

Knowingly enters the United Kingdom without leave

Knowingly arrives in the United Kingdom without valid entry clearance

**Immigration Act 1971 section 24(B1)
Immigration Act 1971 section 24(D1)**

Triable either way

Maximum: Four years' imprisonment

Offence range: High level community order – 3 years' custody

STEP ONE**Determining the offence category**

CULPABILITY	
A - High Culpability	<ul style="list-style-type: none"> • Significant role played (more than simply a passenger) • Sophisticated planning by the offender beyond that which is inherent in the offence • Has made previous attempts to unlawfully enter/ arrive in the UK including by use of a false document
B - Medium culpability	<p>Other cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> • Factors are present in A and C which balance each other out and/or • The offender's culpability falls between the factors as described in A and C
C - Lower culpability	<ul style="list-style-type: none"> • Offender fled persecution or serious danger • Involved due to coercion or pressure

HARM	
Category 1	<ul style="list-style-type: none"> • Seeking to enter/ arrive in order to engage in criminal activity • Exploited/ put pressure on others
Category 2	<ul style="list-style-type: none"> • All other cases

STEP TWO - Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 18 months - 3 years' custody	Starting Point 18 months custody Category Range 9 months' – 2 years' custody	Starting Point 1 years' custody Category Range 6 -18 months' custody
Category 2	Starting Point 18 months' custody Category Range 9 months' – 2 years' custody	Starting Point 1 years' custody Category Range 6 -18 months' custody	Starting Point 6 months' custody Category Range High level Community Order – 8 months' custody

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Previously deported, removed or extradited from the UK or deprived of UK citizenship

- Previous history of failed applications for leave to enter/ remain in the UK or for asylum (if not already taken into account at step 1)

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability (where not taken into account at step 1)
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SIX**Ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

STEP SEVEN**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Facilitation

Assisting unlawful immigration to the United Kingdom

Immigration Act 1971 section 25

Helping asylum-seeker to enter the United Kingdom

Immigration Act 1971 section 25A

Triable either way

Maximum: life imprisonment

Offence range: High-level community order – 16 years' custody

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STEP ONE
Determining the offence category

CULPABILITY	
A- High Culpability	<ul style="list-style-type: none"> • Leading role in a commercial activity • Sophisticated nature of offence/ significant planning • Significant financial gain/ expectation of significant financial gain
B- Medium culpability	<p>Other cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> • Factors are present in A and C which balance each other out and/or • The offender's culpability falls between the factors as described in A and C
C- Lower culpability	<ul style="list-style-type: none"> • Non – commercial activity • Minor role in group activity • Involved due to coercion or pressure

HARM	
Category 1	<ul style="list-style-type: none"> • Means or route of entry/ arrival involved a high risk of serious injury or death • Facilitating large numbers of individuals to illegally enter/ arrive in the UK • Exploited/ put pressure on others
Category 2	<ul style="list-style-type: none"> • Means or route of entry/ arrival involved some risk of serious injury or death • Facilitating small numbers of individuals to illegally enter/ arrive in the UK • Facilitating large numbers of individuals to remain unlawfully
Category 3	<ul style="list-style-type: none"> • All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 14 years' custody Category Range 10 - 16 years' custody	Starting Point 12 years' custody Category Range 9 - 14 years' custody	Starting Point 8 years' custody Category Range 6 - 10 years' custody
Category 2	Starting Point 8 years' custody Category Range 6 - 10 years' custody	Starting Point 5 years' custody Category Range 4 - 7 years' custody	Starting Point 3 years' custody Category Range 2 - 5 years' custody
Category 3	Starting Point 5 years' custody Category Range 4 - 7 years' custody	Starting Point 3 years' custody Category Range 2 - 5 years' custody	Starting Point 18 months' custody Category Range 12 months' custody – 2 years' custody

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Offending conducted over a sustained period of time
- Abuse of position of trust
- Recruited others to take part in offending (unless already taking into account at step 1)
- Significant risk of injury or death to those seeking to rescue individuals

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
- Limited understanding of scale of activity

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SIX**Ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

STEP SEVEN**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Breach of Deportation Order

Immigration Act 1971 section 24(A1)

Triable either way

Maximum: Five years' imprisonment

Offence range: 6 months' – 3 years 6 months' custody

STEP ONE Determining the offence category
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CULPABILITY	
A - High Culpability	<ul style="list-style-type: none"> • Breached order shortly after its imposition • Has previously breached a deportation order • Sophisticated method of breach
B - Medium culpability	<p>Other cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> • Factors are present in A and C which balance each other out and/or • The offender's culpability falls between the factors as described in A and C
C - Lower culpability	<ul style="list-style-type: none"> • Complied with order for lengthy period of time • Involved due to coercion or pressure • Unsophisticated nature of conduct

HARM	
Category 1	<ul style="list-style-type: none"> • Committed new serious offence(s) • Returned with the intention of committing further serious offence(s) • Been in the UK in breach of a deportation order for a lengthy period
Category 2	All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' 6 months' custody Category Range 2 - 3 years 6 months' custody	Starting Point 2 years' custody Category Range 1-3 years custody	Starting Point 1 year 6 months' custody Category Range 6 months' – 2 years' custody
Category 2	Starting Point 2 years' custody Category Range 1-3 years custody	Starting Point 1 year 6 months' custody Category Range 6 months' – 2 years' custody	Starting Point 1 years' custody Category Range 6 months' – 1 years' 6 months custody

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness*Statutory aggravating factors:*

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Use of false documents (where not charged separately or taken in account at step 1)

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability (where not taken into account at step 1)
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

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If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SIX**Ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

STEP SEVEN**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Deception

Immigration Act 1971 section 24A

Triable either way

Maximum: Two years' imprisonment

Offence range: Band C fine – 20 months' custody

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STEP ONE**Determining the offence category**

CULPABILITY	
A - High Culpability	<ul style="list-style-type: none"> • Sophisticated nature of the offence or significant planning • Multiple or repeated deceptions
B - Medium culpability	<p>Other cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> • Factors are present in A and C which balance each other out and/or • The offender's culpability falls between the factors as described in A and C
C - Lower culpability	<ul style="list-style-type: none"> • Unplanned or limited in scope • Unsophisticated nature of conduct • Offender's responsibility substantially reduced by mental disorder or learning disability • Involved due to coercion or pressure

HARM	
Category 1	<ul style="list-style-type: none"> • Deception results in lengthy period of stay
Category 2	<ul style="list-style-type: none"> • All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 15 Months custody	Starting Point 12 months' custody	Starting Point 6 months' custody
	Category Range 10-20 months' custody	Category Range 9 - 18 months' custody	Category Range High Level CO -9 months' custody
Category 2	Starting Point 12 months' custody	Starting Point 9 months' custody	Starting Point High Level CO
	Category Range 9 - 18 months' custody	Category Range 6 - 12 months' custody	Category Range Band C fine – 6 months custody

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Involvement of others through pressure, influence
- *Use of false documents (where not charged separately or taken in account at step 1)*

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability (where not taken into account at step 1)
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

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STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

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If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

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In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

STEP SEVEN**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Possession of false identity documents etc with improper intention

Identity Documents Act 2010 section 4

Indictable Only

Maximum: 10 years' imprisonment

Offence range: High level community order- 8 years' custody

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STEP ONE**Determining the offence category**

CULPABILITY	
D-	<ul style="list-style-type: none"> • Possession of a large number of documents used for commercial scale criminal activity • Substantial financial gain or expectation of substantial financial gain • A leading role where offending is part of a group activity • Sophisticated nature of offence or significant planning
E-	<ul style="list-style-type: none"> • Possession of multiple documents intended for the use of others • Financial gain or expectation of financial gain • A lesser role where offending is part of a group activity
F-	<ul style="list-style-type: none"> • Possession of one or two false documents for own use • Involved due to coercion or pressure

HARM	
Category 1	<ul style="list-style-type: none"> • Document(s) used or intended for use to evade immigration controls
Category 2	<ul style="list-style-type: none"> • Document used or intended for use to assist criminal activity (other than that described in category 1 or 3) • Document used or intended for use to evade responsibility for criminal activity other than that described in category 1 or 3) • Document used or intended for use to falsely demonstrate a lawful right to drive in the UK
Category 3	<ul style="list-style-type: none"> • Document used or intended for use to obtain rights, services or benefits [such as employment, accommodation, bank accounts etc]
Category 4	<ul style="list-style-type: none"> • All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	<p>Starting Point 7 years' custody</p> <p>Category Range 5 – 8 years' custody</p>	<p>Starting Point 3 years' custody</p> <p>Category Range 2 – 4 years' custody</p>	<p>Starting Point 2 years' custody</p> <p>Category Range 18 months – 30 months years' custody</p>
Category 2	<p>Starting Point 3 years' custody</p> <p>Category Range 2 – 4 years' custody</p>	<p>Starting Point 18 months' custody</p> <p>Category Range 1 – 2 years' custody</p>	<p>Starting Point 1 year custody</p> <p>Category Range 6 months' – 18 months' custody</p>
Category 3	<p>Starting Point 18 months' custody</p> <p>Category Range 1 – 2 years' custody</p>	<p>Starting Point 1 year custody</p> <p>Category Range 6 months' – 18 months' custody</p>	<p>Starting Point 9 months' custody</p> <p>Category Range 6 - 12 months' custody</p>
Category 4	<p>Starting Point 1 year custody</p> <p>Category Range 6 months' – 18 months' custody</p>	<p>Starting Point 9 months' custody</p> <p>Category Range 6 - 12 months' custody</p>	<p>Starting Point 6 months' custody</p> <p>Category Range High level CO - 9 months' custody</p>

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Offending conducted over a sustained period
- Involvement of others through pressure, influence
- Offender not lawfully present in the UK (unless taken into account at step 1)
- Abuse of position of trust

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
- Limited understanding of scale of activity

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SIX**Ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

STEP SEVEN**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Possession of false identity documents etc without reasonable excuse

Identity Documents Act 2010 section 6

Triable either way

Maximum: 2 years' imprisonment

Offence range: Band C Fine – 18 Months' custody

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STEP ONE Determining the offence category
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CULPABILITY	
G-	<ul style="list-style-type: none"> • Possession of multiple documents • Possession of any apparatus, article or material that could be used to make multiple documents
H-	<ul style="list-style-type: none"> • Possession of a single document • Possession of any apparatus, article or material that could be used to make a single document

HARM	
Category 1	<ul style="list-style-type: none"> • Passport, other immigration document, or a document that can be used instead of a passport • Apparatus, article or material is capable of making a passport or other immigration document
Category 2	<ul style="list-style-type: none"> • Driving licence • Apparatus, article or material is capable of making a driving licence

STEP TWO Starting point and category range

Harm	Culpability	
	A	B
Category 1	<p>Starting Point 12 months' custody</p> <p>Category Range 9 - 18 months' custody</p>	<p>Starting Point 9 months' custody</p> <p>Category Range 6-12 months' custody</p>
Category 2	<p>Starting Point 6 months' custody</p> <p>Category Range High Level Community Order -9 months' custody</p>	<p>Starting Point High Level Community Order</p> <p>Category Range Band C fine – 6 months custody</p>

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

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Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Offending conducted over a sustained period
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No recent or relevant convictions
- Good character and/or exemplary conduct
- Remorse
- Sole or primary carer for dependent relatives
- Age/lack of maturity
- Mental disorder or learning disability
- Possession due to coercion or intimidation
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

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In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

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The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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**RESPONSE TO MISCELLANEOUS AMENDMENTS TO SENTENCING GUIDELINES
CONSULTATION — NOVEMBER 2023****QUESTION 17: NEW MITIGATING FACTOR ON PREGNANCY, MATERNITY AND POSTNATAL
CARE****1. COMMENTS****Background: introduction of a new mitigating factor**

There should be a new mitigating factor which specifies that pregnancy, maternity and the postnatal period are relevant to the sentencing of a female defendant convicted of any crime, and that an associated explanation should be included in the sentencing remarks.

However, we consider that the mitigating factor and associated explanation currently proposed are insufficient.

We agree that this is an area where particular emphasis should be placed on avoiding custodial sentences where cases are “on the cusp”. However, additional measures should also be introduced to avoid custody where a pregnant woman’s sentence is over the custody threshold or she is facing a mandatory minimum sentence. In practical terms, this means:

1. Where a woman is on the cusp of custody, a non-custodial sentence must be considered;
2. Where a woman is over the custody threshold and facing a custodial sentence of up to 2 years, a suspended sentence must be considered based on the significant harm custody or separation causes to pregnant and postnatal women and their dependants;
3. Where a woman is facing a sentence of over two years, or a mandatory minimum sentence, pregnancy and the postnatal period to constitute an ‘exceptional circumstance’ that makes the imposition of the minimum term a disproportionate sentence and would justify not imposing the statutory minimum sentence.

This approach gives due weight to the significant harm caused by custody to the pregnant woman, her unborn child and a baby who may be born in prison. It also prioritises the best interests of the child over separation.

The need to provide evidence to sentencers

The views expressed by sentencers in focus group discussions revealed a worrying lack of understanding about the impact of custodial sentences on pregnant women and their babies. In our view, this only increases the importance of explicit measures to avoid custodial sentencing for pregnant women wherever possible, whose needs may not otherwise be recognised by those sentencing them.

The views expressed in focus group discussions with sentencers were predominantly neutral or negative. Some sentencers questioned the evidence base relating to the practical impact of custody upon pregnant women and their safety. This demonstrates a lack of engagement with the available research and indeed the Ministry of Justice’s own acceptance that all pregnancies in prison are high risk.

It is the expert view of the Royal College of Midwives¹ that “prison is no place for pregnant women”, and both the Royal College of Midwives and Royal College of Obstetricians and Gynaecologists have emphasised the need for non-custodial alternatives for pregnant women².

¹ Independent, [Calls for urgent review over number of pregnant women being sent to prison](#) (2022)

² RCOG (2021) [RCOG Position Statement: Maternity care for women in prison in England and Wales](#)

In 2021, His Majesty's Prisons and Probation Ombudsman reported that all pregnancies in prison are "high risk by virtue of the fact that the woman is locked behind a door for a significant amount of time"³. As of 2022, NHS Health and Justice also classifies all pregnancies in prison as "high risk" on account of 'the complexities for women in detained settings'⁴. The Ministry of Justice also accepts that all pregnancies in prison are high risk.

Pregnancy and the postnatal year is a high-risk period for severe mental ill-health in women generally. There are also major risks to physical health, including pre-eclampsia, haemorrhage, and sepsis.⁵

Women in custody are likely to have complex health needs, which increase the risks associated with pregnancy for both the woman and the baby:

- Pregnant women in prison are seven times more likely to suffer a stillbirth than women in the community⁶
- Pregnant women in prison are almost twice as likely to give birth prematurely as women in the general population, which puts both the mothers and their babies at risk⁷
- Over one in five pregnant women in prison miss midwifery appointments, increasing the risk of premature birth, miscarriage and stillbirth⁸
- One in ten pregnant women in prison give birth in-cell or on the way to hospital⁹
- Pregnant women in prison are at greater risk of perinatal mental health difficulties¹⁰

Sentencers must be made aware that when sentencing a pregnant offender to custody, they are effectively sentencing them to a high-risk pregnancy, potentially a preterm birth or worse: a stillbirth with associated trauma.

Beyond concerns around birth, sentencers should be aware of the postnatal period and the longer-term developmental harm that maternal imprisonment causes to the child, which is likely to outlast the length of a custodial sentence:

- Criminal justice proceedings and imprisonment are highly distressing environments for pregnant women.¹¹ Antenatal stress is proven to increase levels of the hormone cortisol in the mother's body, which, when it crosses the placenta, can affect the health of the baby, brain development, emotional attachment and early parenting interactions.¹²
- Many women who give birth during their time in prison, or who enter prison during the postnatal period, will be separated temporarily or permanently from their baby, interrupting breastfeeding and risking significant trauma in a time at which the mother-baby attachment is shown to be crucial in supporting long-term development.¹³

³ Prisons and Probation Ombudsman, '[Independent investigation into the death of Baby A at HMP Bronzefield on 27 September 2019](#)' (2021)

⁴ NHS England, '[Service specification: National service specification for the care of women who are pregnant or post-natal in detained settings](#)' (2022)

⁵ MBRRACE-UK (2023) [Saving Lives, Improving Mothers' Care](#)

⁶ Observer, [Pregnant women in English jails are seven times more likely to suffer stillbirth](#) (2023)

⁷ Ibid

⁸ Nuffield Trust, [Ill-equipped prisons and lack of health care access leave pregnant prisoners and their children at significant risk](#) (2022)

⁹ Nuffield Trust (2022), [Pregnancy and childbirth in prison: what do we know?](#)

¹⁰ NHS England (2023), [A review of health and social care in women's prisons](#)

¹¹ Abbott, L et al (2020) Pregnancy and childbirth in English prisons: institutional ignominy and the pains of imprisonment, *Sociology of Health & Illness* Vol. 42 No. 3 2020 ISSN 0141-9889, pp. 660–675

¹² Gerhardt, S. (2003) *Why love matters: how affection shapes a baby's brain*. Hove, East Sussex: Brunner-Routledge.

¹³ Abbott, L., Scott, T. and Thomas, H., 2023. Compulsory separation of women prisoners from their babies following childbirth: Uncertainty, loss and disenfranchised grief. *Sociology of Health & Illness*, 45(5), pp.971-988.

- As many as 19 out of 20 children are forced to leave their home when their mother goes to prison.¹⁴
- The imprisonment of a household member is one of ten adverse childhood experiences (ACEs) known to risk significant negative impact on children's long-term health and wellbeing, their school attainment, and later life experiences.¹⁵
- Separation for both parent and child is traumatic and can have long term effects.¹⁶

It is concerning that sentencers are not more aware of the severity of some of these risks, especially after the high-profile prison baby deaths of Aisha Cleary in September 2019 (and the related inquest conclusions) and Brooke Powell in June 2020.

Reliance upon the assertion that a new factor is unnecessary "as courts would always take this (i.e., pregnancy) into account" is inadequate, because "take into account" is meaningless without a specific duty being enshrined. The basis for that proposition can only be anecdotal and such an approach is inadequate to ensure the consistency and understanding needed in this area. Research has shown that sentencers have a lack of awareness of case law relating to the sentencing of primary carers¹⁷ and that many women reported that their role as a primary carer was not considered by the court.¹⁸

The benefits of non-custodial sentences for pregnant and post-natal women

The Ministry of Justice Female Offender Strategy identifies that "custody is particularly damaging for women" and that many female offenders could be more successfully supported in the community, where reoffending outcomes are better¹⁹.

A report from His Majesty's Inspectorate of Probation has found that community women's centres, which help women to build the capacity to address their issues, rather than just addressing offending behaviour, are a far more cost-effective response than custody and are proven to reduce reoffending.²⁰ We note that this mitigating factor will affect very few cases, given that women make up only 21% of individuals dealt with by the Criminal Justice System²¹. Very few women come before the courts for serious offending. Sentencing a woman to imprisonment is therefore an exceptional exercise; let alone a pregnant woman or mother of an infant.

Pregnancy has been recognised as a unique window of opportunity to work proactively with families and lays the foundations for the child's future physical, emotional, social and cognitive development²².

The best approach for pregnant and postnatal offenders, for their children, and for the community at large is an out of custody setting that allows for a safe birth, protects against separation and provides frameworks within which women can be rehabilitated whilst caring for their newborns.

¹⁴ Home Office (2007) [The Corston Report: A review of women with vulnerabilities in the criminal justice system](#)

¹⁵ Felitti, V., Anda, R., Nordenberg, D., Williamson, D., Spitz, A., Edwards, V., Koss, M. and Marks, J. (1998) Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study, *American Journal of Preventive Medicine* 14(4) 245-258

¹⁶ Minson, S. (2020) Maternal sentencing and the rights of the child.

¹⁷ Minson, S. (2020) Maternal sentencing and the rights of the child.

¹⁸ Baldwin, L. and Epstein, R. (2017) [Short but not sweet, a study of the impact of short sentences on mothers and their children.](#)

¹⁹ Ministry of Justice (2018) '[Female Offender Strategy](#)'

²⁰ HM Inspectorate of Probation, [The evidence: women](#)

²¹ Ministry of Justice (2022), [Statistics on Women and the Criminal Justice System 2021](#)

²² All Party Parliamentary Group (APPG) '[First Steps 1001 Critical Days. Building Great Britains: Conception to age 2](#)' (2015)

2. THE PROPOSED CHANGE

We would suggest modifications to the current draft mitigating factor in order to clarify it and strengthen its effect as follows. Our additions are in red.

Pregnancy, childbirth and post-natal care

When considering a custodial, community or **suspended** sentence for a pregnant **or postnatal offender (someone who has given birth in the previous 12 months)** the Probation Service should be asked to address the issues below in a pre-sentence report.

If a comprehensive pre-sentence report addressing the below issues is not available, sentencing should be adjourned until one is available.

When sentencing an offender who is pregnant relevant considerations **must** include:

- **the established high-risk nature of pregnancy and childbirth in custody and the harm custody causes to pregnant and postnatal women and their dependants, including by separation;**
- **the medical needs of the pregnant woman and her unborn child, including her mental health needs;**
- **that access to a place in a prison Mother & Baby Unit is not automatic, and the upper age limit is two years;**
- **the best interests of the child (including the fact that it is universally recognised that separation in the first two years can cause significant, irreversible harm to both mother and child);**
- **the effect of the sentence on the physical and mental health of the woman and;**
- **the effect of the sentence on the child once born.**

The impact of custody on a woman who is pregnant **is very likely to cause significant harm to the physical and mental health of both the mother and the child. Prison is a high-risk environment for pregnant women. It poses inherent barriers to accessing medical assistance and specialist maternity care and causes harm to dependent children.**

Women in custody are likely to have complex health needs, **including a need for specialist trauma services**, which **will** increase the risks associated with pregnancy for both her and the child.

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.

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. **It is also relevant where a suspended sentence is being considered, as custody will result in significant harmful impact to the pregnant woman and child, either due to separation or because of the custodial environment.** See also the Imposition of community and custodial sentences guideline.

For offences that carry a mandatory minimum custodial sentence, pregnancy and the postnatal period should be considered as an 'exceptional circumstance' strongly gravitating against imprisonment or lengthy imprisonment. That is so because the imposition of a mandatory minimum term on a woman who is pregnant or postnatal results in a disproportionately severe sentence when compared with the imposition of such a sentence upon a person who is not affected by such considerations.

Introduction of a new sentencing guideline

Without a full medical and social picture of the pregnant or postnatal woman, there is a significant risk that sentencers will be unwittingly sentencing a mother to a stillbirth, a baby to death or other serious complications, or an infant to developmental trauma. There is currently no guidance on what information sentencers should consider, or from what source, despite the vast amount of research and evidence available. We therefore suggest, in addition to a new mitigating factor, the introduction of a specific sentencing guideline for pregnant and postnatal women.

3. THE NEED FOR REASONS

The consequences and impact of a prison sentence for a pregnant or postnatal woman and her child are too often disproportionate to the offence. For the reasons outlined above, whenever a custodial sentence is passed upon a pregnant or postnatal woman, the sentencer should explain in detail why, notwithstanding the considerations set out herein, a custodial sentence is justified.

Reasons for all sentences of pregnant or postnatal women should address the following:

- that increased pregnancy risks are an intrinsic consequence of the imposition of a custodial sentence on a pregnant woman;
- that custody poses inherent barriers to accessing medical assistance and specialist maternity care, causes trauma to pregnant and postnatal women in particular and has an adverse impact on a child's development;
- the medical needs of a pregnant or postnatal woman and her child, including her mental health needs;
- the best interests of the child (including the fact that it is universally recognised that separation in the first two years can cause significant harm to both mother and child);
- the effect of the sentence on the physical and mental health of the woman;
- the effect of the sentence on the child once born;
- the fact that prisons are overcrowded;
- why a community or suspended sentence is not appropriate.

4. IMPACT

We note with concern that the Sentencing Council, at the time of opening this consultation, did not have access to data on the number of pregnant or postnatal women sentenced each year. Since this consultation has been opened, some of this data has been made available.

A freedom of information request, the results of which were published in *The Observer* on 29 October 2023 found that between April 2022 and March 2023, in the 80% of cases where data was available for pregnant women in prisons, 34% were on remand, 49% had been sentenced and 17% had been recalled.²³ We urge the Sentencing Council to require the Ministry of Justice to collect and publish data on the pregnant and postnatal prison population.

Since this consultation was launched, the government has announced plans to introduce a presumption against all sentences of 12 months and under. If this legislation is passed, it may impact a significant cohort of female offenders, including pregnant and postnatal ones, and adds strength to the proposition that sentencing guidelines must ensure sentencers fully understand the threat to life and wellbeing posed by imprisoning a pregnant or postnatal woman, even for a short period of time.

²³ Observer (2023) [Revealed: One in three jailed pregnant women in England and Wales still to face trial](#)

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Birth Companions submission to the Sentencing Council consultation 2023: Miscellaneous amendments to sentencing guidelines.

This submission outlines Birth Companions' response to the proposed mitigating factor relating to pregnancy, birth and the postnatal period, including revisions to the draft, and comments shared by members of our Lived Experience Team. At the end of this paper, we also provide brief responses to a number of other questions in the current consultation.

Question 17: Do you agree with the proposed new mitigating factor and expanded explanation relating to pregnancy? If not, please provide any alternative suggestions.

- We strongly agree with the inclusion of a specific mitigating factor and expanded explanation on pregnancy, childbirth and postnatal care, but we do not support the draft version provided in the consultation. As such, we have proposed a number of revisions to ensure this mitigating factor achieves its aims.
- We welcome the recognition of risk but question the fact that this has been downplayed in the draft following research with sentencers who are not the experts in this evidence. The evidence on risk to both mother and child should be included – particularly as this is noted by NHS England's own *National Service Specification for the care of women who are pregnant or post-natal in detained settings (prisons, immigration removal centres, children and young people settings)*¹, and demonstrated so starkly by the deaths of two babies in the prison system since 2019.
- The issues noted in the draft factor include problems with access to specialised midwifery care, but research shows the concerns go much wider in terms of access to appropriate healthcare more generally, and include mental health provision. It is crucial these are recognised given the fact that pregnancy and the postnatal period can pose significant risks to women's health.²
- The word 'child' should be changed to 'baby/ infant' throughout, to reflect the specific vulnerabilities associated with this period.
- We welcome the inclusion of 'postnatal care' in the title, but the factor needs to specify what period this is, as use of the term can vary significantly, and explain this aspect more fully.
- There are clearly evidenced risks to women in the year after birth, from conditions such as sepsis, thrombosis and thromboembolism, and acute mental health risks, linked to high numbers of deaths due to drug and alcohol use or suicide.³ On that basis, the factor should clearly cover, as a minimum, at least 12 months after birth. However, the HMPPS policy framework relevant to the care of pregnant and postnatal women in prison extends this period to up to 24 months after pregnancy, to cover the entirety of the critical 'first 1001 days' from conception to a child's second birthday. Mother and Baby Units also hold mothers whose babies may be up to two years of age. This mitigating factor should therefore cover the same period, in order to reflect the widely recognised physical and mental health needs of both mother and child, and in particular the

¹ NHS England (2022) National Service Specification for the care of women who are pregnant or post-natal in detained settings (prisons, immigration removal centres, children and young people settings). <https://www.england.nhs.uk/wp-content/uploads/2022/06/B1708-National-service-specification-for-the-care-of-women-who-are-pregnant-or-post-natal-in-detained-settings.pdf>

²MBRRACE-UK (2023) Saving Lives, Improving Mothers' Care <https://www.npeu.ox.ac.uk/mbrance-uk/reports>

³ MBRRACE-UK (2023) Saving Lives, Improving Mothers' Care <https://www.npeu.ox.ac.uk/mbrance-uk/reports>

significant, long-term trauma associated with separation during this critical time.^{4,5}

- The risks of separation from a baby⁶, and the challenges and issues inherent in the application process for Mother and Baby Units (MBUs), must be highlighted given the extensive recommendations made by the Chief Social Worker in her recent review of cases⁷.
- This mitigating factor is an important step. However, further guidance is required to ensure mitigation relevant to pregnancy, birth and the postnatal period is applied in cases over the custody threshold, as well as those 'on the cusp', including where there is a mandatory minimum sentence:
 1. Where a woman is on the cusp of custody, a non-custodial sentence must be considered;
 2. Where a woman is over the custody threshold and facing a custodial sentence of up to two years, a suspended sentence must be considered based on the significant harm custody or separation causes to pregnant and postnatal women and their dependants;
 3. Where a woman is facing a sentence of over two years, or a mandatory minimum sentence, pregnancy and the postnatal period should constitute an 'exceptional circumstance' that makes the imposition of the minimum term disproportionate, and thereby justifies not imposing that minimum.
- It is essential that sentencers recognise the accumulated disadvantage faced by pregnant or postnatal girls and women who are young (typically under 25); from minoritised communities; and/or are care experienced. There is a real risk that these factors, which are recognised elsewhere in sentencing guidance, may be overlooked or not adequately considered when sentencing those who are pregnant or have recently given birth.
- This is especially relevant to the overlap with the age and/or lack of maturity mitigating factor, as pregnant or postnatal girls and women may be perceived as more mature than they are, or, in the case of girls, subject to "adultification"⁸ by virtue of having become pregnant. This will often not reflect the reality of their situation and care will need to be taken to ensure that immaturity, and the presence of neurodiversity, are properly factored in where women and girls are being sentenced under the age of 25.

On the following page we have made **suggested revisions to the draft factor** as it appears in the consultation document. **Birth Companions' additions are marked in red.**

⁴Abbott, L., Scott, T. and Thomas, H., 2023. Compulsory separation of women prisoners from their babies following childbirth: Uncertainty, loss and disenfranchised grief. *Sociology of Health & Illness*, 45(5), pp.971-988.

⁵ First 1001 Days Movement (2022) The First 1001 Days: An Age of Opportunity <https://parentinfantfoundation.org.uk/1001-days/resources/evidence-briefs/>

⁶ Abbott, L., Scott, T. and Thomas, H., 2023. Compulsory separation of women prisoners from their babies following childbirth: Uncertainty, loss and disenfranchised grief. *Sociology of Health & Illness*, 45(5), pp.971-988.

⁷ Department for Education. (2022). [Applications to mother and baby units in prison: how decisions are made and the role of social work.](#)

⁸ Youth Justice Legal Centre (2023) Dare to Care: Representing care experienced young people <https://yjlc.uk/sites/default/files/attachments/2023-09/YJLC-Guide-DARE2CARE-16-D%20%281%29.pdf>

Pregnancy, childbirth and postnatal care

When considering a custodial or community sentence for a pregnant or postnatal woman (a woman who has given birth in the last two years) the Probation Service should be asked to address the issues below in a pre-sentence report. If a comprehensive pre-sentence report addressing these issues is not available, sentencing should be adjourned until that is available.

Pregnancy and maternity are recognised as protected characteristics under the Equality Act 2010.

When sentencing an offender who is pregnant or postnatal relevant considerations may include:

- the fact that the NHS classifies all pregnancies in prison as high risk;
- any effect of the sentence on the physical and mental health of the offender;
- any effect of the sentence on the unborn/ newborn baby/ infant
- that access to a place in a prison Mother and Baby Unit is not automatic, and the upper age limit is 18 months, with potential to extend to a maximum of 24 months in certain circumstances.

The impact of custody on an offender who is pregnant or postnatal can be harmful for the physical and mental health of both the offender and the unborn/ newborn baby/ infant^{9,10}.

Women in custody are likely to have complex health needs which may increase the risks associated with pregnancy and the period following birth for both the offender and the baby/ infant¹¹. Pregnancy and the postnatal period are a high-risk time in terms of severe mental ill-health in women. There is significant risk of suicide or death as a result of substance use, as evidenced by the annual reports on maternal mortality¹². The mental health risks are exacerbated by the uncertainty faced by those entering prison as to whether they will be able to access a place within a Mother and Baby Unit or have to deal with the trauma of separation. There are also major risks to the physical health of mother and baby, including premature and unassisted labour, pre-eclampsia, haemorrhage, and sepsis¹³.

NHS England states that "it is because of the complexities for women in detained settings that all pregnancies must be classed as high risk."¹⁴ The Royal College of Midwives and the Royal College of Obstetricians and Gynaecologists both emphasise the need for alternatives to prison to be used in sentencing pregnant women wherever possible^{15,16}. Research shows there can be significant difficulties accessing equivalent and appropriate healthcare, including urgent medical assistance or specialist maternity services in custody^{17,18}, and appropriate mental health provision¹⁹.

Many women who give birth during their time in prison, or who enter prison during the postnatal period, will be separated temporarily or permanently from their baby, interrupting breastfeeding and risking significant trauma in a time at which the mother-baby attachment is shown to be crucial in supporting long-term development²⁰.

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. It is also relevant where a suspended sentence is being considered, as custody presents significant risk of harm to the pregnant woman, mother and child, either due to separation or because of the risks inherent in the custodial environment. 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 sentencing²¹.

For offences that carry a mandatory minimum custodial sentence, pregnancy and the postnatal period should be considered as an 'exceptional circumstance' significantly mitigating against imprisonment or custodial sentence length. This reflects the fact that the imposition of a mandatory minimum term on a woman who is pregnant or postnatal results in a disproportionately severe sentence when compared with the imposition of such a sentence upon a person who is not affected by these protected characteristics.

⁹ Knight M., Plugge E. (2005). Risk factors for adverse perinatal outcomes in imprisoned pregnant women: A systematic review. *BMC Public Health*, 5, 111

¹⁰ Pitfield, C., Binley, J., Soni, S., Pontvert, C. and Callender, M., 2023. A rapid evidence review of clinical risk factors for poor perinatal mental health in women's prisons in England. *The Journal of Forensic Psychiatry & Psychology*, pp.1-21.

¹¹ NHS England (2022) National service specification for the care of women who are pregnant or post-natal in detained settings (prisons, immigration removal centres, children and young people settings) <https://www.england.nhs.uk/wp-content/uploads/2022/06/B1708-National-service-specification-for-the-care-of-women-who-are-pregnant-or-post-natal-in-detained-settings.pdf>

¹² MBRRACE-UK (2023) Saving Lives, Improving Mothers' Care <https://www.npeu.ox.ac.uk/mbrance-uk/reports>

¹³ MBRRACE-UK (2023) Saving Lives, Improving Mothers' Care <https://www.npeu.ox.ac.uk/mbrance-uk/reports>

¹⁴ NHS England (2022) National service specification for the care of women who are pregnant or post-natal in detained settings (prisons, immigration removal centres, children and young people settings) <https://www.england.nhs.uk/wp-content/uploads/2022/06/B1708-National-service-specification-for-the-care-of-women-who-are-pregnant-or-post-natal-in-detained-settings.pdf>

¹⁵ RCM (2018) Position Statement: Perinatal women in the criminal justice system www.rcm.org.uk/media/3640/perinatal-women-in-the-criminal-justice-system_7.pdf

¹⁶ RCOG (2021) RCOG Position Statement: Maternity care for women in prison in England and Wales <https://www.rcog.org.uk/media/wwhogs5/rcog-maternity-care-and-the-prison-system-position-statement-sept-2021.pdf>

¹⁷ Abbott, L., Scott, T. and Thomas, H. (2023) Experiences of midwifery care in English prisons. *Birth*, 50(1), pp.244-251.

¹⁸ Davies, M et al (2022) Inequality on the inside: Using hospital data to understand the key health care issues for women in prison

<https://www.nuffieldtrust.org.uk/research/inequality-on-the-inside-using-hospital-data-to-understand-the-key-health-care-issues-for-women-in-prison>

¹⁹ Pitfield, C. et al. (2023) A rapid evidence review of clinical risk factors for poor perinatal mental health in women's prisons in England, *The Journal of Forensic Psychiatry & Psychology*, DOI: 10.1080/14789949.2023.2212657

²⁰ First 1001 Days Movement (2022) The First 1001 Days: An Age of Opportunity <https://parentinfantfoundation.org.uk/1001-days/resources/evidence-briefs/>

²¹ Minson, S (2019) *Maternal sentencing and the rights of the child*, Hampshire: Palgrave

Evidence from our Lived Experience Team

In November 2023 we held an online focus group with six members of our Lived Experience Team – women who have been remanded and/ or sentenced to prison by the courts while pregnant or postnatal.

The discussions were led by the women, who had all reviewed the consultation document in detail in advance of the meeting. Their responses are outlined below, under themed headings.

Women didn't feel their pregnancy or postnatal status had been considered in their sentencing.

Several of the women talked of how they felt there was little or no consideration of their pregnancy or recent birth by the sentencer, or the risks that posed. Some felt their pregnancy actually made the sentencing decision harsher.

"I feel lucky that the second time I was in court, the judge did take the fact that I had a young baby into account in my sentencing. He said he decided my sentence length in order to avoid a separation and allow tag. The first judge, when I was pregnant, did not take my pregnancy, health or anything into consideration at all."

"The judge didn't take it [my pregnancy] into consideration at all – in fact, they said that I'd be ok because 'there are loads of other pregnant ladies in there', and said the MBU was sufficient extra care for her."

"So many women were in prison from doing things men asked them to do. In my personal experience I now know I was groomed, but back then I don't think people understood how women are groomed. I was bailed for 2 years and was working and was told [I'd get a] suspended sentence. I got pregnant on bail. Then once I was pregnant they used the father of my child's criminal history against my character. Even though I never knew the father of my baby when I was arrested for the crime. It was like because I got pregnant and my baby's father had a past it made me look worse, as up until that point I was told suspended sentence."

"When I was about to be sentenced, every woman in the prison said to me 'let's hope you don't get a female judge!' – it was so well known that female judges will come down harder on you because you're a woman who did this thing while pregnant or while a mother."

One woman's probation officer, before sentencing, told her *"there's nothing wrong with you, is there?"* and *"loads of women have had successful births in prison"*. That mother felt that the significant risks of pregnancy and birth in prison need to be made really explicit to all involved.

Another described how surprised she had been to receive a custodial sentence given everything she'd been led to expect. *"Throughout the whole process, my case was seen as community – they wrote it down that they were going for a community sentence. I had asked the judge not to mention that I was pregnant, as I didn't want the jury to know. The judge herself stepped it up to custodial from community, even though she knew I was 7 weeks pregnant. She knew and she decided to move me up instead of down."*

Sentencers' lack of knowledge relating to pregnancy and early motherhood in custody, including MBUs.

Women talked of the need for more training, including detailed case studies of the issues, risks and outcomes for women sentenced to custody while pregnant or in the postnatal period. There was a sense that sentencers have little understanding of key details like eligibility and the application process for an MBU, or what care is really provided for pregnant women.

"My judge never had a clue. My barrister had to explain how long I could keep the baby after my barrister researched it. No one seemed to know anything."

"Being sentenced to a prison with an MBU is all well and good, but they don't take into account the availability of MBU places."

"So much disparity between judges and their decisions. They gave me a sentence that enabled me to not be separated, but then put nothing in place to avoid a separation. No planning. I ended up separated from baby for two months while things were sorted out – no support to breastfeed during this time. No way to account for what trauma that caused. So much recovery time needed, also with my older child who I was separated from. I also think there is a race element to this – different women are treated different."

"They need training, and insight into what it's actually like."

"Some kind of training, videos explaining the emotional impacts of imprisonment on pregnant women and kids. Videos on the impact on the women and also the children that are left behind, the impact, so they can have a different perspective."

"I had to do so much research and planning for myself. It required so much determination and persistence. But there should be someone in the courts doing this work, supporting women to make sure all these things get done. The system should provide this care and support."

One woman shared her more positive experience of having the needs of her and her baby considered, and being supported by a well-informed judge to avoid separation while in custody.

"The judge delayed sentencing, which allowed birth, recovery, early bonding, breastfeeding. They sentenced me on the basis of allowing me to leave prison with my baby at the end of the MBU period. My child could have ended up in care, her entire life could have been so different. Judges need to have more of an empathetic heart. Case studies like mine could be so powerful in helping judges see the positive impacts their sentencing decisions can have. Let them see the longer-term outcomes, what happens next etc."

Concerns that the draft mitigating factor would not be strong enough to ensure adequate/consistent consideration.

While acknowledging the value of the proposed new factor, women were concerned that this may not be applied by sentencers in all cases. They wanted stronger, mandatory directions on sentencing pregnant and postnatal women, given the severity of the risks and the long-term impacts for mother and child.

"Judges don't have to follow these guidelines, so we need something stronger."

"Judges can go outside of guidelines – they are not mandatory."

"I can't believe how poor the sentencing guidelines were before – [pregnancy wasn't] even under medical! – absolutely shocking. Didn't fully understand how bad it was."

"It feels like they make examples of women to show "others" that getting pregnant isn't a get 'get out of jail free card'."

The value of community alternatives to custody.

Women in the focus group felt community sentences are not being properly considered for many pregnant and postnatal women.

"Pre-sentence reports are not looked at enough. Mine recommended a community sentence. But it wasn't even looked at, at all."

"Why are judges not looking and considering and giving women a chance for a community sentence? If it's a first offence, a nonviolent offence, and if she's pregnant or a mother – why do you need to send her to prison?"

"Focus on community sentences, treatment programmes, support and so on would be much better as imprisonment does affect the kids the women leave behind."

"They need to take everyone's circumstances into account, and act accordingly. It would better if women didn't go to prison, and had community sentences. The majority of women I saw in the system in that year, so many were first time offenders, lots of pregnant women and new mothers."

"Most women are low risk, otherwise we wouldn't get a place on the MBU."

Other consultation questions

In the following section we have outlined our responses to several other questions in the consultation.

Question 12: Do you agree with the proposed changes to the wording of the factor and expanded explanation for the mitigating factor of good character? If not, please provide any alternative suggestions.

- We support this change, given the fact it avoids the use of examples that may not reflect the opportunities and circumstances of many individuals, including those facing disadvantage and inequality.

Question 13: Do you agree with the proposed additions to the Determination and/or demonstration of steps taken to address addiction or offending behaviour expanded explanation? If not, please provide any alternative suggestions.

- We support these additions, in order to acknowledge the limited provision of/ difficulties in accessing support in many areas.

Question 14: Do you agree with the proposed change to the age and/or lack of maturity factor? If not, please provide any alternative suggestions

- We agree with this change.

Question 15: Do you agree with the proposed new mitigating factor and associated expanded explanation: Difficult and/or deprived background or personal circumstances? If not, please provide any alternative suggestions.

- Yes, although we feel that the language of *trauma* should be included in this factor, as well as disadvantages, to reflect the wider emphasis on trauma-informed approach across systems²².

Question 16: Do you agree with the proposed new mitigating factor and associated expanded explanation: Prospects of or in work, training or education? If not, please provide any alternative suggestions.

- Yes, we support this new factor. It is vital that it specifies that a lack of work, training or education must never be an aggravating factor, as for many mothers these may be unavailable or difficult to secure.

For further information on this submission, or other aspects of our work with pregnant and postnatal women in contact with the criminal justice system, please contact Kirsty Kitchen, Head of Policy and Communications, at kirsty@birthcompanions.org.uk

²² OHID (2022) Guidance: working definition of trauma-informed practice <https://www.gov.uk/government/publications/working-definition-of-trauma-informed-practice/working-definition-of-trauma-informed-practice#:~:text=Trauma%20results%20from%20an%20event,as%20harmful%20or%20life%20threatening>.

OFFICIAL - SENSITIVE

January Council - Housing Offences - ANNEX A

Data has not been provided for offences where no offenders were sentenced.
Data could not be provided for some sections in legislation due to way offence codes are grouped in the published data.

Table 1a: Number of adult offenders sentenced for specified offences under the Housing Act 2004, 2012 to 2022

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Failure to comply with certain orders/notices/regulation and supplying misinformation to a housing authority (summary offences under Housing Act offences) (ss. 30(1) and (3), 32, 131(5) and (6), 234, 236(1) and (3) and 238(1) and (3), 238(2) and (3))	189	190	226	249	266	256	175	145	79	105	67
Offences connected with houses in multiple occupation and housing licences (ss. 72 (1) and (6), 72(2) and (6), 72(3) and (7), 95(1) and (5), 95(2) and (6))	107	117	164	219	346	345	246	147	64	102	67
Alter/suppress/destroy a document required to produce under a section 235 housing notice (s. 236(4) and (5))	1	1	0	0	0	0	0	0	0	0	0
Failing to comply with overcrowding order or obstructing a relevant person in performance of anything required by Parts 1 to 4 Housing Act 2004 (ss. 139(7), 241(1) and 3)	2	2	0	2	2	2	0	2	0	0	0

Table 1b: Number of organisations sentenced for specified offences under the Housing Act 2004, 2012 to 2022

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Failure to comply with certain orders/notices/regulation and supplying misinformation to a housing authority (summary offences under Housing Act offences) (ss. 30(1) and (3), 32, 131(5) and (6), 234, 236(1) and (3) and 238(1) and (3), 238(2) and (3))	19	30	23	22	58	37	33	30	13	22	15
Offences connected with houses in multiple occupation and housing licences (ss. 72 (1) and (6), 72(2) and (6), 72(3) and (7), 95(1) and (5), 95(2) and (6))	13	19	15	26	37	70	45	48	21	11	14
Alter/suppress/destroy a document required to produce under a section 235 housing notice (s. 236(4) and (5))	1	0	0	0	0	0	0	0	0	0	0
Failing to comply with overcrowding order or obstructing a relevant person in performance of anything required by Parts 1 to 4 Housing Act 2004 (ss. 139(7), 241(1) and 3)	0	0	0	3	0	0	0	0	0	0	0

Table 2a: Number of adult offenders sentenced for specified offences under the Prevention of Social Housing Fraud Act 2013, 2013 to 2022

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Sub-let / part with possession of a dwelling-house let under a secure or an assured tenancy in breach of a term of the tenancy (ss 1(1) and (5), 2(1) and (6))	0	3	9	6	11	10	14	2	6	2
Dishonestly sub-let/part with possession of dwelling-house let under secure or an assured tenancy in breach of a term of the tenancy (ss 1(2) and (6), 2(2) and (7))	0	2	2	9	13	9	10	5	13	5

Table 2b: Number of organisations sentenced for specified offences under the Prevention of Social Housing Fraud Act 2013, 2013 to 2022

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Sub-let / part with possession of a dwelling-house let under a secure or an assured tenancy in breach of a term of the tenancy (ss 1(1) and (5), 2(1) and (6))	0	0	0	2	0	0	0	0	0	0
Dishonestly sub-let/part with possession of dwelling-house let under secure or an assured tenancy in breach of a term of the tenancy (ss 1(2) and (6), 2(2) and (7))	-	-	-	-	-	-	-	-	-	-

Table 3a: Number of adult offenders sentenced for specified offences under the Protection from Eviction Act, 2012 to 2022

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Unlawful eviction of occupier (s 1(2) and (4))	13	8	13	15	20	14	13	16	8	17	6
Unlawful harassment of occupier (ss 1(3) and (4), 1(3A) and (4))	8	8	10	5	16	13	3	8	4	4	2

Table 3b: Number of organisations sentenced for specified offences under the Protection from Eviction Act, 2012 to 2022

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Unlawful eviction of occupier (s 1(2) and (4))	0	0	1	0	1	1	1	0	0	2	0
Unlawful harassment of occupier (ss 1(3) and (4), 1(3A) and (4))	0	2	0	0	3	0	1	0	0	0	0

Table 4a: Number of adult offenders sentenced for specified offences under the Criminal Law Act 1997, 2012 to 2022

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Use or threaten violence to secure entry to premises (s 6(1) and (5))	334	261	304	369	284	301	300	246	201	170	176

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