

Sentencing Council

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

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SC(23)JUN02 - Imposition
Jo King
Jessie Stanbrook
Jessie.stanbrook@sentencingcouncil.gov.uk

1 ISSUE

1.1 This paper presents the full updated draft guideline on the Imposition of community and custodial sentences to the Council for the first time in this review. It does not ask for sign off, but instead some final questions on outstanding issues members requested to return to.

2 RECOMMENDATION

2.1 It is recommended that the Council considers the questions within the paper and confirms decisions so final work can be done over the summer and the updated guideline can be signed off for consultation in September after the resource assessment has been completed and Council can consider any potential impacts on prison and probation resources when signing off the guideline. The areas to be discussed in this meeting are:

- Deferred sentences
- Pre-sentence reports (cohorts, indication of sentence)
- Drug testing requirements
- Young adult and female offender sections
- Full guideline

3 CONSIDERATION

Deferred Sentences

3.1 In the December 2022 meeting, Council considered some new lines on deferred sentencing to be included in the imposition guideline. Council agreed with the inclusion of deferred sentencing in the guideline, but with more amended and detailed text than I had initially proposed, including to broaden out the line that suggested deferred sentencing might be particularly appropriate for young people to include those in transitional life circumstances.

3.2 I have slightly expanded on the original lines suggested and made all requested amendments. However, after considering the length of the full updated draft of the guideline, I would like to revisit the decision to make this section any longer. Especially as Council wished to maintain the line “However, deferred sentences will be appropriate only in very limited circumstances”, I believe any more text than the below would not be appropriate considering it is the first paragraph of the imposition guideline. Instead, I have suggested that the paragraph has a drop down which contains the text from the existing guidance on deferred sentencing.

3.3 This existing guidance on deferred sentences can be seen at **Annex A**, and already contains all the other suggestions Council members made to include in the deferred sentencing section. Currently, this page exists within the Explanatory Materials area which sits within in the magistrates section of the website (though is a standalone page that can be navigated to directly from a google search or website search). Only one change to the text is considered necessary in a drop down in the imposition guideline, and that is to add the word “Magistrates:” before the line “Always consult your legal adviser if you are considering deferring a sentence.” All other text in this current guidance is already applicable to both magistrates and crown courts.

3.4 The updated version of the text within the imposition guideline can be seen below. As specified, this is not a numbered section but a ‘Note’ before the first numbered section on Thresholds.

Note: Deferred Sentences

The court may consider whether it would be appropriate, beneficial and in the interests of justice for sentencing to be deferred for up to six months, and may attach conditions to that deferment.

The purpose of deferment is to enable the court to have regard to the offender’s conduct after conviction or any change in their circumstances, including the extent to which the offender has complied with any requirements imposed by the court. Deferring sentence can be a valuable tool to assess whether a potential community or suspended sentence order is appropriate for a particular offender. Deferring sentencing may be particularly appropriate for young adults (18-25 years of age) or those who are in transitional life circumstances. However, deferred sentences will be appropriate only in very limited circumstances. When deferring sentence, the court must be clear what the two potential sentences are depending on whether the deferral period is successfully complied with, or not.

If deferring the sentence is a consideration, please see further guidance on Deferred Sentencing in the drop-down below.

Question 1: Does Council agree that the deferred sentencing paragraph should be more limited considering the total length of the guideline?

Question 2: Does the Council have any final amendments to be made to the deferred sentencing paragraph?

Pre-Sentence Reports

3.5 Council has agreed to most of the updated draft of the pre-sentence report section. There were however two elements that were requested to be considered further.

3.6 The first of these was the line specifying that a pre-sentence report may be particularly important if the offender is one of a list of cohorts. The second was the differences between magistrates and crown courts (in particular) in what, if any, indication of sentence should be given to probation when requesting a PSR.

3.7 On the list of cohorts, amendments agreed in the October meeting have been made, and the updated list can be seen below, with lines to be discussed in **bold**.

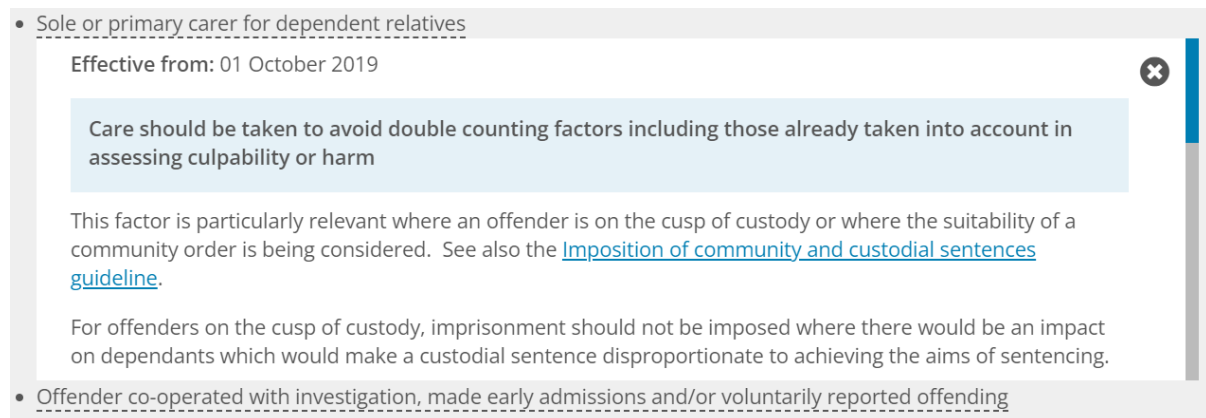
A pre-sentence report may be particularly important if the offender is:

- **at risk of a custodial sentence of 12 months or less;**
- a young adult (18-25 years);
- female (see further information below);
- **pregnant (see further information below)**
- ~~**a sole or primary carer for dependant relative(s);**~~
- has disclosed they are transgender;
- has any drug or alcohol addiction issues;
- has a learning disability or mental disorder;
- Or; the court considers there to be a risk that the offender may have been the victim of domestic abuse, trafficking, modern slavery, or been subject to coercion, intimidation or exploitation.

3.8 The first cohort; those '**at risk of a custodial sentence of 12 months or less**' has been added after it was suggested by a number of members in the last meeting. Taking into account discussions around the use of the term "short custodial sentence" and the Council deciding not to directly specify in the guideline that a short custodial term is 12 months or less as specified by the Effectiveness review, this term aligns with that used later in the guideline under the question 'what is the shortest term commensurate with the seriousness of the offence' which refers to the effectiveness review findings. Council agreed in this discussion that the preferred term was 'immediate custodial sentence of up to 12 months' rather than 'short custodial sentence of up to 12 months' or indeed 'short custodial sentence' which leaves interpretation to what this might be open, so I have replicated this line in the list of cohorts.

Question 3: Does the council agree with the term ‘at risk of a custodial sentence of 12 months or less’ for this cohort of offenders in the list of cohorts for whom a PSR may be particularly important?

3.9 In a previous meeting, Council members expressed a desire to have the term ‘previous term ‘sole or primary carer for dependant relative(s)’ link to the expanded explanation for what is commonly a mitigating factor in many guidelines. Due to the way the expanded explanations are hosted on the website, it is not possible to link to these directly, however Council could decide to include the drop down for this expanded explanation in the same way drop downs are currently presented for aggravating and mitigating factors (currently a dotted line), such as the below.



The screenshot shows a dropdown menu item with the following content:

- Sole or primary carer for dependent relatives
 - Effective from: 01 October 2019
 - Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm
 - This factor is particularly relevant where an offender is on the cusp of custody or where the suitability of a community order is being considered. See also the [Imposition of community and custodial sentences guideline](#).
 - For offenders on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing.
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

3.10 If the Council decided to do this, it should be noted that no other cohort in the list of cohorts would have an expandable explanation, however Council may feel that the information within this explanation is particularly important to highlight. The full expanded explanation for sole and primary carer can be seen at **Annex B**.

Question 4: Does Council wish to include a drop-down for the expanded explanation of sole or primary carer within the list of cohorts in the PSR section?

3.11 I have added ‘**pregnant**’ to the list of cohorts due to the recent discussions on pregnant offenders in prison. I have made this a separate factor as it is an important consideration in its own right, and if it were with ‘primary carer’ this may risk ‘primary carers’ only being applicable to female offenders.

Question 5: Does Council agree with ‘pregnant’ in the list of cohorts for whom a PSR may be particularly important?

3.12 There were previously some concerns from members about the description of what was previously ‘**minority ethnic background**’ in particular. A policy briefing published by Action for Race Equality (ARE) and EQUAL on the ‘Ethnic Inequalities in the Criminal Justice System’ in January 2023 refers to “ethnic minority groups” or “ethnic minority communities”. Action for Race Equality has been working for over 30 years to end race inequality for Black, Asian, Mixed heritage and ethnic minority communities and ARE is a Black and Asian-led organisation working collaboratively and in partnership with grassroots, voluntary and community organisations, so it is considered that these are acceptable terms to be used. Other than the key findings in this report, it is noted that “inadequate or poor-quality information in pre-sentence reports [or indeed, the lack of pre-sentence reports] can result in ambiguity about the seriousness of the offence which determines the decision to imprison, and potentially biased ‘perceptual shorthands’ which increase the risk of ethnic minority individuals receiving more punitive sentences.”

3.13 Two of the recommendations in response to this finding were to:

- Ensure high quality standard delivery [*commonly adjourned*] pre-sentence reports are obtained in all cases where sentencers are considering a sentence of imprisonment, and
- Guidelines on pre-sentence reports should be revised to ensure they contain adequate information about the personal, cultural, and offending circumstances of individuals and pay attention to experiences of discrimination, racism, and victimisation.

3.14 It is therefore considered particularly important to include this cohort of offenders, and the cohort description has been amended to ‘**from an ethnic minority, cultural minority, and/or faith minority community.**’ This seeks to align with the terminology used in the recent policy briefing, as well as to include a wider group of individuals than simply from a ‘ethnic minority background’.

Question 6: Does the Council agree with the term ‘from an ethnic minority, cultural minority, and/or faith minority community’ to be used instead of ‘minority ethnic background’ for this cohort of offenders?

3.15 The second issue that was noted to be discussed further within the PSR section was the indication of sentence given to probation when requesting a PSR. Council’s discussion on this topic focused on the differences between magistrates and crown courts; in particular what level of information would be most useful to give to probation about the potential

sentence when requesting a report. It was concluded in this discussion that separate guidance may be necessary due to the different approaches in the different courts.

3.16 Members speaking on behalf of magistrates' courts mostly agreed that specifying an initial finding for harm and culpability factors would be a very helpful indication both to probation and the sentencing court (which would likely not be the same as the trial court), but requested it was clear this was a 'preliminary' indication, so a line has been developed accordingly specific to magistrates' courts. In addition, all members agreed that it would be useful for the court to indicate any specific requirements, needs or issues it would like probation to consider and/or assess, so this has been included in relation to all courts.

Indication of sentence to Probation

In magistrates' courts, it may be helpful for the court to indicate to Probation the preliminary level of harm and culpability it has found for the offence.

In all courts, it may be helpful for the court to indicate to Probation any specific requirements that probation should consider the defendant's suitability for should a community or suspended sentence order be imposed; and any needs or concerns the court would specifically like to be considered.

3.17 There is a small risk that referring to "community or suspended sentence order" in one line contrasts the Council's intention that an SSO is not seen as a more robust community order. Both a CO and an SSO are relevant in this context as probation are able to assess the offender's suitability for any requirement that can be attached to either, and both these sentences are served in the community, however Council may feel on balance it would be better to mention only CO here.

Question 7: Does the Council agree with the split between magistrates' courts and all courts and are there any other specific indications to probation that should be included in either of the lines?

Question 8: Does the Council have any concerns about the use of 'CO and SSO' together?

Question 9: Does the Council approve this paragraph?

PSRs on Committal to Crown Court

3.18 In the October meeting it was agreed to consider the new guidance that was being developed in the Better Case Management Handbook, particularly in relation to the question of mentioning court resources in the PSR section of the guideline.

3.19 This new guidance published in January 2023, the relevant part of which can be seen at **Annex C**, does reference court resources in relation to requesting PSRs, so it is considered that the guideline does not need to. The relevant excerpt is below.

“There should be liaison between Crown Courts, Magistrates’ Courts and the Probation Service about the resources available so that courts are aware what level of provision is available.

In most areas the Probation Service will now be able to provide Pre-Sentence Reports (PSRs) in all cases which are committed to the Crown Court.”

Please note, the line “This guidance applies pending an update to CrimPD 3A.9.” remains in the Better Case Management Handbook despite the Criminal Practice Directions being updated in May 2023. There is no conflicting information in the respective documents nor is there in the updated version of the imposition guideline.

Question 10: Does the Council agree the PSR section should not include reference to court resources?

Requirements: inclusion of drug testing

3.20 The list of requirements was discussed by the Council in March. Council amended and then agreed to the current version of this list, but it was not decisively concluded whether the list should include reference to the drug testing requirement. This requirement is planned to be ‘turned on’ this month but will only be relevant and applicable to 3-5 single courts across England and Wales. As this is the case, it is recommended that it is not included in the Imposition guideline as it may otherwise confuse and can be added at a later date when it is more widely applicable. However, Council may feel it would be useful to include it considering it is in legislation.

Question 11: Does Council agree not include the drug testing requirement in the requirements list at this time?

Female offenders and young adult offenders

3.21 The paragraphs on female offenders and young adult offenders within the effectiveness section have been through considerable development. Having now brought all sections together, it is considered necessary to ask whether these sections are of a suitable length. This section has been put into bullet points for easier reading, but Council may feel that, considering the length of the updated full guideline, the paragraphs on female offenders

in particular are, arguably, disproportionately long. This may risk sentencers skipping over these paragraphs and/or not referring to them at all. It is clear from the BIT report, which has now been reviewed by the Analysis and Research Sub-Group and is currently with the peer reviewer, that sentencers do not necessarily read each guideline in full when referring to them. It is also clear, from a practical perspective, that the imposition guideline is not read in full while in court (particularly if sentencers are also looking at the relevant offence specific guideline and are having to flick between).

3.22 On the other hand, the issues surrounding sentencing female offenders, and pregnant offenders, are particularly prominent at this time and this is a discussion the Council has had many times over the last few years. The Council may feel a disproportionately long (at least to the proportion of female offenders) paragraph on female offenders ensures it is clear that the Council considers this an important issue and makes this an important point of reference for sentencers, and that the bullet point format ensures this section can be read as easily as possible.

Question 12: Is the Council content with the current length of the female offenders paragraph in particular, and also the young adult offenders paragraph?

Full guideline

3.23 While this meeting does not seek to ask the Council for sign off for the guideline considering the number of outstanding discussion points, it does provide an opportunity for members to read through the guideline in full for the first time and raise any concerns for any issues that may not yet have been discussed in detail. The full updated draft guideline is at **Annex D**.

3.24 Please note, the list of requirements within the guideline are also intended to be drop downs, which would make the overall length shorter if all contracted.

3.25 It may be helpful for members to email both Bill and Jessie any substantial additional points or concerns in advance of the meeting to aid time management during the meeting, but please also feel free to raise anything new during the meeting.

Question 13: Is there anything else members of Council wish to raise now seeing the whole guideline?

4.1 The updated draft Imposition guideline addresses some issues set out in University of Hertfordshire commissioned report on equality and diversity in the work of the Sentencing Council (“the equalities report”).

4.2 The Council agreed in response to the finding on personal mitigation that the Imposition guideline would consider this in relation to whether and the point at which sentencers request PSRs and consequently receive all the information necessary for sentencing. It is intended that the new PSR section states the legislation on PSRs more directly so to encourage courts to request PSRs in all cases unless considered unnecessary. This is strengthened by the encouragement for courts to give some indication of the harm and culpability (in magistrates’ courts only) and/or particular needs or issues they want probation to address in a PSR, and for a PSR to be requested on committal to the Crown court. This is also applicable to the new inclusion of the list of cohorts for whom a PSR may be particularly important, as information on personal mitigation of offenders in these cohorts obtained by the court through a PSR may affect the overall type or requirements on a sentence. While the list of cohorts may end up capturing the majority of offenders in courts, this is considered necessary to ensure the courts have the necessary information to make the most informed sentencing decision.

4.3 The equalities report recommended that pregnancy should be a distinct item where medical conditions are mentioned. The updated draft Imposition guideline newly makes reference to pregnancy in multiple places; first in the list of cohorts for whom a PSR may be particularly important (which, in line with the report, is distinct from both the primary carer cohort and female offender cohort) and then in more detail in a female offenders specific sub-section in a new Effectiveness section. This new section also addresses various equality issues related to the sentencing of female offenders that the Council has been recently lobbied to address.

4.4 Regarding the recommendation in the equalities report on communicating with other ‘consumers’ or stakeholders in the guideline development (or review) process, there has been significant engagement throughout the review of this guideline with various teams within Probation, including in particular the central court team. This has led to the Council being asked for direct feedback on a new PSR form which will be piloted later in the year, and it is hoped this closer relationship will continue for future guidelines.

4.5 More generally, the guideline sets out that the court should ensure that requirements imposed on an offender should be suitable according to a variety of factors. The updated draft guideline has expanded on this list of factors (newly adding, for example, ‘the ability of the offender to comply taking into account the offender’s accommodation, employment and

family situation including any dependants'). These new factors take more individualised needs into account, which may decrease the risk of some high-need cohorts of offenders being given unsuitable sentences. This approach is strengthened by the removal of rehabilitative requirements from the levels table lists that increase volume of requirement with severity of offence, and the statement that 'Any requirement/s imposed for the purpose of rehabilitation should be determined by and aligned with the offender's needs.'

4.6 Finally, after some initial conversations with organisations representing those with lived experience of the criminal justice system, it is intended that the consultation will be sent to these organisations with a request for input specifically from those with lived experience.

5 IMPACT AND RISKS

5.1 The resource assessments undertaken for each guideline must consider the potential impact of the guideline on prison, probation and youth justice resources. Typically, for offence specific guidelines, this tends to focus on the resource associated with prison places, as this is the analysis we can most easily conduct with the data we have access to. "For this guideline, any impact on prison resources is more likely to be from fewer people being sent to prison than more people being sent to prison."

It is anticipated, however, that the resource assessment for the Imposition guideline will need to consider in greater depth the impact on probation resources. This has historically been much harder to determine as the 'capacity' of probation services cannot be measured in the same way as beds in cells, and our access to probation data is much more limited. The A&R team intend to work with MoJ and the Probation Service to understand what impact the guideline may have regarding capacity and resources, and the draft resource assessment will be presented with the draft guideline for sign off in the September meeting.

Deferred Sentences

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Always consult your legal adviser if you are considering deferring a sentence.

The court is empowered to defer passing sentence for up to six months ([Sentencing Code, s.5](#)). The court may impose any conditions during the period of deferment that it considers appropriate. These could be specific requirements as set out in the provisions for community sentences, restorative justice activities ([Sentencing Code, s.3](#)) or requirements that are drawn more widely. The purpose of deferment is to enable the court to have regard to the offender's conduct after conviction or any change in his or her circumstances, including the extent to which the offender has complied with any requirements imposed by the court.

The following conditions must be satisfied before sentence can be deferred ([Sentencing Code, s.5](#)):

1. the offender must consent (and in the case of restorative justice activities the other participants must consent);
2. the offender must undertake to comply with requirements imposed by the court; and
3. the court must be satisfied that deferment is in the interests of justice.

Deferred sentences will be appropriate only in very limited circumstances.

- deferred sentences are likely to be relevant predominantly in a small group of cases close to either the community or custodial

sentence threshold where, should the offender be prepared to adapt his behaviour in a way clearly specified by the sentencer, the court may be prepared to impose a lesser sentence;

- sentencers should impose specific and measurable conditions that do not involve a serious restriction on liberty;
- the court should give a clear indication of the type of sentence it would have imposed if it had decided not to defer;
- the court should also ensure that the offender understands the consequences of failure to comply with the court's wishes during the deferment period.

If the offender fails to comply with any requirement imposed in connection with the deferment, or commits another offence, he or she can be brought back to court before the end of the deferment period and the court can proceed to sentence.

Expanded Explanation for sole or primary carer for dependant relatives

Effective from: 01 October 2019

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm

This factor is particularly relevant where an offender is on the cusp of custody or where the suitability of a community order is being considered. See also the [Imposition of community and custodial sentences guideline](#).

For offenders on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing.

Where custody is unavoidable consideration of the impact on dependants may be relevant to the length of the sentence imposed and whether the sentence can be suspended.

For more serious offences where a substantial period of custody is appropriate, this factor will carry less weight.

When imposing a community sentence on an offender with primary caring responsibilities the effect on dependants must be considered in determining suitable requirements.

In addition when sentencing an offender who is pregnant relevant considerations may include:

- any effect of the sentence on the health of the offender and
- any effect of the sentence on the unborn child

The court should ensure that it has all relevant information about dependent children before deciding on sentence.

When an immediate custodial sentence is necessary, the court must consider whether proper arrangements have been made for the care of any dependent children and if necessary consider adjourning sentence for this to be done.

When considering a community or custodial sentence for an offender who has, or may have, caring responsibilities the court should ask the Probation Service to address these issues in a PSR.

Useful information can be found in the [Equal Treatment Bench Book](#) (see in particular Chapter 6 paragraphs 131 to 137)

Better Case Management Handbook

10.2. Ordering a PSR in the Magistrates' Court on Committal for Sentence

This guidance applies pending an update to CrimPD 3A.9.

There should be liaison between Crown Courts, Magistrates' Courts and the Probation Service about the resources available so that courts are aware what level of provision is available.

In most areas the Probation Service will now be able to provide Pre-Sentence Reports (PSRs) in all cases which are committed to the Crown Court.

In other areas the Probation Service will not yet be able to provide PSRs in all cases and in such areas the magistrates must reach a decision whether a PSR is necessary applying the following guidance.

The sentencing court must obtain a report on an offender 18 or over unless it considers it unnecessary to do so. Additional conditions apply where the offender is aged under 182.

The purpose of a PSR is to facilitate the administration of justice, and to reduce an offender's likelihood of reoffending and to protect the public and/or victim(s) from further harm. A PSR does this by assisting the court to determine the most suitable method of sentencing an offender³.

Unless there is already in existence a recent PSR (not normally more than 6 months old) which is adequate to the new case, the Magistrates' Court will generally order a PSR when committing for sentence where:

- The defendant is of previous good character, or young (under 18, or under 21 and of previous good character or with no previous prison sentence), or otherwise vulnerable, OR
- The defendant has caring responsibilities, OR
- The sentence that might be appropriate in the Crown Court, before credit for plea, is likely to be 3 years or less such that the Crown Court will need to consider a suspended or community sentence, OR
- The defendant has committed a sexual offence (including indecent images) or domestic violence offence OR
- The sentencing court will have to consider whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (dangerousness).

If a report is to be ordered the magistrates should consider if any separate drug or alcohol treatment assessment is also required.

Where a defendant has committed a further offence during the period of a community order or suspended sentence it will usually be sufficient to order a progress report from the supervising officer to supplement an existing PSR.

Ordering a report at the time the case is committed for sentence allows probation maximum time to prepare a quality report, minimises delays, and reduces the risk of the need to adjourn the sentencing hearing. The complexity of reports required for the Crown Court and the limited capacity of the probation service to provide "on the day" reports means that organising a report in advance is much to be preferred.

If the Magistrates' Court refuses to order a PSR the defence should be reminded that they may renew their application to the Crown Court and should do so in writing in advance of the date set for sentence to avoid an ineffective hearing.

In all cases where there may be a guilty plea it is valuable for the defence to liaise with the Probation Service in advance to discuss whether a report may be of assistance and any particular issues that ought to be considered. If there are mental health issues the defence should also liaise with any mental health support service provided at the court.

Magistrates should ensure that arrangements are in place to ensure that the Probation Service is informed of any order for the preparation of a PSR.

Imposition Guideline

Note: Deferred Sentences

The court may consider whether it would be appropriate, beneficial and in the interests of justice for sentencing to be deferred for up to six months, and may attach conditions to that deferment.

The purpose of deferment is to enable the court to have regard to the offender's conduct after conviction or any change in their circumstances, including the extent to which the offender has complied with any requirements imposed by the court. Deferring sentence can be a valuable tool to assess whether a potential community or suspended sentence order is appropriate for a particular offender. Deferring sentencing may be particularly appropriate for young adults (18-25 years of age) or those who are in transitional life circumstances. However, deferred sentences will be appropriate only in very limited circumstances. When deferring sentence, the court must be clear what the two potential sentences are depending on whether the deferral period is successfully complied with, or if it is not.

If deferring the sentence is a consideration, please see further guidance on Deferred Sentencing in the drop-down below.

1. Thresholds

The circumstances of the offence and the factors assessed by offence-specific guidelines will determine whether the community or custody threshold may be passed. Where no offence specific guideline is available to determine seriousness of the offence, the harm caused by the offence, the culpability of the offender and any previous convictions will be relevant to the assessment, alongside consideration of the General Guideline ([link](#)).

A **community order** must not be imposed unless the offence is serious enough to warrant the making of such an order. There is no power to make a community order for a non-imprisonable offence.

Even where the threshold for a community order has been passed, sentencers must consider all available disposals at the time of sentence as a fine or discharge may still be an appropriate penalty. A Band D fine may be an appropriate alternative to a community order in some cases and can achieve the purposes of sentencing.

Sentences should not necessarily escalate from one community order range to the next on each sentencing occasion. The decision as to the appropriate range of community order should be based upon the seriousness of the new offence(s) (which will take into account any previous convictions).

If the offender received a non-custodial disposal for the previous offence, the court should not necessarily move to a custodial sentence for the fresh offence.

A **custodial sentence** must not be imposed unless the offence or the combination of the offence and one or more offences associated with it was so serious that neither a fine alone nor a community sentence can be justified. Prison must only be a punishment for the most serious offences.

Even where the threshold for a custodial sentence has been passed, a custodial sentence should not be imposed where sentencers consider that a community order achieve the purposes of sentencing. Imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the purposes of sentencing.

Relevant previous convictions will be an aggravating factor increasing the seriousness of the offence. They will affect the intensity and length of a community sentence and the length of a custodial sentence. Great caution must be exercised before the existence of relevant previous convictions is used as the sole basis to justify the case passing the custody threshold.

Numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction) that could be addressed more effectively through a community order with relevant requirements and will not necessarily indicate that a custodial sentence is necessary.

2. Pre-sentence reports

The court must request and consider a pre-sentence report (PSR) before forming an opinion of the sentence unless, in the circumstances of the case, it considers that it is unnecessary to obtain a pre-sentence report. A pre-sentence report may also be requested by a defence solicitor as part of the [before-plea protocol](#).

A pre-sentence report can be pivotal in helping the court decide whether to impose a custodial or community order and, where relevant, what particular requirements or combination of requirements are most suitable for an individual offender on either a community order or a suspended custodial sentence.

PSRs are necessary in all cases that would benefit from an assessment of one or more of the following: the offender's dangerousness and risk of harm, the nature and causes of the offender's behaviour, the offender's personal circumstances and any factors that may be helpful to the court in considering the offender's suitability for different sentences or requirements.

A pre-sentence report may be unnecessary if a discharge or fine is the most likely sentencing outcome.

A pre-sentence report may be particularly important if the offender is:

- at risk of a custodial sentence of 12 months or less;
- a young adult (18-25 years);
- female (see further information below);
- pregnant (see further information below);
- a sole or primary carer for dependant relative(s);
- from an ethnic minority, cultural minority, and/or faith minority community;
- has disclosed they are transgender;
- has any drug or alcohol addiction issues;
- has a learning disability or mental disorder;
- Or; the court considers there to be a risk that the offender may have been the victim of domestic abuse, trafficking, modern slavery, or been subject to coercion, intimidation or exploitation.

Please refer to the [Equal Treatment Bench Book](#) ([link](#)) for more guidance on how to ensure fair treatment and avoid disparity of outcomes for different groups.

A report will also be mandatory or particularly important for a variety of requirements (please see requirements list below.)

When ordering a PSR, the court must make clear to the offender that it may impose any sentence that the law allows including a custodial sentence, and the court retains its power of committal for sentence to the Crown Court.

Indication of sentence to Probation

In magistrates' courts, it may be helpful for the court to indicate to Probation the preliminary level of harm and culpability it has found for the offence.

In all courts, it may be helpful for the court to indicate to Probation any specific requirements that Probation should consider the defendant's suitability for should a community or suspended sentence order be imposed; and any issues or concerns the court would specifically like to be considered.

Adjournments and on committal

Pre-sentence reports can be verbal or written, and may require an adjournment to allow time for the necessary information to be collected by Probation. Please liaise with Probation on whether a quality report

can be delivered on the day and adjourn the case if it cannot be. The need for an adjournment may be reliant on the availability of third parties to gather necessary information.

Where a case is being committed to the Crown Court, a PSR should be requested on committal to allow Probation as much time as possible to prepare a quality report, minimise any delay and reduce the risk of the need to adjourn at the first hearing.

Magistrates: Consult your legal adviser before deciding to sentence to custody without a pre-sentence report.

3. Purposes and Effectiveness of Sentencing

The court must have regard to the five purposes of sentencing when determining sentence. The weighting each purpose should be given will vary from case to case. Both community and custodial sentences can achieve all the purposes of sentencing.

- The punishment of offenders
- The reduction of crime (including its reduction by deterrence)
- The reform and rehabilitation of offenders
- The protection of the public
- The making of reparation by offenders to persons affected by their offences

The court must ensure that any restriction on the offender's liberty is commensurate with the seriousness of the offence. A restriction on liberty can be achieved by a community or a custodial sentence.

Effectiveness

The court should 'step back', and review whether the sentence it has preliminarily arrived at fulfils the purposes of sentencing.

Where relevant, the court should ensure that a rehabilitative sentence has been fully considered, which research has shown can reduce the risk of reoffending when compared to a short custodial sentence, therefore fulfilling other purposes of sentencing, such as reduction of crime and protection of the public, through its sentencing.

The effectiveness of a sentence will be based on the individual offender. The [Equal Treatment Bench Book \(link\)](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. The Council has issued overarching guidelines for consideration in the [sentencing of offenders with mental disorders, developmental disorders, or neurological impairments \(link\)](#). Courts should review this guideline if it applies to the case.

Young Adults Offenders

When sentencing young adult offenders (18-25 years), courts should be aware that age and/or lack of maturity can affect the offender's responsibility for the offence and the effect of the sentence on the offender. When considering a custodial or community sentence for a young adult, the court should ask Probation for a pre-sentence report. In particular young adults are still developing neurologically and consequently may be less able to:

- evaluate the consequences of their actions;
- limit impulsivity; and
- limit risk taking.

Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers. Environment plays a role in neurological development and factors such as adverse childhood experiences including deprivation and/or abuse may affect development.

When considering sentencing options for young adult offenders, courts should be aware that an immature offender may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody, and that an immature offender may find it particularly difficult to cope with the requirements of a community order without appropriate support. However, there is a greater capacity for

change in immature offenders and they may be more receptive to opportunities to address their offending behaviour and change their conduct.

Courts should be aware that the emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

Female Offenders

Courts should be aware that female offenders offend for different reasons than men and the impact of custodial sentences on female offenders is different. It is important for the court to ensure that it has sufficient information about a female offender's background. As such, when considering a community or custodial sentence for a female offender, the court should ask Probation for a pre-sentence report. Courts should be aware of the following considerations when sentencing a female offender.

- **Female offending is commonly linked to mental health, substance-misuse, or financial and homelessness issues**, and female offenders are more likely to be victims of domestic abuse or have experienced emotional, physical or sexual abuse as a child. Female offenders sentenced to custody are much more likely than men to suffer from anxiety or depression or attempt suicide.
- **Women from an ethnic minority background in particular have distinct needs from both men from an ethnic minority background, and white women**, and these should be considered before the imposition of a community or custodial sentence.
- **Female offenders are more likely to be primary carers than male offenders**. When mothers are sentenced to custody, only a very small percentage of children remain in their own home. Those dependent children are adversely impacted by having to adjust to new homes, new carers, and new educational establishments and are often separated from siblings. There is an emotional impact for those children resulting in shame, stigma, anger, grief and behavioural changes. Those dependent children consequently have an increased likelihood of committing criminal offences, mental health problems, substance misuse and other social issues.
- **The impact of custody on pregnant women can be harmful for both the mother and the unborn child**. Pregnant women in custody are more likely to have high risk pregnancies with reduced access to specialised maternity services. There may also be difficulties accessing medical assistance and with being transported to hospital when in labour and giving birth.
- **There are only a small number of prisons for female offenders**. Therefore, female offenders are more likely to be imprisoned some distance from support networks of friends and family. This will impact on resettlement when they leave custody.
- **Female offenders are at greater risk than male offenders of leaving custody without accommodation and being unemployed after release**, leaving them vulnerable to further abuse and exploitation. A greater proportion of female offenders are unemployed when released than male offenders.

Courts should consider the research referenced in this guideline that short custodial sentences are generally less effective at reducing reoffending than community sentences, which can seek to better address the underlying causes of offending.

4. Imposition of community orders

A community order can only be imposed if the offence committed is punishable by imprisonment. The maximum term that a community order can be imposed is 3 years.

Community orders can fulfil all the purposes of sentencing. 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.

Determining the length of a Community Order

In general, courts should impose the shortest term commensurate with the seriousness of the offence. The court imposing a community order must specify the length of that order by specifying the end date by which all requirements in it must have been complied with. This end date must not be more than 3 years after the date of the order.

The court should specify a length of an order which reflects both the seriousness of the offence and the length of time the requirements being imposed necessitate (within which a consideration of the offender's individual circumstances will be necessary).

Time remanded in custody or on qualifying curfew before imposing a community order

The court imposing a community order may take any time spent in custody on remand or on a qualifying curfew into account when determining any restrictions on liberty as part of the community order.

The court may make a community order where the offender has been remanded in custody (or subject to a qualifying curfew) for a period equal to, or in excess of, the time that they would have served commensurate with the seriousness of the offence. The rehabilitative, or any other purpose of sentencing, may still justify a community order, which takes the period of custody or curfew into account by reducing the punitive element. Time spent in custody or on a curfew may amount to exceptional circumstances which would make it unjust to impose a requirement for the purposes of punishment.

5. Requirements

Community orders must consist of one or more requirements.

The court must ensure that requirements imposed are the most suitable for the offender. This means that requirements should be suitable according to:

- 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.

At least one requirement must be imposed for the purpose of punishment and/or a fine imposed must be 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 where two or more requirements are included, they are compatible with one another and are not excessive when taken together. 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.

Unpaid work requirement (UPW)

V

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.

“Community Payback” is a term used to describe the delivery of an Unpaid Work requirement.

Volume/length range: Between 40 – 300 hours to be completed within 12 months.

Work as part of an unpaid work requirement must be suitable for an offender to perform; and if necessary, this suitability should 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.

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.

Rehabilitation activity requirement (RAR)

V

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 Probation.

The 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 interventions, or referral to external organisations providing rehabilitative services.

Volume/length range: Minimum of 1 RAR day; no maximum, to be completed within the length of the order.

A rehabilitation activity requirement should be imposed when the offender has rehabilitative needs that cannot be addressed by other requirements.

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.

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.

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

V

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.

Volume/length range: 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 must be recommended by Probation, as each programme has specific eligibility criteria that must be met and different regions have different programmes.

Probation will specify to the court how many days are required to complete a suitable programme to ensure a suitable programme can be completed.

Prohibited activity requirement

V

A prohibited activity requirement prohibits the offender from participating in any activity specified by the court.

Volume/length range: Duration set by the court, up to the length of the order.

The court must consult Probation 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

V

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.

Volume/length range: 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.

The court must ensure safeguarding and domestic abuse enquiries are carried out 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. Ordinarily this is a function performed by Probation.

Exclusion requirement

V

An exclusion requirement prohibits an offender from going into a particular place or area.

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.

Volume/length range: Up to 2 years. May either be continuous or only during specified periods.

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).

Residence requirement

V

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.

Volume/length range: Duration set by the court, up to the length of the order. The maximum placement length of an approved premises is 12 weeks.

The court must consider the home surroundings of the offender before imposing this requirement.

The court is encouraged to engage with Probation to understand what type of HMPPS provided temporary accommodation is available in their region to support these orders.

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.

Foreign travel prohibition requirement

V

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).

Volume/length range: Duration set by the court, up to a maximum of 12 months.

Unlikely to be suitable for an offender who does not have a passport, rarely travels, or has no apparent international connections.

Mental health treatment requirement (MHTR)

V

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.

Volume/length range: Duration set by the court, up to the length of the order.

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.

MHTRs can be used in combination with other treatment requirements (for example drug and alcohol rehabilitation requirements) for eligible offenders with multiple needs.

Drug rehabilitation requirement (DRR)

V

A drug rehabilitation requirement (DRR) 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.

Volume/length range: Duration set by the court, up to the length of the order.

A drug rehabilitation requirement 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.

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.

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.

DRRs can be used in combination with other treatment requirements (for example, mental health treatment requirement) for offenders with multiple needs.

Alcohol treatment requirement (ATR)

V

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. The treatment may be residential or non-residential.

Volume/length range: Duration set by the court, up to the length of the order.

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.

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.

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.

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 alcohol abstinence and monitoring requirement (AAMR).

Alcohol abstinence and monitoring requirement (where available) (AAMR)

V

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.

Volume/length range: Up to 120 days.

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.

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.

An AAMR cannot be imposed alongside an ATR alcohol treatment requirement.

Electronic monitoring

v

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. The electronic compliance monitoring requirement is imposed to monitor compliance with another requirement on an order.

Volume/length range: Up to 2 years.

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.

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:

- 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.

The court must ensure safeguarding and domestic abuse enquiries are carried out 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. Ordinarily this is a function performed by Probation.

Please note: A compensation order or ancillary order may be imposed with any requirement/s

6. Community order levels

Offence-specific guidelines refer to three levels of community order based on offence seriousness (low, medium and high). The culpability and harm present in the offence(s) should be considered to identify which of the three sentencing is appropriate.

The seriousness of the offence should be the initial factor in determining the requirement imposed for the purpose of punishment and its corresponding intensity. Any requirement(s) imposed for the purpose of rehabilitation should be determined by, and align with, the offender's needs.

Courts should consider any relevant circumstances of the offender, including their needs and risks, in determining the final requirement or package of requirements. This includes whether these circumstances:

- make a punitive requirement unjust
- affect the assessment or intensity of the appropriate punitive requirement

- make any other requirements appropriate to fulfil any of the other purposes of sentencing.

Courts should tailor community orders for each offender according to their specific circumstances.

In determining the requirement or combination of requirements, consideration should be given to the broad variety of sentences a community order can offer to be most effective for a particular offender, including different lengths of an order. Guidance on determining the length of a community order is given below the table.

The levels table below offers non-exhaustive examples of the intensity of requirements that might be appropriate in each level of community order. For the curfew requirement, the court may vary the number of hours on different days if appropriate according to the circumstances of the offender.

Low	Medium	High
Offences only just cross the community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate.	Offences that obviously fall within a sentence of a community order.	Offences only just below the custody threshold, or where the custody threshold is crossed but a community order is more appropriate in the circumstances.
If imposing for the purposes of punishment, suitable requirement ranges might include:		
<ul style="list-style-type: none"> • 40 – 80 hours of unpaid work • Curfew requirement up to 16 hours in any day for up to 4 weeks* • Exclusion requirement, for a few months • Prohibited activity requirement 	<ul style="list-style-type: none"> • 80 – 150 hours of unpaid work • Curfew requirement up to 16 hours in any day for up to 6 months* • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement 	<ul style="list-style-type: none"> • 150 – 300 hours of unpaid work • Curfew requirement up to 20 hours in any day for up to 24 months • Exclusion requirement lasting in the region of 12 months* • Prohibited activity requirement
*Maximum of 112 hours in any period of 7 days.		
Any requirement/s imposed for the purpose of rehabilitation should be determined by and aligned with the offender's needs. The court may benefit from Probation's assessment of the offender's needs and suggestion of appropriate rehabilitative interventions.		
If order does not contain a punitive requirement, suggested fine levels are indicated below:		
BAND A FINE	BAND B FINE	BAND C FINE

7. Imposition of custodial sentences

A custodial sentence (whether immediate or suspended) can only be considered where the court is satisfied that the seriousness of an offence and all circumstances of the offence and the offender mean that no other sentence is suitable.

The court should ask the following three questions in the following order:

Is it unavoidable that a custodial sentence be imposed?

Passing the custody threshold does not mean that a custodial sentence is inevitable. Custody should not be imposed where the purposes of sentencing could be achieved by a community order (for example, a community order may provide sufficient restriction on an offender's liberty, by way of punishment, while allowing rehabilitation to take place to prevent future crime.)

Community orders can be highly punitive. They last longer than shorter custodial sentences. Community orders can restrict an offender's day to day liberties, especially imposed on an offender who may find regular attendance at a specific place or time challenging. Breach can result in significant adverse consequences.

A custodial sentence may become disproportionate to achieving the purposes of sentencing where there would be an impact on dependants, including on unborn children where the offender is pregnant. Courts should avoid the possibility of an offender giving birth in prison unless the imposition of a custodial sentence is unavoidable.

If the purposes of sentencing can be achieved by a community order, or any personal mitigation means that a community order may be a more suitable sentence, please see the [Imposition of Community orders \(link\)](#) section.

What is the shortest term commensurate with the seriousness of the offence?

If the court is considering an immediate custodial sentence of up to 12 months, it should take into account that research suggests that custodial sentences of up to 12 months are less effective than other disposals at reducing reoffending and can lead to negative outcomes. Any custodial sentence can disrupt employment, education or accommodation and affect support networks by interfering with relationships with friends and family. Factors supporting desistance also can be adversely impacted by custody.

In considering the shortest term, the court must NOT consider any licence or post sentence supervision requirements or any other administrative or statutory consequences of the potential sentence imposed.

Can the sentence be suspended?

If the shortest term commensurate with the seriousness of the offence is less than 24 months, the court may consider whether it is appropriate to suspend that sentence, so that the offender serves their sentence in the community under the supervision of Probation. If the offender reoffends during the operational period or fails to comply with any requirements during the supervision period of the suspended sentence order, the custodial term will be activated and the offender will be required to serve some or all of the sentence in custody, unless it is unjust to do so, as set out in the [Breach of Suspended Sentence Orders guideline \(link\)](#).

A suspended sentence is a custodial sentence. A suspended sentence **MUST NOT** be imposed as a more severe form of community order. Sentencers should be clear that they would impose an immediate custodial sentence if the power to suspend were not available. If not, a non-custodial sentence, such as a community order, should be imposed.

In weighing any of the following non-exhaustive factors indicating whether to suspend a custodial sentence, the court will usually benefit from Probation's assessment of any relevant circumstances (such as dependents) and whether the offender can be safely managed in the community.

Note: Where a statutory minimum term for an offence is 24 months or less, the court may lawfully impose a suspended sentence order, but in practice this will only rarely be appropriate.

Factors indicating that it <u>may</u> be appropriate to suspend a custodial sentence	Factors indicating that it would <u>not</u> be appropriate to suspend a custodial sentence
Realistic prospect of rehabilitation	Offender presents a risk/danger to the public
Offender does not present high risk of reoffending or harm	The seriousness of the offence means that appropriate punishment can only be achieved by immediate custody
Strong personal mitigation	History of poor compliance with court orders AND unlikely to comply in the future
Immediate custody will result in significant harmful impact upon others	

8. Suspended Sentence Orders

A custodial sentence between 14 days and 2 years (also applicable for the aggregate of the terms where the court imposes two or more sentences to be served consecutively) may be suspended for between 6 months and 2 years.

In determining the length of suspension (the operational period), the court should consider whether the time for which a sentence is suspended should reflect the total length of the sentence, and the duration needed for any requirements imposed (the supervision period). A custodial sentence that is suspended should be for the same term that would have applied if the sentence was to be served immediately. Guidance on defining the operational and supervision periods can be found below.

Requirements of a Suspended Sentence Order

When the court suspends a sentence, it may impose one or more requirements for the offender to undertake in the community. The requirements that may be available are identical to those available for community orders. The court must follow the guidance in the [requirements section of this guideline](#) (*link up*), including ensuring that any requirements imposed are the most suitable for the offender, and where multiple requirements are imposed, they are compatible with each other and not excessive.

Requirements imposed as part of a suspended sentence order are more likely to be predominantly rehabilitative in purpose, as the imposition of a custodial sentence, even if suspended, is itself both a punishment and a deterrent. Any punitive requirements should not be disproportionate to the length of custodial sentence being suspended. To ensure that the requirements of the suspended sentence are commensurate with offence seriousness, care must be taken to ensure requirements imposed are not excessive. The court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

Determining operational and supervision periods of a Suspended Sentence Order

The court making a suspended sentence order must specify the operational period and supervision period of the order.

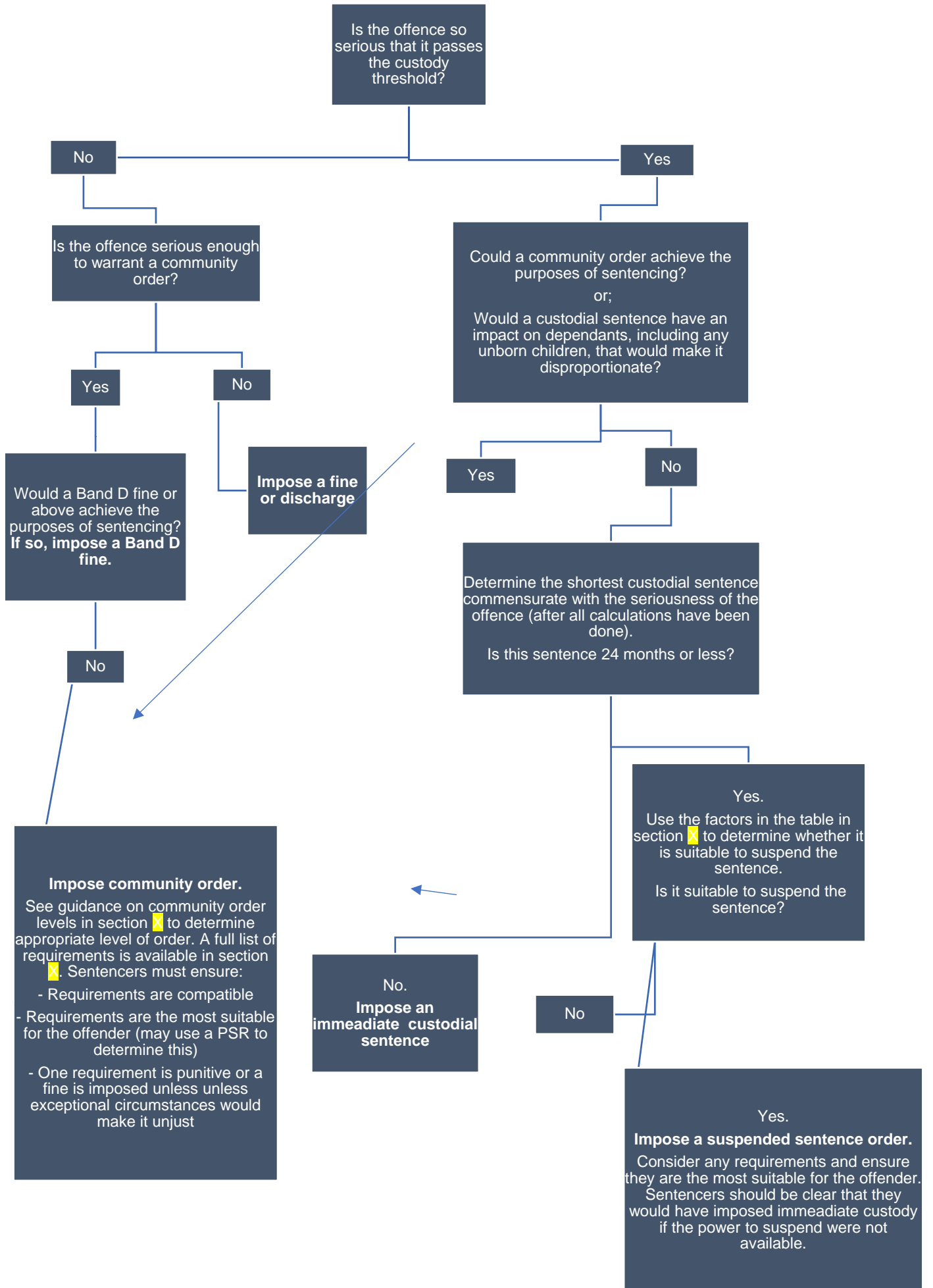
Operational period	<p>The length of time for which a sentence is suspended, during which the offender will be liable to go to custody to serve the suspended custodial term if they commit another offence.</p> <p>This period begins on the day on which the order is made and must be at least 6 months and not more than two years.</p> <p>The length of the operational period should be tailored to the particular circumstances of the case. Non-exhaustive factors which may be relevant when determining length of the operational period are:</p> <ul style="list-style-type: none"> • the length of the custodial term to be suspended; • the nature and duration of any requirements of the order and resulting supervision period; • the risks of reoffending or harm.
Supervision period	<p>The length of time for an offender to complete any requirements of the suspended sentence order, during which the offender will be liable to go to custody to serve the suspended custodial term if they fail to comply with any of the requirements.</p> <p>This period begins with the day on which the order is made and must be at least 6 months and not more than two years, or the operational period if this is less than two years.</p> <p>Non-exhaustive factors which may be relevant when determining the supervision period include:</p> <ul style="list-style-type: none"> • the length of time required to complete any requirements ; • the length of time required for rehabilitative requirements to be most effective (please consult Probation if necessary). <p>If the suspended sentence includes an unpaid work requirement, the supervision period for this requirement continues until the offender has completed the number of hours in the requirement but does not continue beyond the operational period.</p>

Time remanded in custody or on qualifying curfew before imposing a suspended sentence order

The court imposing a suspended sentence order should determine the length of the suspended custodial term without reference to any time spent in custody on remand or on a qualifying curfew. When explaining the effect of the sentence, the court should indicate that the time remanded in custody or on a qualifying curfew would be deducted in the event of breach and activation of that sentence.

If an offender has spent a significant proportion of the custodial term to be suspended on remand or on a qualifying curfew, the court must consider whether it would be appropriate to impose a suspended sentence order at all, as there would be limited effect of the custodial term in the case of activation. Depending upon the circumstances of the case, immediate custody (which may result in immediate release due to time served) or a community order or discharge may be more appropriate, particularly where there is a good prospect of rehabilitation.

Sentencing Flow Chart



Requirements Table ([print](#))

	Requirement	Requirement overview	Volume / Length range	Considerations / Factors to consider
1	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 a 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 if necessary, this suitability should 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>
2	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 Probation.</p> <p>The court will specify the maximum number rehabilitative activity days the offender must complete. Post-</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</p>

		<p>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 interventions, or referral to external organisations providing rehabilitative services.</p>		<p>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> <p>The court needs only to specify the number of 'RAR' or rehabilitative activity days, and Probation will manage supervision appointments alongside these days.</p>
3	Programme requirement	<p>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.</p>	<p>The court must specify the number of days on which the offender must participate in the programme up to the length of the order.</p>	<p>An accredited programme must be recommended by Probation, as each programme has specific eligibility criteria that must be met and different regions have different programmes.</p> <p>Probation will specify to the court how many days are required to complete a suitable programme to ensure a suitable programme can be completed.</p>
4	Prohibited activity requirement	<p>A prohibited activity requirement prohibits the offender from participating in any activity specified by the court.</p>	<p>Duration set by the court, up to the length of the order.</p>	<p>The court must consult Probation before imposing this requirement.</p> <p>Electronic monitoring may be considered to monitor compliance with the prohibited activity if it is suitable (see electronic monitoring below).</p>
5	Curfew requirement	<p>A curfew requirement requires an offender to remain at a particular place (or places) for a specified period (or periods) of time.</p> <p>Different places or different curfew periods may be specified for different days. The curfew period should be targeted to reflect the punishment</p>	<p>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</p>	<p>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.</p> <p>In all cases, the court must consider those likely to be affected, such as any dependants.</p>

		intended, support rehabilitation where relevant, and protect victims and the public.	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.	The court must ensure safeguarding and domestic abuse enquiries are carried out 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. Ordinarily this is a function performed by Probation.
6	Exclusion requirement	An exclusion requirement prohibits an offender from going into a particular place or area. 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.	Up to 2 years. May either be continuous or only during specified periods.	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).
7	Residence requirement	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.	Duration set by the court, up to the length of the order. The maximum placement length of an approved premises is 12 weeks.	The court must consider the home surroundings of the offender before imposing this requirement. The court is encouraged to engage with Probation to understand what type of HMPPS provided temporary accommodation is available in their region to support these orders. 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.
8	Foreign travel prohibition requirement	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).	Duration set by the court, up to a maximum of 12 months.	Unlikely to be suitable for an offender who does not have a passport, rarely travels, or has no apparent international connections.
9	Mental health treatment requirement	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.	Duration set by the court, up to the length of the order.	<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>MHTRs can be used in combination with other treatment requirements (for example drug and alcohol rehabilitation requirements) for eligible offenders with multiple needs.</p>
10	Drug rehabilitation requirement	A drug rehabilitation requirement (DRR) 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	Duration set by the court, up to the length of the order.	<p>A drug rehabilitation requirement 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</p>

		directed by the court.		<p>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>
11	Drug Testing requirement	Not yet available to courts.		
12	Alcohol treatment requirement	<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>	Duration set by the court, up to the length of the order.	<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 alcohol abstinence and monitoring requirement (AAMR).</p>
13	Alcohol abstinence and monitoring	An alcohol abstinence and monitoring requirement imposes a	Up to 120 days.	It is generally recommended that an alcohol abstinence and monitoring requirement (AAMR) is

	requirement (where available)	total ban on alcohol consumption and requires the offender to have their compliance with the requirement electronically monitored.		<p>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>
14	Electronic monitoring: <ul style="list-style-type: none"> • 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>The court must ensure safeguarding and domestic abuse enquiries are carried out on any proposed curfew address to ensure the accommodation is suitable,</p>

				others will not be put at risk and the homeowner agrees to the curfew, particularly where vulnerable adults and children are involved. Ordinarily this is a function performed by Probation.
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