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**SC(23)NOV03 – Ancillary orders scoping
paper
tbc**

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1 ISSUE

1.1 The Council has previously indicated that it would be useful to do some work on ancillary orders.

1.2 The purpose of this paper is to set out what guidance and information is currently available and to discuss what changes or improvements could usefully be made.

2 RECOMMENDATION

2.1 That the Council decides whether further work should be done on ancillary orders and if so, whether this should involve:

- improvements to the consistency, accessibility and presentation of the current information provided
- more detailed information on ancillary orders and/or
- stronger indications in guidelines as to the desirability (or otherwise) of imposing particular ancillary orders

3 CONSIDERATION

Current position

3.1 Ancillary orders are referenced in various ways in guidelines and elsewhere on the Sentencing Council website. Most offence specific guidelines have a step (usually step 6 or 7) entitled 'Ancillary orders' or 'Compensation and ancillary orders' though there are several variations on this. In most guidelines that step includes these hyperlinks:

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

3.2 Some guidelines only have a brief piece of text in addition to those links, such as:

'In all cases the court should consider whether to make ancillary orders' or

'In all cases the court should consider whether to make compensation and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).'

3.3 Other guidelines contain more information. This can take the form of:

- a reference to ancillary orders that may be relevant to that offence either with or without links to more detailed information
- reference to relevant ancillary orders with text in the guideline giving more details
- a dropdown giving more information (there are three of these – for sexual offences, terrorism offences, and driving offences)

3.4 Examples of the ancillary orders step in guidelines are provided at **Annex A**.

3.5 The ancillary orders hyperlinks in guidelines take users to the explanatory materials to magistrates' courts guidelines which is material provided by the Sentencing Council. As noted, there is usually a general link to these in guidelines (including in a few guidelines for offences that are indictable only). The full list of matters covered is:

[1. Introduction to ancillary orders](#)

[2. Anti-social behaviour orders](#)

[3. Binding over orders](#)

[4. Confiscation orders](#)

[5. Criminal behaviour orders](#)

[6. Deprivation of ownership of animal](#)

[7. Deprivation orders](#)

[8. Destruction orders and contingent destruction orders for dogs](#)

[9. Disqualification from driving – general power](#)

[10. Disqualification from ownership of animals](#)

[11. Disqualification of company directors](#)

[12. Drinking banning orders](#)

[13. Exclusion orders](#)

[14. Football banning orders](#)

[15. Forfeiture and destruction of drugs](#)

[16. Forfeiture and destruction of goods bearing unauthorised trade mark](#)

[17. Forfeiture and destruction of weapons orders](#)

[18. Forfeiture or suspension of liquor licence](#)

[19. Parenting orders](#)

[20. Restitution orders](#)

[21. Restraining orders](#)

[22. Sexual harm prevention orders](#)

[23. Sexual offences prevention orders](#)

[24. Automatic orders on conviction for sexual offences](#)

[Additional note: Availability of ancillary orders](#)

3.6 As part of the work currently being undertaken on improvements to the website, discussed and approved in the September Council meeting, the appearance of explanatory materials page which contains the ancillary orders will change (to make it easier to navigate) but the content will not.

3.7 The hyperlink in most guidelines to the Crown Court Compendium (produced by the Judicial College) is to a landing page on the Judiciary website. From there a user needs to scroll down and download the [Crown Court Compendium Part II Sentencing June 2023](#). There is no section in that document devoted to ancillary orders though several are covered in Section 3 Disposals (General) and others in Section 6 Further Powers of Sentencing.

Developments currently being considered by the Council

3.8 The Council plans to consult on additional guidance for disqualification from driving which will cover the information and guidance on that topic currently contained in the explanatory materials.

Options for improvements

3.9 A review of what information on ancillary orders is provided where and in what format, has shown that there are inconsistencies across guidelines. Some differences are entirely justified as there are some guidelines for which ancillary orders are less likely to be relevant and some where there are particular orders that apply. Allowing for the particular requirements of different guidelines, some changes could be made to provide a more consistent level of assistance with ancillary orders.

3.10 As noted above, most of the information on ancillary orders that the Council itself provides is aimed at magistrates' courts. We could seek to provide a similar level of information for the Crown Court rather than providing the rather unhelpful link to the judiciary website. The most efficient way of doing this would be to update the existing guidance to cater for all courts making clear where the powers of magistrates' courts differ from that of the Crown Court

3.11 Whatever the level of information provided, there are two different options for how this is presented to users. Currently, ancillary orders are accessed via hyperlinks which take users to separate pages. This format could remain with any updates to these pages. The

other option is to put all ancillary order information in drop downs, which would not require any new pages to be opened. We can consider these options internally and make recommendations to a future Council meeting.

3.12 Any information that we provide as part of our guidelines will have to be maintained and kept up to date. For that reason it is preferable that information that is common to several guidelines is accessed from a single source, so that changes will be made to all guidelines to which it applies.

3.13 Additionally, the Council may wish to consider whether in some guidelines, as well as giving factual information on ancillary orders, more guidance should be included on the circumstances in which it is (or is not) appropriate to impose certain discretionary orders in combination with other disposals.

Question 1: Does the Council wish to provide a more consistent level of assistance with ancillary orders?

Question 2: Does the Council wish to provide guidance on ancillary orders aimed at the Crown Court (as well as magistrates' courts)?

Question 3: Does the Council wish to consider providing more of a steer on the use of ancillary orders in individual guidelines?

Question 4: Are there other matters relating to ancillary orders that the Council wishes to explore?

4 EQUALITIES

4.1 There is very little published data on ancillary orders and it may be difficult to identify any potential equalities issues from data. However, we could explore unpublished sources of information depending on the extent of the work that the Council wishes to undertake.

Question 5: Are there any particular equalities issues that should be explored further at this stage?

5 IMPACT AND RISKS

5.1 Again, the lack of published data may make it difficult to quantify the impact of any changes. If changes are limited to providing information, the impact on outcomes for offenders is likely to be low. If the Council seeks to influence the use of ancillary orders there could be more of an impact which we could consider further if relevant.

Ancillary orders - Annex A

1. Examples of guidelines with minimal reference to ancillary orders:

Bladed articles and offensive weapons - having in a public place

Step 7 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Domestic burglary

Step 8 – Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

2. Examples of guidelines with brief reference to specific ancillary orders:

Affray

Step 7 – Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

In particular, where the offender is convicted of a relevant offence within Schedule 1 of the Football Spectators Act 1989, the court must consider whether a Football Banning Order should be made pursuant to s14A Football Spectators Act 1989, and if not give reasons why.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Football related offences

Step 6 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other [ancillary orders](#), including a [football banning order](#).

Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates’ Court](#)

3. Examples of guidelines with more detailed information

Individuals: Breach of food safety and food hygiene regulations

Step 6 – Compensation and ancillary orders

Ancillary orders In all cases the court must consider whether to make ancillary orders. These may include:

Hygiene Prohibition Order These orders are available under both the Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006. If the court is satisfied that the health risk condition in Regulation 7(2) is fulfilled it **shall** impose the appropriate prohibition order in Regulation 7(3). Where a food business operator is convicted of an offence under the Regulations and the court thinks it proper to do so in all the circumstances of the case, the court **may** impose a prohibition on the operator pursuant to Regulation 7(4). An order under Regulation 7(4) is not limited to cases where there is an immediate risk to public health; the court might conclude that there is such a risk of some future breach of the regulations or the facts of any particular offence or combination of offences may alone justify the imposition of a Hygiene Prohibition Order. In deciding whether to impose an order the court will want to consider the history of convictions or a failure to heed warnings or advice in deciding whether an order is proportionate to the facts of the case. Deterrence may also be an important consideration.

Disqualification of director An offender may be disqualified from being a director of a company in accordance with section 2 of the Company Directors Disqualification Act 1986. The maximum period of disqualification is 15 years (Crown Court) or 5 years (magistrates’ court).

Compensation

Where the offence results in personal injury, loss or damage the court must consider whether to make a compensation order and must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited. Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over prosecution costs.

- [Ancillary orders – Magistrates’ Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Encouragement of terrorism

Step 8 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Magistrates’ Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Additional guidance [drop down]

Ancillary order	Statutory reference
Confiscation A confiscation order may be made by the Crown Court in circumstances in which the offender has obtained a financial benefit as a result of, or in connection with, his criminal conduct.	Section 6 and Schedule 2 of the Proceeds of Crime Act 2002
Forfeiture When sentencing for a funding offence (sections 15 – 18 Terrorism Act 2000), the court may order the forfeiture of money or property which the offender had possession or control of at the time of the offence	Section 23 to 23B Terrorism Act 2000
Automatic orders on conviction The following requirements or provisions are not part of the sentence imposed by the court but apply automatically by operation of law. The role of the court is to inform the offender of the applicable requirements and/or prohibition.	
Ancillary order	Statutory reference
Notification requirements A relevant offender automatically becomes subject to notification requirements, obliging him to notify the police of specified information for a specified period. The court should inform the offender accordingly. The operation of the notification requirement is not a relevant consideration in determining the sentence for the offence.	Sections 41 – 53 Counter-Terrorism Act 2008

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