

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

31 March 2023
SC(23)31MAR05 - Imposition
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1 ISSUE

1.1 This paper looks in detail at the Imposition of Community Orders section of the Imposition Guideline ('the guideline'), and a sub section on Requirements. The community order levels table will be discussed in the next Imposition Working group meeting.

2 RECOMMENDATION

2.1 It is recommended that the Council agrees to the updated Imposition of Community Orders section, and provides feedback on the draft of the requirements table/list:

3 CONSIDERATION

Imposition of Community Orders

3.1 The Imposition working group met for their second meeting in mid-March and considered draft text in the 'Imposition of Community Orders' section. The version of this section contained in this paper has been updated after discussion at this meeting.

3.2 This section currently comes fourth, after an initial note on Deferred Sentences, a first section on thresholds, a second section on pre-sentence reports and a third section on purposes and effectiveness of sentencing.

3.3 The key updates to this section are lines of text related to thresholds being moved to the new threshold section, the requirements section being moved to prior to the community order levels table (which will not be discussed today), text in the 'specific considerations in determining requirements' section being condensed and brought into the main section under Imposition of Community orders, and the inclusion of more information about each of the requirements for consistency, as agreed in the October Council meeting.

3.4 It is of note that the working group agreed that while requirements are relevant both to community orders and suspended sentence orders (SSOs), there should be no mention of SSOs in this section to ensure the guideline promotes the correct principles of the imposition of SSOs. Instead, there is a new sub section on requirements in the Imposition of Custodial Orders section which gives information about the inclusion of requirements on SSOs.

3.5 The updated version of the Imposition of Community Orders section is below.

4. Imposition of community orders

A community order can only be imposed for an offence which is punishable by imprisonment. The maximum length of a community order is three years.

Community orders can fulfil all of the purposes of sentencing. In particular, they can have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities.

The court must ensure that the restriction on the offender's liberty is commensurate with the seriousness of the offence and that the requirements imposed are the most suitable for the offender.

Requirements

Community orders consist of one or more requirements. At least one requirement must be imposed for the purpose of punishment and/or a fine imposed, unless there are exceptional circumstances which relate to the offence or the offender that would make it unjust in all the circumstances to do so. It is a matter for the court to decide which requirements amount to a punishment in each case.

The court must ensure that the requirements imposed are the most suitable for the offender. This means that requirements reflect:

- the purpose(s) of the sentence
- the risk of re-offending
- the needs and rehabilitation of the offender, including any mental health or addiction issues
- the ability of the offender to comply taking into account the offender's accommodation, employment and family situation including any dependants
- the availability of the requirements in the local area

The court must ensure that where two or more requirements are included they are compatible with one another and are not excessive. So far as practicable, any requirements imposed should not conflict or interfere with:

- an offender's religious beliefs
- the requirements of any other court order to which they may be subject
- an offender's attendance at work or educational establishment

Question 1: Does the Council wish to make any amendments to the updated draft of the Imposition of Community Orders section?

Requirements

3.6 Council members agreed in the October Council meeting that the requirements list should be updated due to the current inconsistency of information. It was also agreed in this meeting that the requirements list should be reformatted, and the guideline should present both a table, and a suitable drop-down list format, for the requirements list.

3.7 A new table of requirements can be seen at **Annex A**. The order of the requirements in this table is the same as the current guideline, which reflects the order in which they are set out in [schedule 9 to the Sentencing Act](#).

3.8 The Council could decide to order these requirements differently. One option is to order these by how often they are imposed. The current number of requirements commenced under community orders for the years 2018-2021 can be seen in published Probation data below (the only differences in the order for requirements commenced under SSOs is more drug treatment than alcohol treatment requirements, and more mental health requirements than exclusion requirements.)

Figure 1: Table showing number of requirements commenced under community orders for the years 2018-2021, according to Probation Data

	2018	2019	2020	2021
Community order	122,912	123,181	84,520	101,138
Rehabilitation activity requirement	47,818	48,653	33,661	41,923
Unpaid work	40,526	39,645	25,762	29,171
Curfew	13,058	12,362	9,991	11,430
Accredited programme	8,814	8,767	6,800	6,458
Alcohol treatment	3,441	3,900	2,412	3,291
Drug treatment	5,069	5,143	2,646	3,203
Electronic monitoring	1,505	1,710	1,265	1,643
Alcohol abstinence and monitoring	-	-	23	1,580
Exclusion	971	1,204	861	893
Mental health	489	535	453	865
Attendance centre	646	699	283	305
Prohibited activity	231	227	166	172
Residential	189	209	133	132
Supervision	152	127	63	72
Specified activity	3	0	1	0


To note: this data does not include standalone curfews as most of these are not supervised by Probation; numbers for all requirements were impacted significantly by COVID especially in 2020; Alcohol abstinence and monitoring was only rolled out nationally in Winter 2020; and 'supervision' is likely to be an error due to confusion between Probation supervision as part of a RAR, given this is not a legal standalone requirement anymore.


3.9 Another option for amending the order is ordering the requirements alphabetically. This may make requirements easier to find on the page if sentencers are aware they are ordered alphabetically, but may not work in practice if all requirements are not commonly called by the same term (e.g. 'accredited programme' or 'programme requirement'.)

Question 2: Does the Council wish to order the requirements in differently? If so, how?

3.10 In the October Council meeting, Council members discussed that there should both be a requirements list, in a possible drop-down format, and a new table of requirements that could be downloaded or printed.




3.11 While we are awaiting the final report of the ongoing user testing project, initial findings coming out of this research shows that sentencers are not always aware that the dotted line underneath words, e.g. aggravating and mitigating factors, is expandable, and that other drop-down boxes in the guidelines that have a small downwards arrow are more clearly understood to be expandable. One of the draft recommendations in this report (not yet finalised) is therefore to make this consistent across the guidelines, ideally using drop down arrows for expandable information, such as what is already in the imposition guideline and all other offence specific guidelines that have fines in the range, as per the below.

Band ranges 

Band ranges 

	Starting point	Range
Fine Band A	50% of relevant weekly income	25 - 75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75 - 125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125 - 175% of relevant weekly income
Fine Band D	250% of relevant weekly income	200 - 300% of relevant weekly income
Fine Band E	400% of relevant weekly income	300 - 500% of relevant weekly income
Fine Band F	600% of relevant weekly income	500 - 700% of relevant weekly income

3.12 Therefore, an initial proposal for the presentation of requirements is that each requirement is listed similar to that of 'band ranges' above, with information relating to each requirement contained in the drop-down box below, similar to the below.

Unpaid work requirement (UPW)	
Rehabilitation activity requirement (RAR)	
Programme requirement	

Prohibited activity requirement	V
Curfew requirement	V
Exclusion requirement	V
Residence requirement	V
Foreign travel prohibition requirement	V
Mental health treatment requirement	V
Drug rehabilitation requirement	V
Alcohol treatment requirement	V
Alcohol abstinence and monitoring requirement (where available)	V
Electronic monitoring	V

3.13 The disadvantage of this format is that information cannot be seen and read without expanding the boxes, however having the table contained or downloadable in addition to this list, would go some way to mitigating this disadvantage.

3.14 Another option is for the table to be included within the body of the guideline, either alone, or in addition to the list proposed above. Depending on how this can be formatted, this is likely to take up considerable space, but this may be deemed necessary by the Council given the importance of consistency of information across the requirements. This could look similar, pending any amendments and formatting, to **Annex A**.

Question 3: Does the Council still wish to include both a list with drop-downs, and a table, or only a table within the guideline?

Question 4: Would the Council like the table of requirements to be embedded in the body of the guideline, or contained within a link which can be downloaded/opened in a new window and/or printed?

3.15 As per the agreement in the October meeting, information against each of the requirements has been updated in a table with support from relevant MoJ policy teams and Probation. The intention of this update is to ensure that each requirement has a brief overview of what the offender will receive when this requirement is imposed, legislative information about the volume/length range, and considerations and factors that will be helpful to sentencers when perusing the requirements list. This update includes reference to the rehabilitative need and eligibility assessments made by Probation to ensure suitable and effective interventions/programmes are available and can be delivered in the time allowed. The updated table was considered by the Imposition working group, and an updated version of this requirements list can be seen in **Annex A**.

3.16 For the purposes of this discussion, it will be useful to focus on the information against each of the requirements in turn, rather than the presentation of the table itself, which may differ when published and for which options need to be considered.

Question 5: What amendments does the Council wish to make to the information against each of the requirements in Annex A?

- **Unpaid work requirement (UPW)**
- **Rehabilitation activity requirement (RAR)**
- **Programme requirement**
- **Prohibited activity requirement**
- **Curfew requirement**
- **Exclusion requirement**
- **Residence requirement**
- **Foreign travel prohibition requirement**
- **Mental health treatment requirement**
- **Drug rehabilitation requirement**
- **Alcohol treatment requirement**
- **Alcohol abstinence and monitoring requirement (where available)**
- **Electronic monitoring**

4 EQUALITIES

4.1 Equalities considerations will be considered in detail once an initial decision has been made on the above questions, in particular the formatting of the requirements list. It will be ensured that any formatting agreed will fulfil accessibility requirements.

5 IMPACT AND RISKS

This will be considered in full at a later date. Any risks around the accessibility of information suggested to be formatted differently in this paper can be considered in road testing.

Requirements Table

Requirement	Requirement overview	Volume / Length range	Considerations / Factors to consider
Unpaid work requirement (UPW)	<p>An unpaid work requirement requires offenders to undertake work projects in their local community. In some regions, a small proportion of these hours can be spent on education, training or employment activities for eligible offenders.</p> <p>“Community Payback” is the term used to describe the delivery of an Unpaid Work requirement.</p>	Between 40 – 300 hours to be completed within 12 months.	<p>Work as part of an unpaid work requirement must be suitable for an offender to perform, and this suitability must be assessed by Probation. Probation will also be able to advise what type of projects are available in the region. The court must consider whether the offender is in employment, has any disabilities or limitations, has any dependants, or whether there are any other circumstances that may make an unpaid work requirement unsuitable.</p> <p>If unpaid work hours are not completed within 12 months (unless extended or revoked by the court), the requirement remains ‘live’ and will need to be returned to the court for the operational period to be extended so the remaining hours can be worked. Sentencers should consider this when considering any other requirements to ensure that it is realistic for an offender to complete all unpaid work hours within the operational period.</p>
Rehabilitation activity requirement (RAR)	<p>A rehabilitation activity requirement (RAR) requires the offender to participate in rehabilitative activities designed to address the behaviours and needs that contributed to the offence, and attend supervision appointments with the Probation Service.</p> <p>A court will specify the maximum number rehabilitative activity days the offender must complete. Post-sentence, Probation will assess the offender and produce a tailored activity plan based on their needs. Activities can include probation-led toolkits or group structured</p>	Minimum of 1 RAR day; no maximum, to be completed within the length of the order.	<p>A rehabilitation activity requirement should be imposed when the offender has rehabilitative needs that cannot be addressed by other requirements.</p> <p>The specific type of activities that the offender will be required to participate in will be determined post-sentence by an assessment of these rehabilitative needs, and as such sentencers should consider the number of RAR days recommended by Probation to ensure this number is suitable and proportionate to the level of need and any eligibility requirements for commissioned rehabilitative services that may be relevant.</p> <p>Structured rehabilitative activity appointments are complemented by supervision appointments with Probation which ensure contact is maintained, Probation can track the offender’s progress in completing activities and offer support where necessary.</p>

	interventions, or referral to external organisations providing rehabilitative services.		The court needs only to specify the number of 'RAR' or rehabilitative activity days, and Probation will manage supervision appointments alongside these days.
Programme requirement	A programme requirement requires an offender to complete an offending behaviour programme or intervention. These are intensive structured programmes, designed to tackle the attitudes, thinking and behaviours of certain criminogenic needs. Programmes are usually delivered in groups by a trained facilitator.	The court must specify the number of days on which the offender must participate in the programme up to the length of the order.	An accredited programme should be recommended by the Probation Service, as each programme has specific eligibility criteria that must be met and different regions have different programmes that may be suitable with different eligibility criteria that may or may not apply. Probation will specify to the court how many days are required to complete a suitable programme to ensure a suitable programme can be completed in full.
Prohibited activity requirement	A prohibited activity requirement prohibits the offender from participating in any activity specified by the court.	Duration set by the court, up to the length of the order.	The court must consult the Probation Service before imposing this requirement. Electronic monitoring may be considered to monitor compliance with the prohibited activity if it is suitable (see electronic monitoring below).
Curfew requirement	A curfew requirement requires an offender to remain at a particular place (or places) for a specified period (or periods) of time. Different places or different curfew periods may be specified for different days. The curfew period should be targeted to reflect the punishment intended, support rehabilitation where relevant, and protect victims and the public.	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; and maximum term 2 years; - or - For an offence of which the offender was convicted before 28 June 2022: 2 – 16 hours in any 24 hours; maximum term 12 months.	Where the court imposes a curfew requirement, it must also impose an electronic monitoring requirement to monitor compliance, unless in the circumstances of the case, it considers it inappropriate to do so. In all cases, the court must consider those likely to be affected, such as any dependants. Prior to the imposition of a curfew requirement, Probation must carry out safeguarding and domestic abuse enquiries on any proposed curfew address, to ensure the accommodation is suitable, others will not be put at risk and the homeowner agrees to the curfew, particularly where vulnerable adults and children are involved.

<p>Exclusion requirement</p>	<p>An exclusion requirement prevents an offender from going into a particular place or area.</p> <p>The exclusion zone can include more than one prohibited place/area, more than one exclusion period and different prohibited places/areas for different exclusion periods or different days.</p>	<p>Up to 2 years. May either be continuous or only during specified periods.</p>	<p>Where the court imposes an exclusion requirement, it must also impose an electronic monitoring requirement to monitor compliance, unless in the particular circumstances of the case, it considers it inappropriate to do so (see note on electronic monitoring below).</p>
<p>Residence requirement</p>	<p>A residence requirement provides that the offender must reside at a particular place (i.e. a private address or HMPPS provided temporary accommodation, including an approved premises or Bail accommodation Support Services) for a specified period.</p>	<p>Duration set by the court, up to the length of the order.</p> <p>The maximum placement length of an approved premises is 12 weeks.</p>	<p>Courts are encouraged to engage with Probation to understand what type of HMPPS provided temporary accommodation is available in their region to support these orders.</p> <p>Where a residence requirement provides that the offender reside at a private address, there is no requirement that the offender to be at the address at a specific time. A curfew requirement would be necessary for this. However, where a residence requirement is for an approved premises (AP), an offender is bound by the rules of the AP, which may include an overnight curfew and drug and/or alcohol testing.</p>
<p>Foreign travel prohibition requirement</p>	<p>An offender is prohibited from travelling to a country (or countries) or territory (or territories) outside the British Islands (that is the United Kingdom, the Channel Islands and the Isle of Man).</p>	<p>Duration set by the court, up to a maximum of 12 months.</p>	<p>Unlikely to be suitable for an offender who does not have a passport, rarely travels, or has no apparent international connections.</p>
<p>Mental health treatment requirement</p>	<p>A mental health treatment requirement provides treatment to an offender with a mental health condition. Treatment may be residential or non-residential and must be provided by or under the direction of a registered medical practitioner or chartered psychologist.</p>	<p>Duration set by the court, up to the length of the order.</p>	<p>The court must be satisfied: (a) that the mental condition of the offender is such as requires and may be susceptible to treatment but is not such as to warrant the making of a hospital or guardianship order; (b) that arrangements for treatment have been or can be made; (c) that the offender has expressed willingness to comply. Probation should be consulted to ensure these factors are met, and to assess the offender to ensure that any eligibility requirements for the treatment are satisfied before imposing this requirement.</p>

			<p>Most MHTRs are provided by Secondary Care Mental Health Services and are available in every court. MHTRs can be used in combination with other treatment requirements (for example drug and alcohol rehabilitation requirements) for offenders with multiple needs.</p>
<p>Drug rehabilitation requirement</p>	<p>A drug rehabilitation requirement provides treatment to an offender who is dependent on drugs or has a propensity to misuse drugs. Treatment can be residential or non-residential, and the offender must participate in court reviews of the order, as directed by the court.</p>	<p>Duration set by the court, up to the length of the order.</p>	<p>A drug rehabilitation requirement (DRR) may be imposed on an offender for whom the court is satisfied that the offender is dependent on or has a propensity to misuse drugs (as defined by s.2 of the Misuse of Drugs Act 1971) where the dependency or propensity requires and may be susceptible to treatment.</p> <p>The court must ensure that necessary arrangements have been or can be made for the proposed treatment, and the offender must express willingness to comply with the treatment.</p> <p>Probation should be consulted to ensure these factors are met, and to assess the offender to ensure that any eligibility requirements for the treatment are satisfied before imposing this requirement.</p> <p>DRRs can be used in combination with other treatment requirements (for example, mental health treatment requirement) for offenders with multiple needs.</p>
<p>Alcohol treatment requirement</p>	<p>An alcohol treatment requirement may be imposed on an offender who is dependent on alcohol, where that dependency requires and may be susceptible to treatment.</p> <p>The treatment may be residential or non-residential.</p>	<p>Duration set by the court, up to the length of the order.</p>	<p>An alcohol treatment requirement (ATR) may be imposed on an offender for whom the court is satisfied is dependent on alcohol and this dependency is such that it requires and is susceptible to treatment.</p> <p>The court must ensure that necessary arrangements have been or can be made for the proposed treatment, and the offender must express willingness to comply with the treatment.</p> <p>Probation should be consulted to ensure these factors are met, and to assess the offender to ensure that any eligibility requirements for the treatment are satisfied before imposing this requirement.</p> <p>ATRs can be used in combination with other treatment requirements (for example, mental health treatment requirement) for offenders with multiple needs. However, an ATR cannot be imposed alongside an</p>

			alcohol abstinence and monitoring requirement (AAMR).
Alcohol abstinence and monitoring requirement (where available)	An alcohol abstinence and monitoring requirement imposes a total ban on alcohol consumption and requires the offender to have their compliance with the requirement electronically monitored.	Up to 120 days.	<p>It is generally recommended that an alcohol abstinence and monitoring requirement (AAMR) is not a standalone requirement and sits alongside other measures that support rehabilitation.</p> <p>The court must be satisfied that the offender is not alcohol dependant. If the offender is alcohol dependant, an ATR may be more appropriate. Probation should be consulted to assess the rehabilitative need and advise on the most relevant and available treatment.</p> <p>An AAMR cannot be imposed alongside an ATR alcohol treatment requirement.</p>
Electronic monitoring: electronic whereabouts monitoring requirement and electronic compliance monitoring requirement	<p>The electronic whereabouts monitoring requirement is a requirement for the offender to submit to electronic monitoring of their whereabouts (other than for the purpose of monitoring compliance with any other requirement included in the order) during a period specified in the order.</p> <p>The electronic compliance monitoring requirement is imposed to monitor compliance with another requirement on an order.</p>	Up to 2 years.	<p>The electronic whereabouts monitoring requirement may be imposed without the imposition of another requirement and involves monitoring an offender's whereabouts with the imposition of a GPS tag, save for circumstances in which the consent of a person whose co-operation is required is withheld.</p> <p>Where the court makes a relevant order imposing a curfew requirement or exclusion requirement it must also impose an electronic compliance monitoring requirement for monitoring compliance with it, save where:</p> <ul style="list-style-type: none"> • there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring and that person does not consent; and/or • electronic monitoring is unavailable and/or impractical; and/or • in the particular circumstances of the case, the court considers it inappropriate to do so. <p>Prior to the imposition of a curfew requirement, Probation must carry out safeguarding and domestic abuse enquiries on any proposed curfew address, to ensure the accommodation is suitable, others will not be put at risk and the homeowner agrees to the curfew, particularly where vulnerable adults and children are involved.</p>

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