 595 640"><i>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</i></p> <p data-bbox="193 685 595 707">To:</p> <p data-bbox="193 752 595 887"><b><i>Curfew requirement within the lowest range (for example up to <u>20 hours per day</u> for a few months)</i></b></p>	<p data-bbox="595 259 997 327"><i>("Exclusion requirement lasting in the region of 6 months")</i></p> <p data-bbox="595 439 997 461">From:</p> <p data-bbox="595 506 997 640"><i>Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months)</i></p> <p data-bbox="595 685 997 707">To:</p> <p data-bbox="595 752 997 909"><b><i>Curfew requirement within the middle range (for example up to <u>20 hours per day</u> lasting in the region of 6 months)</i></b></p>	<p data-bbox="997 259 1396 327"><i>("Exclusion requirement lasting in the region of 12 months")</i></p> <p data-bbox="997 439 1396 461">From:</p> <p data-bbox="997 506 1396 595"><i>Curfew requirement for example up to 16 hours per day for 4 – 12 months</i></p> <p data-bbox="997 640 1396 663">To:</p> <p data-bbox="997 707 1396 887"><b><i>Curfew requirement within the highest range (for example up to <u>20 hours per day</u> lasting in the region of 12 months)</i></b></p>

3.20 However, while these requirements have similarities, they are not the same, and we do not yet know what the impact of these increases will be on those with curfew requirements, or on probation resources or ability to deliver. As noted above, this more detailed applicability of sentencing ranges may be more appropriate to consult on, especially considering the intention to run a standalone project on the Imposition Guideline.

3.21 The Council may also wish to consider amending the curfew requirement duration ranges using another approach, however the approach outlined above is most consistent with the reason for which the legislative change was made.

3.22 On balance we think Option 2 is the better option as it aligns the new maximum number of hours in the Community Order Levels Table with the new legislation but does not amend sentencing ranges for now. Sentencing ranges and any further changes could then be tested at consultation as part of the standalone Imposition project

**Question 6: Does the Council agree to proceed with Option 2?**

**4 EQUALITIES**

4.1 While most proposals are updating the Guideline in accordance with legislative or policy change, we do not know at this point what the impact would be of amending the curfew requirement duration ranges. This may be another reason for the Council to decide on Option 1 or 2, or 3 as a temporary measure, so that the duration ranges can be consulted on to understand the full impact of any proposal.

## **5 IMPACT AND RISKS**

5.1 The impact of the majority of proposed amendments in this paper will be relatively minor. The amendments to the curfew requirement will have the biggest impact, specifically the increase of the requirement duration ranges in the levels table should the Council favour Option 3. This may increase the length of community orders with curfew requirements which would require increased probation resources to manage.