

# Breach Offences Guideline Consultation



# Breach Offences Consultation

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The consultation will end on 25 January 2017

A consultation produced by the Sentencing Council.

This information is also available on the Sentencing Council's website:

**[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)**

# About this consultation

## To:

This consultation is open to everyone including members of the public, judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.

## Duration:

From 25 October 2016 to 25 January 2017

## Enquiries (including requests for the paper in an alternative format) to:

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## Additional ways to feed in your views:

This consultation exercise is accompanied by a resource assessment, and an online questionnaire, all of which can be found at:

[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

A series of consultation meetings is also taking place. For further information please use the “Enquiries” contact details above.

## Response paper:

Following the conclusion of this consultation exercise, a response will be published at:

[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

## Freedom of Information:

We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish.

If you wish to submit a confidential response, you should contact us before sending the response.

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# Introduction

## What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. Part of the Council's remit<sup>1</sup> is to conduct public consultations on guidelines for the sentencing of offenders.

## Why breach?

Guidelines are not currently available for breaches of all types of court order, and there is variation in the format of the guidelines which do exist and in their scope. There are a number of breach guidelines which were produced by the Council's predecessor body, the Sentencing Guidelines Council ('SGC') and some guidance issued by the Sentencing Council is available to magistrates' courts in the Magistrates' Court Sentencing Guidelines ('MCSG') but this is not applicable in the Crown Court.

A survey of 216 magistrates and district judges was conducted in November 2014, to gather information on sentencing breaches and the usefulness of current breach guidelines.<sup>2</sup> Respondents indicated that they would like comprehensive sentencing guidelines for breaches of orders, presented in a consistent format and clearly identifiable as a breach guideline.

The Council decided that breach guidelines should be issued as a single definitive guideline, with comprehensive, consolidated guidance for sentencers in all courts, which will ensure a consistent approach to sentencing breach of orders.

## Which breaches are covered by the guideline?

The new breach guideline will contain guidance for:

- Breach of a Community Order
- Breach of a Suspended Sentence Order
- Breach of Post Sentence Supervision
- Failing to Surrender to Bail
- Breach of a Protective Order (restraining and non-molestation orders)
- Breach of a Criminal Behaviour Order and Anti-Social Behaviour Order
- Breach of a Sexual Harm Prevention Order and Sexual Offence Prevention Order
- Failing to Comply with Notification Requirement
- Breach of disqualification from acting as a director
- Breach of disqualification from keeping an animal

<sup>1</sup> ss.118–136 Coroners and Justice Act 2009

<sup>2</sup> The sample was self selected, and relatively small, meaning that we cannot generalise from these findings to the general population of magistrates and district judges. The findings do, however, give us an indication of how an engaged and interested group use the current guidance and their needs and preferences with reference to future guidelines.

## What is the Council consulting about?

The Council has produced this consultation paper in order to seek the views of as many people as possible interested in the sentencing of breach offences.

However, it is important to clarify that the Council is consulting on sentencing these offences and not the legislation upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

Through this consultation process, the Council is seeking views on:

- the approach taken to the breach guidelines;
- the principal factors that make any of the offences included within the draft guideline more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guidelines;
- the types and lengths of sentence that should be passed;
- anything else you think should be considered.

A summary of the consultation questions can be found at Annex A.

## What else is happening as part of the consultation process?

This is a 13 week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from groups with an interest in this area as well as with sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all courts.

Alongside this consultation paper, the Council has produced an online questionnaire which allows people to respond to the consultation questions through the Sentencing Council website. The Council has also produced a resource assessment. The online questionnaire and resource assessment can be found on the Sentencing Council's website:

**[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)**



# Section one: Overarching issues and the context of the guidelines

Compliance with court orders is important to ensure public confidence in the justice system, and in many cases to protect individuals or the wider public from harm either from specific types of offending or continuing criminal behaviour. Legislation provides that court orders, and some other orders not issued by the courts, can be enforced by them, to ensure appropriate sanctions can be imposed where the purpose of the order is being undermined by non-compliance.

This has been a challenging project covering a broad range of breach offences, many of which are currently subject to a changing landscape. It has been necessary to consider changes to the way in which community and suspended sentence orders are managed and the relevance of this to breach proceedings, and to develop guidelines for breach of new provisions recently introduced relating to the management of newly released offenders. Data was unavailable to enable a thorough examination of current sentencing practice for some of the breaches included. This was the case for breach of community orders in particular. Where possible the Council held discussions with professionals to inform its proposals but it is particularly keen that consultation responses highlight any issues that were not identified due to the limited scope of these discussions, or may not yet have been apparent at the time they took place. While developing the guideline, the Council also identified that some breach offences were attracting sentences much lower than the statutory maximum provides for, either due to no existing guidance being available or because existing guidance did not address offences at the upper end of seriousness. The draft guidelines provide for the full spectrum of seriousness in a breach to be assessed and the sentence ranges more closely reflect the statutory maxima for the offences.

The Council has developed the most comprehensive package of breach guidance possible, to ensure that guidance is of optimum use to sentencers. It is important to note that the objective of the guideline is to sentence breach offences and not any new offences constituting a breach, which would usually be charged separately. This has been a further challenge to guideline development; to ensure that the guideline does not 'double count' for new offences, but adequately and appropriately addresses non-compliance with court orders and the risks this presents to the protection of the public and the integrity of the criminal justice system.

## **Applicability of guidelines**

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced it will apply to all offenders aged over 18, who are sentenced on or after the date that the guideline comes into force, regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

### **The guideline in relation to current practice and existing guidelines**

In preparing this draft guideline, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council’s aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

The Council considered statistical data from the Ministry of Justice Court Proceedings Database (‘CPD’) for the offences covered in the guideline to get a picture of current sentencing levels. Existing guidance was also reviewed where this was available.

Research will be carried out during the consultation period to explore sentencers’ attitudes to the proposed new guidelines.

The approach that has been taken in developing the draft guideline aims to regularise practice rather than to alter it substantially in most cases.

### **Structure, ranges and starting points**

For the purposes of section 125(3)–(4) of the Coroners and Justice Act 2009, the guidelines specify offence ranges – the range of sentences appropriate for each type of offence, or the appropriate penalty. Where relevant, the Council has specified a number of categories which reflect varying degrees of seriousness. The offence range is split into category ranges – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. As in other Sentencing Council definitive guidelines, this guideline adopts offence based starting points. Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases. Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions where these are relevant so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision-making process, after the appropriate sentence has been identified.

**Assessing seriousness**

The assessment of seriousness in some of the draft guidelines is different to the usual approach in Sentencing Council guidelines, as the factors which affect the seriousness assessment do not fit with a stepped approach to sentencing. For the guidelines for breach of community orders, suspended sentence orders and post sentence supervision, bespoke guidelines have been developed which ensure all relevant and appropriate considerations can be made by sentencers.

The format of the other guidelines is in line with other Sentencing Council guidelines, using the stepped approach to sentencing and assessing harm and culpability, and any factors increasing seriousness. Not all of the standard steps in other Council guidelines are relevant to breach offences, so only those that apply to sentencing breach offences are included.

The particular circumstances of each breach which reaches court will be different. The draft guideline aims to help the court to decide how serious a breach is by reference to a series of factors which in turn determine what the sentence starting point or penalty should be.

# Section two: Breach of a Community Order by Failing to Comply with Requirements

(Draft guideline at page 61)

The legislative provisions for breach of a community order are found within Schedule 8 of the Criminal Justice Act 2003. The legislation provides that in the event that an offender fails without reasonable excuse to comply with any of the requirements of a community order the court has a number of options. In summary these are:

- (a) impose more onerous requirements than the original order;
- (b) impose a fine not exceeding £2,500;
- (c) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any way in which the court could deal with him if he had just been convicted by it of the offence (including custody);
- (d) if non compliance is wilful and persistent, impose up to 6 months' imprisonment.

There is currently very little guidance for courts on how to deal with breaches of a community order. The definitive SGC guideline, '*New Sentences Criminal Justice Act 2003*' contained some narrative guidance, but this sets out the general approach to sentencing rather than providing guidance about what makes a breach more or less serious.

Very little evidence is available regarding current practice for dealing with breach of community orders. In addition, as the majority of breaches of this type are dealt with in magistrates' courts, limited case transcripts are available to identify factors influencing sentences and the assessment of seriousness. During the development of the draft guideline, the Council considered how best to explore current practice in relation to breaches of community orders. This led to a number of discussions being held with sentencers and probation officers, to identify which factors influence outcomes for these breaches.

The findings from the discussions highlighted that the objective of rehabilitating offenders is crucial to all concerned with dealing with these breaches. The Council recognises that the primary objective of the court is to achieve compliance with a community order, and that many variables will affect the decision on how to deal with a breach. The draft guideline seeks to balance the overall objective of achieving compliance, while still ensuring breaches are dealt with effectively and consistently.

## **Assessing seriousness**

The Council concluded from the discussions held, and from a limited review of cases, that the primary factor in assessing seriousness of the breach was the prior level of compliance with the community order. The assessment of seriousness in the draft guideline includes the following guidance on which factors should be considered in assessing the level of compliance.

The court must take into account the extent to which the offender has complied with the requirements of the community order when imposing a sentence.

In assessing the level of compliance with the order the court should consider:

- i) the overall attitude and engagement with the order as well as the proportion of elements completed;
- ii) the impact of any completed or partially completed requirements on the offender's behaviour; and
- iii) the proximity of breach to imposition of order.

## Penalty levels

As the legislation provides a number of options for dealing with a breach, the Council has avoided being too prescriptive in specifying penalties. The Council recognises that different penalties will be appropriate in individual cases, depending on the circumstances of the offender and of the breach. The penalty options are necessarily broad due to the various options provided by the legislation. The Council is also alert to the many potential variables in the existing requirements of an order. The guideline therefore aims to strike the balance between appropriately punitive penalties to deal with the breach and providing sufficient options to enable the penalty to be suitably tailored to the circumstances. The exception is where a breach is wilful and persistent, where in line with legislation, the guideline provides that the order should be revoked and the offender re-sentenced to custody.

Overall compliance with order	Level of penalty
Wilful and persistent non-compliance	Revoke the order and re-sentence imposing custodial sentence (even where the offence seriousness did not originally merit custody)
Low level of compliance	Revoke the order and re-sentence original offence <b>OR</b> 30 - 50 hours additional unpaid work/extend length of order/add additional requirements (eg; curfew, programme requirement) <b>OR</b> Band C fine
Medium level of compliance	Revoke the order and re-sentence original offence <b>OR</b> 20 - 30 hours additional unpaid work/extend length of order/add additional requirements (eg; curfew, programme requirement) <b>OR</b> Band B fine
High level of compliance	10 - 20 hours additional unpaid work/extend length of order/add additional requirements (eg; curfew, programme requirement) <b>OR</b> Band A fine

Q1

**Do you agree with the proposed approach to the assessment of seriousness of breach of a community order? Please state if there are any other factors which you think should be included in the assessment of seriousness.**

Q2

**Do you have any general comments on the proportionality of the proposed penalties?**

### Aggravating and mitigating factors

These have not been included in the draft guideline as the level of compliance determines the seriousness of the breach, and many of the appropriate factors would result in double counting of compliance related matters.

### Other related guidance

The Council also considered other, more 'technical' information, which it may be useful for sentencers to have available within the guideline. The draft guideline therefore includes the following:

- i) If imposing more onerous requirements the length of the order may be extended up to 3 years or six months longer than the previous length, whichever is longer (but only once).
- ii) If imposing unpaid work as a more onerous requirement and an unpaid work requirement was not previously included, the minimum number of hours that can be imposed is 20.
- iii) The maximum fine that can be imposed is £2,500.
- iv) If re-sentencing, a suspended sentence **MUST NOT** be imposed as a more severe alternative to a community order. A suspended sentence may only be imposed if it is fully intended that the offender serve a custodial sentence in accordance with the Imposition of Community and Custodial sentences guideline.
- v) Where the order was imposed by Crown Court, magistrates should consider their sentencing powers in dealing with a breach. Where the judge imposing the order reserved any breach proceedings commit the breach for sentence.

Q3

**Do you have any general comments on the additional technical guidance included? Is there any further information which should be included?**

## Community order - Powers of the court following subsequent conviction

The commission of a new offence during the currency of a community order does not constitute a breach. The legislative provisions are contained within Schedule 8 of the Criminal Justice Act 2003 and provide that on a subsequent conviction during the term of a community order the court *may* revoke the order or both revoke the order and re-sentence the offender for the original offence. As the legislation does not compel the court to exercise either of those options it is also possible for no action to be taken. A conviction for a further offence during the currency of a community order is also dealt with in the *totality* guideline. The Council has therefore decided to include the following information in the breach guideline for ease of reference:

A conviction for a further offence does not constitute a breach of a community order. However, in such a situation, the court should consider the following guidance from the *Offences Taken into Consideration and Totality* guideline:<sup>3</sup>

### **Offender convicted of an offence while serving a community order**

*The power to deal with the offender depends on his being convicted whilst the order is still in force; it does not arise where the order has expired, even if the additional offence was committed whilst it was still current.*

*If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.*

*Where an offender, in respect of whom a community order made by a Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence and the additional offence.*

*The sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.*

Q4

**Do you have any general comments on the draft guideline for breach of a community order?**

<sup>3</sup> [https://www.sentencingcouncil.org.uk/wp-content/uploads/Definitive\\_guideline\\_TICs\\_\\_totality\\_Final\\_web.pdf](https://www.sentencingcouncil.org.uk/wp-content/uploads/Definitive_guideline_TICs__totality_Final_web.pdf) p.14

# Section three: Breach of a Suspended Sentence Order

(Draft guideline at page 65)

The legislative provisions for breach of a suspended sentence order are found within Schedule 12 of the Criminal Justice Act 2003. While the provisions state that the court must activate the original or a lesser custodial term in the event of a breach, this is subject to the exception ‘unless it is of the opinion that it would be unjust to do so in view of all the circumstances’, which include (but are not limited to) the level of compliance with the original order and the facts of the subsequent offence. The legislation also provides for the court to amend the suspended sentence order by imposing more onerous requirements and/or extending the operational or supervision period of the order. This presents a range of options for the court in dealing with a breach, which is resulting in significant inconsistency in sentencing. The Council considered that it is important that penalties for these breaches are consistent and sufficiently robust to avoid the objective of the sentence being undermined and to promote public confidence in these sentences.

The only existing guidance for breaches of suspended sentence orders is contained within the SGC guideline, *New Sentences Criminal Justice Act 2003*. The guidance is in a narrative format, and seeks to guide sentencers as to relevant considerations when activating a custodial term.

Very little evidence is available regarding current sentencing practice for breach of suspended sentences. The Council therefore explored this in discussions with sentencers and probation officers and staff. A review of case transcripts was also conducted, to identify factors currently influencing activation of custodial sentences upon breach, and when it may be unjust to activate a suspended sentence in full or in part.

In developing the guideline, the Council has incorporated consideration of the wider ‘unjust in all the circumstances’ test.

The guideline addresses two types of breaches:

- i) Breach by failure to comply with community requirements during the supervision period of an order; and
- ii) Conviction for a further offence committed during the operational period of the order.

## **1) Failure to comply with a community requirement during the supervision period of the order**

### **Assessing seriousness**

The draft guideline takes the same approach as the one for breach of a community order by assessing seriousness with reference to the level of compliance with the order.



The court must take into account the extent to which the offender has complied with the suspended sentence order when imposing a sentence.

In assessing the level of compliance with the order the court should consider:

- i) the overall attitude and engagement with the order as well as the proportion of elements completed;
- ii) the impact of any completed or partially completed requirements on the offender's behaviour; and
- iii) the proximity of breach to imposition of order.

## Penalty levels

The assessment of compliance will determine the action to be taken on the breach. A review of cases identified a number of principles which have developed in relation to sentencing practice. These have informed the draft guideline.

Breach involves	Penalty
Low level of compliance	Full activation of original custodial term
Medium level of compliance	Activate custodial sentence but apply reduction to original custodial term proportionate to unpaid work or curfew requirements completed <b>OR</b> Impose more onerous requirements and/or extend supervision period and/or extend operational period and/or impose fine
High level of compliance	Impose more onerous requirements and/or extend supervision period and/or extend operational period and/or impose fine

**Low level of compliance** – Breaches where there has been a low level of compliance with community requirements are considered by the Council to be the most serious and will result in full activation of the custodial sentence.

**Medium level of compliance** – To provide for the range of potential variables in this category, the guideline offers sentencers greater discretion in identifying the appropriate penalty. Two sentencing options are therefore available.

**High level of compliance** – These represent the lowest level of breach. In determining penalties the Council considered views of sentencers and an analysis of cases which indicate that activation in cases of a minor breach may be considered unjust. The Council took the view that where there has been a high level of compliance prior to the breach there is likely to be a greater likelihood of re-engaging the subject of the order, so activation may therefore be disproportionate and potentially disruptive to the rehabilitation of the offender.

Q5

**Do you agree with the proposed approach to the assessment of seriousness of breach of a suspended sentence order by failure to comply with a community requirement? Please state if there are any other factors which you think should be included in the assessment of seriousness.**

Q6

**Do you have any general comments on the proportionality of the proposed penalties?**

## 2) Conviction for further offence committed during operational period of order

### Assessing Seriousness

The details of the new offence will be relevant to the activation of the sentence. Where the new offence is less serious than the original offence but requires a custodial sentence, the court must consider the overall level of compliance with the order to determine the action to be taken on the breach. In all other cases the details of the new offence are the sole consideration.

The nature of the new offence is the primary consideration in assessing the action to be taken on the breach.

Where the breach is in the second category below, the prior level of compliance is also relevant. In assessing the level of compliance with the order the court should consider:

- i) the overall attitude and engagement with the order as well as the proportion of elements completed;
- ii) the impact of any completed requirements on the offender's behaviour;
- iii) the proximity of breach to imposition of order.

### Penalty levels

Breach involves	Penalty
Multiple and/or serious new offences committed <b>OR</b> New offence similar in type and gravity to offence for which suspended sentence order imposed	Full activation of original custodial term
New offence less serious than original offence but requires a custodial sentence and:	
Low level of compliance with suspended sentence order	Full activation of original custodial term
High level of compliance with suspended sentence order	Activate sentence but apply reduction to original custodial term proportionate to any unpaid work and/or curfew requirement completed
New offence does not require custodial sentence	Activate sentence but apply reduction to original custodial term proportionate to any unpaid work and/or curfew requirement completed <b>OR</b> Impose more onerous requirements and/or extend supervision period and/or extend operational period and/or impose fine

### Multiple and/or serious new offences committed or new offence similar in type and gravity to offence for which suspended sentence order imposed:

The Council considers the most serious breaches to be those where multiple and/or serious new offences are committed, or a new offence similar in type and gravity to that for which the suspended sentence order was imposed. A review of cases indicated that currently, where an unpaid work element has been completed and/or the offence is committed close to the expiry of the operational period of the order, a proportionate reduction will often be applied to the custodial term. The Council considered whether to reflect this practice in the guideline, but noted that this would result in more serious offences being treated in the same way as less serious offences. The Council instead took

the view that full activation should apply, to reflect the greater harm caused by the disregard of the court order in the commission of more serious or multiple offences, or offences of the same type as the original offence. The Council does not believe this would make the overall sentence unjust, but considers it would be wrong in principle to allow an offender to offset a proportion of a custodial sentence when he or she chose to offend further and in a serious way.

**New offence less serious than original offence but requires a custodial sentence:**

For the second category of breaches, a review of cases indicated that if there is a good level of compliance with unpaid work requirements or a curfew, a proportionate reduction to the original custodial term will be applied. This is because in such circumstances full activation of the custodial sentence would be unjust. The Council has applied this principle in the guideline, to ensure the sentence is proportionate to the requirements completed. However, where requirements of a more rehabilitative nature may have been completed but a change in an offender's behaviour or attitude is not demonstrated, compliance would be considered to be low. Where there has been a low level of compliance with the terms of the suspended sentence, full activation of the custodial term will not be unjust.

**New offence does not require custodial sentence:**

Where a new offence does not require a custodial sentence, two sentencing options are available to ensure the circumstances of the case can be appropriately addressed. The Council considered whether compliance should be relevant to this assessment in the same way as for new less serious offences which still attract custody. However it decided that even where there had been a low level of compliance, activation of the custodial sentence for a much less serious offence than originally attracted the suspended sentence could be unjust. An example would be where a suspended sentence was received for an offence of shop theft, and a drink driving offence was later committed. To provide for the range of potential offence combinations falling within this category the Council believes the guideline should offer some discretion for sentencers in identifying the appropriate penalty.

Q7

**Do you agree with the proposed approach to the assessment of seriousness of breach of a suspended sentence order by the commission of a further offence? Please state if there are any other factors which you think should be included in the assessment of seriousness.**

Q8

**Do you agree that the proposed levels of penalty are appropriate?**

The legislation provides that in the event of a breach the custodial sentence must be activated unless it would be unjust to do so in view of all the circumstances, including the level of compliance with the order and the nature of any new offence. The guideline takes into account level of compliance and the nature of the new offence, and identifies appropriate action on breach to satisfy the 'unjust test'. It is expected that the breach penalty would be as set out within the guideline. However, the Council recognises that in some cases there may be other circumstances which a court considers would make activation unjust. The guideline therefore includes additional guidance in relation to other factors which may cause activation to be unjust.

**Unjust in all the circumstances**

The court **must activate the custodial sentence** unless it would be unjust in all the circumstances to do so. The predominant factors in determining whether activation is unjust relate to the level of compliance with the suspended sentence order and the nature of any new offence. These factors are already provided for by the guideline.

In determining if there are other factors which would cause activation to be unjust, the court may consider all factors including:

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether immediate custody will result in significant impact on others.

**The court dealing with the breach should remember that the court imposing the original sentence determined that a custodial sentence was appropriate in the original case.**

In cases where the court considers that it would be unjust to order the custodial sentence to take effect, it must state its reasons and it **must** deal with the offender in one of the following ways:

- (a) impose a fine not exceeding £2,500; **OR**
- (b) extend the operational period (to a maximum of two years from date of original sentence); **OR**
- (c) if the SSO imposes community requirements, do one or more of:
  - (i) impose more onerous community requirements;
  - (ii) extend the supervision period (to a maximum of two years from date of original sentence);
  - (iii) extend the operational period (to a maximum of two years from date of original sentence).

Q9

**Do you have any general comments on the section relating to the unjust test? Please state if there are other factors which you consider are relevant to the assessment of whether activation would be unjust.**

Q10

**Do you have any comments on the structure and presentation of information in the guideline?**

**Aggravating and mitigating factors**

These have not been included in the draft guideline as the level of compliance determines the seriousness of the breach, and many of the appropriate factors would result in double counting of compliance related matters.

## Breach of a Suspended Sentence – Case Studies

### Case Study A – 1) Failure to comply with a community requirement during the supervision period of the order

D, a 28 year old male, is subject to a suspended sentence of 6 months' imprisonment suspended for two years for an offence of possession of a Class A drug with intent to supply. The suspended sentence was imposed 6 months ago and included requirements of 100 hours' unpaid work. D's compliance with the requirement was initially good, with 30 hours of the unpaid work completed within the first six weeks. However, for the past two months he has not attended for unpaid work and has put forward a number of reasons regarding his inability to attend, including that his child has been ill and on other occasions that he has been offered ad hoc work and needs the money to support his partner and child. He has been unable to evidence his absences and they have resulted in him being breached by the Probation Service. D has previously completed a community order for a different offence and has a number of previous convictions for offences of common assault and shop theft. D has admitted the breach.

#### Level of Compliance:

D's initial compliance was good, with almost one third of the unpaid work completed in a short period. However, the breach has been committed in the first quarter of the operational period of the order.

It is likely that given the completion of almost a third of the unpaid work in a short space of time, balanced with the proximity of the breach to the imposition of the order, it would be considered there has been a medium level of compliance. This would provide two sentencing options to the court:

- Activate the custodial sentence but apply a proportionate reduction to original custodial term proportionate to unpaid work or curfew requirements completed **OR**
- Impose more onerous requirements and/or extend supervision period and/or extend operational period and/or impose fine.

#### Penalty:

The operational period of the order is already for the maximum term available, and it is unlikely that imposing additional unpaid work would achieve compliance as D has not completed any for some time. Extension of the supervision period would have no immediate effect for the breach offence.

The custodial sentence should therefore be activated but a proportionate reduction applied to the original custodial term proportionate to the unpaid work requirements completed.

D is likely to make submissions that activating the sentence would be unjust in all the circumstances as the breach arose through his working and he has a child and partner to support. The guideline provides for a consideration of other factors which may make activation unjust, including whether immediate custody will have a significant impact upon others. However, the partner and child were relevant at the time the sentence was imposed and the sentencing court still determined that a custodial sentence was the appropriate sentence. Further, if the activation is held to be unjust the available sentencing options are a fine, which would not mark the seriousness of the breach, or adjustment to the sentence which has already been ruled out.

The sentence should therefore be activated with a proportionate reduction for the completed unpaid work.

Q11

Do you consider that the penalty imposed in case study A is appropriate? If you do not agree, please tell us what penalty should be imposed and why.

### Case Study B – 2) Commission of further offence during operational period of order

Z, a 32 year old female and single parent, is subject to a suspended sentence of 4 months' imprisonment suspended for 12 months with requirements of 80 hours unpaid work and attendance on a Think First programme. The suspended sentence was imposed for an offence of ABH, and Z has now been convicted of a further offence of common assault. The suspended sentence was imposed 3 months ago.

#### Level of Compliance:

Only seventeen hours of the unpaid work requirement has been completed as Z has childcare commitments that she states have prevented her attending. Her engagement with the Think First programme has been good, although the court has noted in the instant case that the programme has not been particularly effective given that Z finds herself being sentenced for a further offence. The new offence is less serious than the original offence. The level of compliance with the suspended sentence must be assessed to identify the appropriate penalty. Little of the unpaid work has been completed, and although Z engaged well with the Think First programme, the new offence demonstrates that it has been ineffective in terms of her decision-making relating to further offending. The new offence has been committed three months into the order, so on balance there has been a low level of compliance.

#### Penalty:

The penalty will depend on whether the court determines the new offence requires a custodial sentence. If it does, as Z has demonstrated a low level of compliance with the suspended sentence order, there should be full activation of the original custodial term. If the sentence does not require a custodial sentence, the court will have the option to i) activate the sentence or ii) impose more onerous requirements and/or extend the supervision and/or operational period of the order and/or impose a fine. Z has previously not paid fines imposed, and additional unpaid work would not be appropriate as she has demonstrated a low level of compliance with the existing requirement. Z has also demonstrated that the suspended sentence is not a deterrent to her committing further offences, so extending the supervision or operational period would have no effect for the breach offence.

If the court decides activation is appropriate, Z is likely to make submissions that activating the sentence would be unjust in all the circumstances as there would be a significant impact upon her children for whom she is the sole carer. However, at the time the original custodial sentence was imposed the sentencing court determined that a custodial sentence was the appropriate sentence in accordance with the imposition of community and custodial sentences guideline.

Q12

What penalty do you think is appropriate in case study B, and why?

Q13

Do you have any general comments on the draft breach of suspended sentence order guideline?

# Section four: Breach of Post Sentence Supervision

(Draft guideline at page 69)

Post Sentence Supervision (PSS) provisions were introduced by the Offender Rehabilitation Act (ORA) 2014. This added a new section 256AA to the Criminal Justice Act 2003, which provides that offenders receiving a custodial sentence of more than one day but less than two years (for offences committed on or after 1 February 2015) will be subject to compulsory PSS after release and will be subject to supervision requirements aimed at their rehabilitation. PSS is intended to operate in a similar way to a community order although has a purely rehabilitative focus, and the options available upon breach of PSS are intended to be similar to the options available for dealing with breach of community orders.

The ORA provisions also added section 256AC to the Criminal Justice Act, which provides that in the event that an offender fails without reasonable excuse to comply with a supervision requirement, the court may:

- (a) order the person to be committed to prison for a period not exceeding 14 days,
- (b) order the person to pay a fine not exceeding level 3 on the standard scale, or
- (c) make a Supervision Default Order imposing on the person -
  - (i) an unpaid work requirement (minimum 20 hours maximum 60 hours) **OR**
  - (ii) a curfew requirement (remain indoors for between 2 – 16 hours for minimum of 20 days and no longer than end of PSS period).

If a Supervision Default Order (SDO) is subsequently breached the court may revoke the order and deal with the person for the failure in any of the ways listed above.

Breaches will be dealt with solely in the magistrates' court.

Since the provisions were implemented recently there is no existing guidance for dealing with these breaches, and very little evidence is available regarding volumes of breaches and action taken in relation to a breach. The Council considered that guidance on this particular breach would be very useful for sentencers, and should be aligned with the approach for breach of a community order given the similarities shared with these orders.

## Assessing seriousness

The draft guideline takes the same approach as for breaches of community and suspended sentence orders in assessing seriousness by reference to level of compliance with the order.

The court must take into account the extent to which the offender has complied with the requirements of the Post Sentence Supervision Order when imposing a sentence.

In assessing the level of compliance with the order the court should consider:

- i) the offender's overall attitude and engagement with the order as well as the proportion of elements completed;
- ii) the impact of any completed or partially completed requirements on the offender's behaviour; and
- ii) the proximity of the breach to the imposition of the order.

Q14

**Do you agree with the proposed approach to the assessment of seriousness of breach of Post Sentence Supervision?**

## Penalty levels

There are two potential elements which can be breached. The first is the initial supervision (PSS) to which the released offender is subject. The second is a Supervision Default Order (SDO), which can be imposed in respect of an earlier breach of PSS. The legislation provides that the penalties available for each breach are the same, although one is naturally more serious than the other as breach of a SDO represents a further breach following an initial breach of PSS. For this reason the Council decided that penalties for breach of a SDO should be more severe than for breach of PSS. The penalties are intended to be in line with penalties for similar levels of breach of a community order. However, the penalty options provided by legislation are very limited.

## Breach of Post Sentence Supervision

Level of Compliance	Level of penalty
Low	Up to 14 days' committal to custody <b>OR</b> Supervision Default Order in range of 30 - 40 hours unpaid work <b>OR</b> 8 - 12 hour curfew for minimum of 20 days
Medium	Supervision Default Order in range of 20 - 30 hours unpaid work <b>OR</b> 2 - 8 hour curfew for minimum of 20 days <b>OR</b> Band B fine
High	Band A fine



## Breach of Supervision Default Order

Level of Compliance	Level of penalty
Low	Revoke Supervision Default Order and order up to 14 days' committal to custody
Medium	Revoke Supervision Default Order and impose new order in range of 40 - 60 hours unpaid work <b>OR</b> 8 - 16 hour curfew for minimum of 20 days
High	Band B fine

Q15

Do you have any general comments on the proportionality of the proposed penalties?

### Other information included

Additional information is included within the guideline regarding the statutory maximum fine which can be imposed and the requirements which may be imposed under a Supervision Default Order to provide further assistance to sentencers.

- i) A Supervision Default Order must include **either**:  
an unpaid work requirement of between 20 hours - 60 hours  
**OR**  
a curfew requirement to remain indoors for between 2 - 16 hours for a minimum of 20 days and no longer than end of PSS period.
- ii) The maximum fine which can be imposed is £1,000.

### Aggravating and mitigating factors

These have not been included in the draft guideline as the level of compliance determines the seriousness of the breach, and many of the appropriate factors would result in double counting of compliance related matters.

Q16

Is there any other information or guidance which should be included within the breach of PSS guideline?

# Section five: Failing to Surrender to Bail

(Draft guideline at page 71)

The legislative provisions for failing to surrender to bail are contained within Section 6 of the Bail Act 1976 which provides that:

6(1) If a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.

6(2) If a person who—

(a) has been released on bail in criminal proceedings, and

(b) having reasonable cause therefore, has failed to surrender to custody, fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable he shall be guilty of an offence.

The maximum sentence in a magistrates' court is 3 months' custody. If the matter is committed to the Crown Court for sentence, or dealt with there, the maximum sentence is 12 months' custody.

There is a definitive guideline issued by the SGC in 2007 for failing to surrender to bail. Additional guidance is provided in the Magistrates' Court Sentencing Guidelines. The Council decided to produce updated guidance for failing to surrender to bail following feedback from sentencers that while the SGC guideline was useful, its narrative format was 'cumbersome and unwieldy' in the courtroom.

The draft guideline is in the standard format of Sentencing Council guidelines, and includes the stepped approach to sentencing. The guideline requires an assessment of the culpability and harm present in a failing to surrender to bail offence.

## STEP ONE

The first step of the guideline is to consider the culpability level of the offender by the assessment of a series of factors.

### Culpability

A	Deliberate attempt to evade or delay justice
B	Factors in categories A and C not present
C	Breach just short of reasonable excuse

**Culpability A** – The Council considered that the highest culpability breaches in the context of failing to surrender to bail are situations where an offender absconds or deliberately seeks to evade justice and remain undetected.

**Culpability B** – This category is intended to cover all offenders who have not committed the most serious breaches, but on the other hand have not committed offences at the lowest level of culpability (those which are just short of a reasonable excuse). An example could be an offender who shows a deliberate disregard for surrendering at the appointed time, but does not do so for the reasons in Category A.

**Culpability C** – The lowest culpability category is reserved for failures to surrender which are just outside of the reasonable excuse defence which is available for this offence. An example could be where an offender genuinely believed proceedings were on a different date, which would not amount to a reasonable excuse.

Q17

### Do you agree with the proposed culpability factors?

#### Harm

Once the court has determined the level of culpability the next step is to consider the harm caused by the offence.

Harm 1	Failure to attend Crown Court hearing results in substantial delay and/or interference with the administration of justice
Harm 2	Failure to attend magistrates' court hearing results in substantial delay and/or interference with the administration of justice*
Harm 3	Factors in categories 1 and 2 not present
* In particularly serious cases where the failure to attend is in the magistrates' court and the consequences of the delay have a severe impact on victims and witnesses the case should be committed to the Crown Court pursuant to s.6(6)a Bail Act 1976 and the Crown Court should sentence the case according to the range in Category A1.	

**Category 1** – This category captures serious cases of failing to surrender in the Crown Court, where a substantial delay and/or interference with the administration of justice is caused.

**Category 2** – This category captures serious cases of failing to surrender in the magistrates' court, where a substantial delay and/or interference with the administration of justice is caused.

Due to the differing statutory maxima for this offence in the different jurisdictions, the Council felt it necessary to capture serious failures in each court in separate categories to ensure the sentence levels could adequately reflect the sentences available. It is also the case that disruption to Crown Court proceedings can incur significantly higher costs than in magistrates' courts. The Council recognises that in some magistrates' court proceedings the harm may be of such a level as to require a sentence outside of its sentencing powers. This may be the case where the seriousness of the failure to surrender is aggravated by a severe impact upon victims and witnesses. The Council particularly considered cases of failure to surrender in the magistrates' court where proceedings

were to be committed to the Crown Court, such as sexual offences or cases involving vulnerable witnesses who are severely distressed by the disruption to proceedings. The guideline therefore provides for such cases to be committed to the Crown Court and sentenced within the sentence range available in Category A1.

**Category 3** – This category captures cases in either jurisdiction, where little or no harm or distress is caused as a result of the failure to surrender.

Q18

**Do you agree with the proposed approach to the assessment of harm? Please state your reasons if you do not.**

## STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

### Sentence levels

The starting points and ranges have been based on statistical data from the Ministry of Justice Court Proceedings database and a very small scale analysis of Court of Appeal and first instance case transcripts.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 13 weeks' custody	<b>Starting point</b> 28 days' custody	<b>Starting point</b> 7 days' custody
	<b>Category range</b> 6 weeks' – 40 weeks' custody	<b>Category range</b> High level community order – 13 weeks' custody	<b>Category range</b> Low level community order – 6 weeks' custody
Category 2	<b>Starting point</b> 14 days' custody	<b>Starting point</b> Band C fine	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 13 weeks' custody	<b>Category range</b> Band B fine – High level community order	<b>Category range</b> Band A – Low level community order
Category 3	<b>Starting point</b> 7 days' custody	<b>Starting point</b> Band B fine	<b>Starting point</b> Band A fine
	<b>Category range</b> Low level community order – 6 weeks' custody	<b>Category range</b> Band A fine – Low level community order	<b>Category range</b> Discharge – Band B fine

Maximum sentence in magistrates' court – 3 months' imprisonment  
Maximum sentence in Crown Court – 12 months' imprisonment

Q19

**Do you have any general comments on the sentence ranges and starting points?**

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. In some cases, having considered the factors, it may be appropriate to move outside the identified category range.

The presence of any of the factors on the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.

#### Factors increasing seriousness

##### *Statutory aggravating factor:*

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

##### *Other aggravating factors:*

Breach committed shortly after order made

History of breach of court orders or police bail

Distress to victims and witnesses

#### Factors reducing seriousness or reflecting personal mitigation

Genuine misunderstanding of bail or requirements

Prompt voluntary surrender

Sole or primary carer for dependant relatives

Q20

Are there any aggravating or mitigating factors that should be added or removed?

Q21

Do you have any other general comments on the draft guideline for failure to surrender to bail?

# Section six: Breach of a Protective Order

(Draft guideline at page 77)

Protective orders is a collective term for restraining orders and non-molestation orders. Failure to comply with a restraining order without reasonable excuse is an offence contrary to section 5(5) of the Protection from Harassment Act 1997. Non-molestation orders are provided for by the Family Law Act 1996; section 42 provides that during family proceedings, a court may make a non-molestation order prohibiting the respondent from molesting another person who is associated with the respondent and/or prohibiting the respondent from molesting a relevant child. Section 42A(1) provides that it is an offence to fail to comply with a non-molestation order without reasonable excuse. Breach of either protective order is punishable with up to 5 years' imprisonment. There is an existing guideline for breach of a protective order which was issued by the SGC in 2006, which will be replaced by this guideline.

The draft guideline is in the standard format of Sentencing Council guidelines, and includes the stepped approach to sentencing. The guideline requires an assessment of the culpability and harm present in a breach offence.

## STEP ONE

The first step of the guideline is to consider the culpability level of the offender by the assessment of a series of factors.

### Culpability

A	<ul style="list-style-type: none"> <li>Flagrant, serious or persistent breach</li> </ul>
B	<ul style="list-style-type: none"> <li>Factors in categories A and C not present</li> </ul>
C	<ul style="list-style-type: none"> <li>Minor breach</li> <li>Breach just short of reasonable excuse</li> </ul>

**Culpability A** – The Council considered that the highest culpability breaches in the context of these offences are breaches which are flagrant, serious or persistent, as these represent a deliberate intention to disregard the order of the court.

**Culpability B** – This category covers the offender who does not commit the most serious breach, but on the other hand does not commit an offence at the lowest level of culpability.

**Culpability C** – The lowest culpability category is reserved for minor breaches or those which are just outside of the reasonable excuse defence which is available for this offence.

Q22

Do you agree with the proposed approach to the assessment of culpability?

### Harm

Once the court has determined the level of culpability the next step is to consider the harm caused by the offence.

<b>Category 1</b>	Breach causes very serious harm or distress to an individual
<b>Category 2</b>	Factors in categories 1 and 3 not present
<b>Category 3</b>	Breach causes little or no harm or distress to an individual

**Category 1** – This category captures cases where the breach involves very serious harm or distress. The harm inherent in a breach of a protective order will usually be to its protected subject, but could extend to other individuals such as children or persons present during a breach incident. Breach of these orders will often cause distress, as the order will usually contain prohibitions on contact with particular persons. These orders are often imposed in cases of domestic abuse, where the protected subject may have experienced severe physical or emotional harm. These orders are also often imposed in cases of stalking, where breach can have devastating effects for victims causing severe levels of fear and distress. This category is intended to capture such cases.

**Category 2** – This category captures cases falling between the lowest and highest harm categories.

**Category 3** – This category captures cases where little or no harm or distress is caused as a result of the breach.

Q23

Do you agree with the proposed approach to the assessment of harm?

### STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

#### Sentence levels

The starting points and ranges have been based on statistical data from the Ministry of Justice Court Proceedings database, analysis of first instance transcripts and analysis of Court of Appeal sentencing remarks. The ranges are very different to those included within the existing SGC guideline. The Council took the view that the sentence ranges should more adequately reflect the statutory maximum for this offence, and the sentence levels at the upper end of seriousness reflect sentences in a range of cases which were reviewed.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> Medium level community order – 1 year's custody
Category 2	<b>Starting point</b> 1 years' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 26 weeks' custody
Category 3	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Band B fine – High level community order

The table above refers to single offences. Where there are multiple offences consecutive sentences may be appropriate - please refer to the *Offences Taken Into Consideration and Totality guideline*.

Q24

**Do you have any general comments on the sentence ranges and starting points?**

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. In some cases, having considered the factors, it may be appropriate to move outside the identified category range.

The presence of any of the factors on the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.



**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:**

Breach committed shortly after order made

History of disobedience to court orders

Breach involves a further offence (where not separately prosecuted)

Using contact arrangements with a child/children to instigate offence and/or proven history of violence or threats by offender

Breach results in victim or protected person being forced to leave their home

Impact upon children or family members

Victim or protected subject of order breached is particularly vulnerable

Offender takes steps to prevent victim or subject harmed by breach from reporting an incident or seeking assistance

**Factors reducing seriousness or reflecting personal mitigation**

Breach committed after long period of compliance

Prompt voluntary surrender/admission of breach or failure

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to the commission of the offence

Sole or primary carer for dependant relatives

Contact not initiated by offender – a careful examination of all the circumstances is required before weight is given to this factor

Many of the mitigating factors are commonly used factors in Sentencing Council guidelines. The Council gave particular consideration to the wording of the last factor; ‘Contact not initiated by offender – a careful examination of all the circumstances is required before weight is given to this factor’. In the SGC guideline a mitigating factor included for breach of protective orders was ‘victim initiated contact’. While the Council recognised that there may be complex relationship issues in these cases, it also felt that caution should be exercised and that explicit reference to the victim was inappropriate. The factor is not intended to minimise the behaviour of an offender, but recognises that in some cases the circumstances in which the contact occurred may be relevant to culpability.

There are no statutory mitigating factors.

**Q25**

**Are there any aggravating or mitigating factors that should be added or removed?**

**Q26**

**Do you have any other general comments on the draft guideline for breach of a protective order?**

# Section seven: Breach of a Criminal Behaviour Order

(Draft guideline at page 83)

Criminal behaviour orders (CBO) were introduced by the Anti-social Behaviour, Crime and Policing Act 2014 and came into force on 20 October 2014. The relevant provisions are contained within Part 2 of the Act. They replace anti-social behaviour orders (ASBOs), and are intended to afford the same protection to individuals and the wider community from anti-social behaviour, but are broader in that they can impose positive requirements on offenders in addition to prohibitions. Section 30 of the legislation provides that if, without reasonable excuse, a person does anything they are prohibited from doing by a criminal behaviour order or fails to do anything he or she is required to do by a criminal behaviour order, they commit an offence punishable by up to 6 months' imprisonment on summary conviction and up to 5 years' imprisonment on indictment.

This guideline will also be applicable to ASBOs during the transitional period of these orders, for which the statutory maximum sentences summarily and on indictment are identical and are provided for by Section 1(10) of the Crime and Disorder Act 1998.

The draft guideline is in the standard format of Sentencing Council guidelines, and includes the stepped approach to sentencing. The guideline requires an assessment of the culpability and harm present in a breach offence.

## STEP ONE

The first step of the guideline is to consider the culpability of the offender by the assessment of a series of factors.

### Culpability

A	<ul style="list-style-type: none"> <li>• Flagrant, serious or persistent breach</li> </ul>
B	<ul style="list-style-type: none"> <li>• Factors in categories A and C not present</li> </ul>
C	<ul style="list-style-type: none"> <li>• Minor breach</li> <li>• Breach just short of reasonable excuse</li> </ul>

The factors are identical to culpability factors for breach of a protective order, with flagrant, serious or persistent breaches representing the highest culpability and minor breaches and breaches just short of a reasonable excuse representing lesser culpability.

Q27

Do you agree with the proposed approach to the assessment of culpability?

## Harm

### Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

<b>Harm 1</b>	<ul style="list-style-type: none"> <li>• Breach causes very serious harm or distress</li> <li>• Breach demonstrates a continuing risk of serious criminal and/or anti-social behaviour</li> </ul>
<b>Harm 2</b>	<ul style="list-style-type: none"> <li>• Factors in categories 1 and 3 not present</li> </ul>
<b>Harm 3</b>	<ul style="list-style-type: none"> <li>• Breach causes little or no harm or distress</li> <li>• Breach demonstrates a continuing risk of minor criminal and/or anti-social behaviour</li> </ul>

The harm factors within this guideline include the same factors as for breach of a protective order, given the potential for similar harm and distress to be caused to those the order is designed to protect as a result of a breach. Additional harm factors have been included in view of the positive requirements that may be included in a criminal behaviour order, as the Council considers that breach of these requirements presents a risk of further criminal behaviour on the part of the offender and potential harm as a result. An example could be a requirement that an offender undertakes an alcohol treatment programme to address regular anti-social drunk and disorderly behaviour in a town centre or in close proximity to a residential area, and fails to do so. As the requirement was imposed due to alcohol being identified as a precursor to criminal or anti-social behaviour, there is a greater risk that offending will continue as a result of the breach.

In terms of actual harm, the draft guideline recognises the harm and distress that can be caused to victims of continuing criminal or anti-social behaviour, such as residents in areas where the offending takes place, or shopkeepers and businesses who are impacted financially and/or emotionally by criminal or anti-social behaviour.

Q28

Do you agree with the proposed approach to the assessment of harm?

## STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

### Sentence levels

The sentence ranges are very different to those included within the existing SGC guideline. The Council took the view that the sentence ranges should more adequately reflect the statutory maximum for this offence, and the sentence levels reflect a range of cases which were reviewed. The

Council also considered the similarity of the purpose of criminal behaviour orders and protective orders to protect identified or unidentified victims from particular offending, and decided that the sentence levels for breach of both of these orders should be the same.

The starting points and ranges have been based on statistical data from the Ministry of Justice Court Proceedings Database, analysis of first instance transcripts and analysis of Court of Appeal sentencing remarks.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> Medium level community order – 1 year's custody
Category 2	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 26 week's custody
Category 3	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order
	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Band B fine – High level community order

Q29

**Do you have any general comments on the sentence ranges and starting points?**

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. In some cases, having considered the factors, it may be appropriate to move outside the identified category range. The presence of any of the factors on the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.

**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:**

Offence is a further breach, following earlier breach proceedings

Breach committed shortly after order made

History of disobedience of court orders or orders imposed by local authorities

Breach constitutes a further offence (where not separately prosecuted)

Targeting of a person the order was made to protect or a witness in the original proceedings

Victim or protected subject of order breached is particularly vulnerable due to age, disability, culture, religion, language, or other factors

**Factors reducing seriousness or reflecting personal mitigation**

Genuine misunderstanding of terms of order

Breach committed after long period of compliance

Prompt voluntary surrender/admission of breach or failure

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependant relatives

There are no statutory mitigating factors.

Q30

**Are there any aggravating or mitigating factors that should be added or removed?**

Q31

**Do you have any other general comments on the draft guideline for breach of a criminal behaviour order?**

# Section eight: Breach of a Sexual Harm Prevention Order

(Draft guideline at page 89)

Sexual harm prevention orders (SHPO) were introduced by the Anti-social Behaviour, Crime and Policing Act 2014 and came into force on 8 March 2015. They replaced sexual offence prevention orders (SOPOs). SHPOs can be made in relation to a person who has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged, or cautioned for an offence listed in either Schedule 3 or Schedule 5 to the Sexual Offences Act 2003 either in the UK or overseas. The order may include only prohibitions; there is no power to impose positive obligations. The order may have effect for a fixed period (not less than five years) or until further order. Section 103I provides that a person commits an offence if, without reasonable excuse, they fail to comply with a requirement imposed, which is punishable by up to 6 months' imprisonment on summary conviction and up to 5 years' imprisonment on indictment. Breach of an existing SOPO is subject to the same provisions and the draft guideline will apply to such orders.

There is no existing guidance available for sentencing this offence.

The draft guideline is in the standard format of Sentencing Council guidelines, and includes the stepped approach to sentencing. The guideline requires an assessment of the culpability and harm present in a breach offence.

## STEP ONE

The first step of the guideline is to consider the culpability level of the offender by the assessment of a series of factors.

### Culpability

A	• Flagrant, serious or persistent breach
B	• Factors in categories A and C not present
C	• Minor breach • Breach just short of reasonable excuse

The factors are identical to culpability factors for breach of a protective order and criminal behaviour order, with flagrant, serious or persistent breaches representing the highest level of culpability and minor breaches and breaches just short of a reasonable excuse defence representing lesser culpability.

Q32

**Do you agree with the proposed approach to the assessment of culpability?**

### Harm

<b>Category 1</b>	Breach causes or risks very serious harm or distress
<b>Category 2</b>	Factors in categories 1 and 3 not present
<b>Category 3</b>	Breach causes or risks little or no harm or distress

In order to make a SHPO, the court must be satisfied that the offender presents a risk of sexual harm to the public (or particular members of the public) and that an order is necessary to protect against this risk. The terms of the order would provide for avoidance of risk of the type of offending. The Council considered that the harm factors need to provide for both actual harm caused by any breach, as well as the risk of harm posed by the breach. Cases reviewed assisted in identifying situations where such a risk could be present. An example could be where an offender subject to an order prohibiting him or her being in the presence of a child breaches the order by building a relationship with a child and/or a family unit with the intention of committing further sexual offences. Even if there is no offence committed, it is highly likely that distress would be caused to family members who had unknowingly exposed their child to a risk of sexual harm, and to the child who may become aware of being the subject of potential harm.

Q33

**Do you agree with the proposed approach to the assessment of harm?**

### STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

#### Sentence levels

There is no existing guidance for these breaches against which to make a comparison of sentence ranges. The Council took the view that the sentence ranges should reflect the statutory maximum for this offence and the serious harm inherent in a breach of a sexual harm prevention order, and that the sentence ranges for this breach should be the highest of all breach offences within the draft guideline. The sentence levels at the upper end of seriousness reflect a range of cases which were reviewed.

The starting points and ranges have been based on statistical data from the Ministry of Justice Court Proceedings Database, analysis of first instance transcripts and analysis of Court of Appeal sentencing remarks.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 2 – 4 years 6 months' custody	<b>Category range</b> 36 weeks' – 3 years' custody	<b>Category range</b> High level community order – 2 years' custody
Category 2	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 years' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 36 weeks' – 3 years' custody	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> Medium level community order – 26 weeks' custody
Category 3	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> Medium level community order – 36 weeks' custody	<b>Category range</b> Band B fine – High level community order

Q34

**Do you have any general comments on the sentence ranges and starting points?**

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. In some cases, having considered the factors, it may be appropriate to move outside the identified category range. The presence of any of the factors on the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.



**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:**

Breach committed shortly after order made

History of disobedience of court orders

Breach involves a further offence (where not separately prosecuted)

Targeting of particular individual the order was made to protect

Victim or protected subject of order breached is particularly vulnerable

Offender takes steps to prevent victim or subject harmed by breach from reporting an incident or seeking assistance

**Factors reducing seriousness or reflecting personal mitigation**

Breach committed after long period of compliance

Prompt voluntary surrender/admission of breach

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to the commission of the offence

Sole or primary carer for dependant relatives

There are no statutory mitigating factors.

Q35

**Are there any aggravating or mitigating factors that should be added or removed?**

Q36

**Do you have any other general comments on the draft guideline for breach of a sexual harm prevention order?**

# Section nine: Failing to Comply with a notification requirement

(Draft guideline at page 95)

The legislative provisions for this breach are contained within Part 2 of the Sexual Offences Act 2003, and provide that notification requirements be imposed upon persons convicted of offences listed in Schedule 3 of the Act. Section 91 provides that where a person fails to comply with a notification requirement or provides false information without reasonable excuse it is an offence punishable by up to 6 months' imprisonment on summary conviction and up to 5 years' imprisonment on indictment.

There is existing guidance in the Magistrates' Court Sentencing Guidelines, but no guidance available in the Crown Court.

The draft guideline is in the standard format of Sentencing Council guidelines, and includes the stepped approach to sentencing. The guideline requires an assessment of the culpability and harm present in a breach offence.

## STEP ONE

The first step of the guideline is to consider the culpability level of the offender by the assessment of a series of factors.

### Culpability

A	<ul style="list-style-type: none"> <li>• Flagrant attempts to avoid detection</li> <li>• Long period of non compliance</li> </ul>
B	<ul style="list-style-type: none"> <li>• Deliberate failure to comply with requirement</li> </ul>
C	<ul style="list-style-type: none"> <li>• Minor breach</li> <li>• Breach just short of reasonable excuse</li> </ul>

The culpability factors for this breach differ from other breaches to reflect the more specific levels of culpability the Council considered are present in this offence.

**Culpability A** – These factors provide for offences where there is a flagrant attempt to avoid detection or a long period of non-compliance. The Council felt that these represent the highest level of culpability as an offender's non-compliance may be motivated by a desire to remain unmonitored and unrestricted in order to commit further offences. Examples of application of these factors could be where false information is supplied by an offender, or they move to a new area and do not notify the authorities in a deliberate attempt to avoid detection. Long periods of non-compliance would

increase culpability, as an offender will be well aware of the requirements of the order and is likely to be seeking to prevent its operation.

**Culpability B** – This factor provides for other deliberate failures to comply with the requirement, where for example, an offender is relaxed regarding notification requirements and does not notify a change of address as they do not get around to it. The distinction between factors A and B is the intention behind the non-compliance.

**Culpability C** – This factor is as for the lowest culpability factors in the other draft guidelines already discussed, and captures minor breaches or breaches just outside of a reasonable excuse.

Q37

**Do you agree with the proposed approach to the assessment of culpability?**

### Harm

<b>Harm 1</b>	• Breach causes or risks very serious harm or distress
<b>Harm 2</b>	• Factors in categories 1 and 3 not present
<b>Harm 3</b>	• Breach causes or risks little or no harm or distress

The harm factors for this breach mirror those for SHPOs, as the Council considered that the risk of harm or distress posed by this offence is the same. Notification requirements are intended to enable effective monitoring of convicted sex offenders within the community to protect members of the public from further offending. The Council considers that attempts by offenders to undermine the purpose of a notification requirement should be treated seriously, due to the very serious nature of the risk of, and potential for, actual harm.

Q38

**Do you agree with the proposed approach to the assessment of harm?**

## STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

### Sentence levels

The starting points and ranges are very different to those included within the existing MCSG guideline. The Council took the view that the sentence ranges should more adequately reflect the statutory maximum for this offence, and the sentence levels at the upper end of seriousness reflect a range of cases which were reviewed. A number of these cases mentioned the need for guidance due to the serious harm inherent in a breach of a notification requirement. The existing guidance did not

specifically consider the harm posed by the risk, but focused on the intention behind the breach. The Council therefore reviewed a number of cases in developing sentence levels to determine the factors influencing sentences and the sentences imposed for the most serious offences.

The starting points and ranges have been based on statistical data from the Ministry of Justice Court Proceedings Database, analysis of first instance transcripts and analysis of Court of Appeal sentencing remarks.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 36 weeks' custody
	<b>Category range</b> 1 year's – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> 26 weeks' – 1 year 6 months' custody
Category 2	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> 26 weeks' – 1 year 6 months' custody	<b>Category range</b> Medium level community order – 36 weeks' custody
Category 3	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> 26 weeks' – 1 year 6 months' custody	<b>Category range</b> Medium level community order – 36 weeks' custody	<b>Category range</b> Band B fine – Medium level community order

Q39

**Do you have any general comments on the sentence ranges and starting points?**

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the breach and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. In some cases, having considered the factors, it may be appropriate to move outside the identified category range. The presence of any of the factors on the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.

**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:**

Breach committed shortly after order made

History of disobedience of court orders

Breach constitutes a further offence (where not separately prosecuted)

**Factors reducing seriousness or reflecting personal mitigation**

Breach committed after long period of compliance

Prompt voluntary surrender/admission of breach or failure

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to commission of the offence

Sole or primary carer for dependant relatives

There are no statutory mitigating factors.

Q40

**Are there any aggravating or mitigating factors that should be added or removed?**

Q41

**Do you have any other general comments on the draft guideline for breach of a notification requirement?**

# Section ten: Breach of disqualification from acting as a director

(Draft guideline at page 101)

The offence of breach of a director's disqualification is contained within the Company Directors Disqualification Act 1986. Section 13 of the legislation provides that a person acting in contravention of a disqualification order or who is guilty of an offence under section 11 is liable on conviction on indictment to imprisonment for not more than 2 years or a fine, or both; and on summary conviction, to imprisonment for not more than 6 months or a fine or both.

A disqualification can be imposed by the court as an ancillary order on conviction or as a result of bankruptcy and insolvency proceedings. There is no reasonable excuse defence included in the statutory provisions as there is for some other breach offences.

There is no existing guidance available for sentencing this breach. The draft guideline is in the standard format of Sentencing Council guidelines, and includes the stepped approach to sentencing. The guideline requires an assessment of the culpability and harm present in a breach offence.

## STEP ONE

The first step of the guideline is to consider the culpability level of the offender by the assessment of a series of factors.

### Culpability

A	Flagrant breach
B	All other cases

There are only two levels of culpability; as a person will always know they are disqualified, the Council concluded that it is difficult to see how more than two culpability levels can apply. In all but one of the cases reviewed by the Council in developing the guideline the breaches were flagrant, with the offender deliberately setting up and/or managing companies or businesses knowing they were prohibited from doing so. The other case related to a disqualified person failing to appreciate that the disqualification order was not restricted to commercial activity and extended to the management of a charity. This is the type of case that would fall into category B.

Q42

**Do you agree with the proposed approach to the assessment of culpability?**

### Harm

The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

<b>Category 1</b>	Breach results in significant risk of or actual serious financial loss or harm to company or others
<b>Category 2</b>	Factors in categories 1 and 3 not present
<b>Category 3</b>	Breach results in very low risk of or little or no financial loss or harm to company or others

The guideline assesses the level of harm risked or caused by the breach.

The Council considers that the risk of or actual harm in these breaches will always be of a financial nature, and the harm assessment requires a consideration of the seriousness of the risk of or actual loss to a company or others. Loss has deliberately not been quantified as the impact of any loss would be in the context of the means of the victim.

Q43

**Do you agree with the proposed approach to the assessment of harm?**

### STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

#### Sentence levels

There is no existing guidance for these breaches for a comparison to be made of sentence ranges. The starting points and ranges have been based on statistical data from the Ministry of Justice Court Proceedings database, analysis of first instance transcripts and analysis of Court of Appeal sentencing remarks.

Harm	Culpability	
	A	B
Category 1	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 26 weeks' – 1 year 6 months' custody	<b>Category range</b> 12 weeks' – 36 weeks' custody
Category 2	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 12 weeks' – 36 weeks' custody	<b>Category range</b> High level community order – 26 weeks' custody
Category 3	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Band C Fine – High level community order

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. In some cases, having considered the factors, it may be appropriate to move outside the identified category range. The presence of any of the factors on the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.



**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:**

Breach involves deceit/dishonesty in relation to role within company and/or deliberate concealment of disqualified status

Breach committed shortly after order made

**Factors reducing seriousness or reflecting personal mitigation**

Breach not motivated by personal gain

Breach committed after long period of compliance

Genuine misunderstanding of terms of disqualification

Sole or primary carer for dependant relatives

There are no statutory mitigating factors.

Q44

**Are there any aggravating or mitigating factors that should be added or removed?**

Q45

**Do you have any other general comments on the draft guideline for breach of a disqualification from acting as a director?**

# Section eleven: Breach of disqualification from keeping an animal

(Draft guideline at page 105)

The legislative provisions relating to this breach are contained within Section 32 of the Animal Welfare Act 2006 which provides that a person who breaches a disqualification imposed by an order shall be liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or to both.

As this offence is capable of a summary conviction only it will be dealt with in the magistrates' court, where the maximum sentence is currently 6 months' imprisonment. As these cases are dealt with in the magistrates' court, transcripts were not available to undertake a review of sentences and sentencing remarks. One Court of Appeal case and a number of cases for which details were obtained from the RSPCA have therefore been analysed to explore current sentencing practice and identify culpability and harm factors.

There is no existing guidance for sentencing this breach. The draft guideline is in the standard format of Sentencing Council guidelines, and includes the stepped approach to sentencing. The guideline requires an assessment of the culpability and harm present in a breach offence.

## Culpability

A	Flagrant breach
B	All other cases

As for breach of a director's disqualification, only two culpability factors are proposed for this guideline. This is because the majority of breaches are likely to be of a flagrant nature as the offender will be aware of their disqualified status, and there is less potential for a range of culpability than in some other breach offences. Culpability category A captures flagrant breaches, while culpability category B is intended to capture any other cases, such as where an offender says they were just holding an animal for someone else temporarily and this is accepted by the court.

Q46

Do you agree with the proposed approach to the assessment of culpability?

## Harm

<b>Category 1</b>	<ul style="list-style-type: none"> <li>Breach causes or risks death or very serious harm or suffering to animal(s)</li> <li>Breach results in risk of or actual serious harm to individual(s)</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>Factors in categories 1 and 3 not present</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>Breach causes or risks little or no harm or suffering to animal(s)</li> <li>Breach results in very low risk of or little or no harm to individual(s)</li> </ul>

The guideline assesses the level of harm risked or caused by the breach.

While harm may most commonly be risked or caused to animals being kept in contravention of a disqualification order, the Council was alert to other harm which may result from this type of breach. In particular, it considered cases where an offender is disqualified from keeping an animal following a conviction for a dangerous dog offence, but breaches the order by obtaining a further dangerous dog which goes on to injure, or presents a risk of injury to, individuals. The level of harm caused to other animals as well as to people in such a situation can also be taken into account when conducting the harm assessment.

## STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

The starting points and ranges have been based on statistical data from the Ministry of Justice Court Proceedings database, analysis of Court of Appeal sentencing remarks and case summaries of RSPCA prosecutions.

Harm	Culpability	
	A	B
<b>Category 1</b>	<b>Starting point</b> 16 weeks' custody	<b>Starting point</b> 8 weeks' custody
	<b>Category range</b> 6 weeks' – 26 weeks' custody	<b>Category range</b> Medium level community order – 16 weeks' custody
<b>Category 2</b>	<b>Starting point</b> 8 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> Medium level community order – 16 weeks' custody	<b>Category range</b> Band C fine – High level community order
<b>Category 3</b>	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band A fine
	<b>Category range</b> Band C fine – High level community order	<b>Category range</b> Discharge – Band B fine

Q47

**Do you agree with the proposed approach to the assessment of harm?**

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. In some cases, having considered the factors, it may be appropriate to move outside the identified category range. The presence of any of the factors on the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.

#### 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:*

Breach committed shortly after order made

History of disobedience to court orders

Breach conducted in commercial context

Breach involves deceit regarding ownership of/responsibility for animal

#### Factors reducing seriousness or reflecting personal mitigation

Breach committed after long period of compliance

Genuine misunderstanding of terms of order

Prompt voluntary surrender/admission of breach or failure

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to the commission of the offence

Sole or primary carer for dependant relatives

Q48

**Are there any aggravating or mitigating factors that should be added or removed?**

Q49

**Do you have any other general comments on the draft guideline for breach of a disqualification from keeping an animal?**

## Section twelve: Analogous orders

There are a number of other breaches for which the statutory maximum sentence and volumes are too low to justify full individual guidelines, but the breaches all involve some form of public nuisance, and share similar features to criminal behaviour orders. The Council proposes treating these as analogous orders to criminal behaviour orders and the draft guideline therefore directs sentencers to refer to step one of the breach of a criminal behaviour order guideline to assess the offence seriousness, and identify an appropriate penalty based on the statutory maximum for the breach. The offences include breaches of football banning orders and of civil orders issued by local councils or the police which are aimed at preventing anti-social behaviour.

In sentencing other relevant and analogous breach offences, the court should refer to the sentencing approach in step one of the guideline for breach of a criminal behaviour order to determine culpability and harm, and determine an appropriate sentence bearing in mind the maximum penalty for the offence. An indicative list of such offences is set out below.

Offence	Mode of Trial	Maximum Sentence
Breach of Football Banning Order (S)14J Football Spectators Act 1989	Triable Summarily Only	A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.
Failure to Comply with Dispersal Order Part 3 Anti-social Behaviour, Crime and Policing Act 2014 (Requires a person committing, or likely to commit ASB to leave an area for up to 48 hours.)	Triable Summarily Only	A person guilty of an offence under subsection (1) (Failure to move on) is liable on summary conviction - to imprisonment for a period not exceeding 3 months, or to a fine not exceeding level 4 on the standard scale. A person guilty of an offence under subsection (3) (Failure to hand over items) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
Community Protection Notice Part 4, Chapter 1 Anti-social Behaviour, Crime and Policing Act 2014 (Stops a person, business or organisation committing ASB which spoils the community's quality of life.)	Triable Summarily Only	A person guilty of an offence under this section is liable on summary conviction - to a fine not exceeding level 4 on the standard scale, in the case of an individual; to a fine of up to £20,000, in the case of a body. (If dealt with by way of Fixed Penalty, a fixed penalty notice of up to £100.)

Breach of Public Spaces Protection Order Part 4, Chapter 2 Anti-social Behaviour, Crime and Policing Act 2014 (Stops people committing ASB in a particular public place.)	Triable Summarily Only	A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. (If dealt with by way of Fixed Penalty, a fixed penalty notice of up to £100.)
Closure Power Part 4, Chapter 3 Anti-social Behaviour, Crime and Policing Act 2014 (Allows the police or local council to close premises where ASB was being committed, or was likely to be committed.)	Triable Summarily Only	A person guilty of obstructing a person acting under <a href="#">section 79</a> or <a href="#">85(1)</a> is liable on summary conviction - (a) to imprisonment for a period not exceeding 3 months, or (b) to a fine A person who is guilty of remaining on or entering premises in contravention of a closure order is liable on summary conviction - (a) to imprisonment for a period not exceeding 6 months, or (b) to a fine, or to both.

Q50

**Do you agree with the proposed list of analogous breaches and the approach to dealing with these, and that they should be included within the definitive guideline?**

# Section thirteen: Orders not included

The Council considered the full range of orders with the potential to be breached and there were a number which it decided should not be included. The table below lists these orders and the rationale for their omission.

Order	Statutory Sentence Ranges	Rationale for not including
Breach of Conditional Discharge		There are limited sentencing options available to the court under the legislative provisions, with the options being to take no action on the breach, or revoke the conditional discharge and resentence the offender for the original offence. The legislation is not prescriptive regarding activation and is subject to too many variables for effective guidance to be provided.
Terrorism Orders including: Breach Notification Requirements (Convicted Terrorist Offenders) Counter Terrorism Act 2008	(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both; (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.	The Council decided not to issue guidance for these breaches due to the very specialised considerations that will be required in individual cases.
Foreign Travel Restriction Order (Convicted Terrorist Offenders) Counter Terrorism Act 2008	(a) on summary conviction, to a fine not exceeding the statutory maximum; (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.	
Sex Offender Foreign Travel Order	A person guilty of an offence under this section is liable - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both; (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.	Sex Offender Foreign Travel Orders were replaced by Sexual Harm Prevention Orders which are covered by the draft guideline.
Serious Crime Prevention Order	(a) on summary conviction, to a fine not exceeding the statutory maximum; (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.	Very low volumes of <b>breach prosecutions</b> .

Drug Trafficking Travel Restriction Orders	(a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.	Very low volumes of order. Only ten offences in the last ten years and nil in the last five.
Drinking Banning Orders		Drinking Banning Orders (DBOs) were replaced by Criminal Behaviour Orders (CBOs), and any new DBOs will be made as a requirement of that order and breach dealt with as a breach of CBO. These are already covered by the breach guideline.
Domestic Violence Prevention Orders	None	Order is not made on conviction of an offence. A breach of a Domestic Violence Prevention Order is a civil breach of a court order under Section 63 of the Magistrates' Court Act 1980.
Breach of Parenting Order	A person guilty of an offence of failure to comply with any requirement of an order or failure to comply with any directions given by a responsible officer is liable on summary conviction to a fine not exceeding level 3 on the standard scale.	Low volumes and very low maximum penalty.

Q51

**Do you agree with the breaches not included in the draft guideline and the rationale for not including them? Please give your reasons if you do not.**

Q52

**Are there any equality and diversity issues that the guideline does not take into account?**



# Annex A:

## List of consultation questions

### Section two: Breach of a Community Order by failing to comply with requirements

- Q1 Do you agree with the proposed approach to the assessment of seriousness of breach of a community order? Please state if there are any other factors which you think should be included in the assessment of seriousness.
- Q2 Do you have any general comments on the proportionality of the proposed sentences?
- Q3 Do you have any general comments on the additional technical guidance included? Is there any further information which should be included?
- Q4 Do you have any general comments on the draft guideline for breach of a community order?

### Section three: Breach of a Suspended Sentence Order

- Q5 Do you agree with the proposed approach to the assessment of seriousness of breach of a suspended sentence order by failure to comply with a community requirement? Please state if there are any other factors which you think should be included in the assessment of seriousness.
- Q6 Do you have any general comments on the proportionality of the proposed penalties?
- Q7 Do you agree with the proposed approach to the assessment of seriousness of breach of a suspended sentence order by the commission of a further offence? Please state if there are any other factors which you think should be included in the assessment of seriousness.
- Q8 Do you agree that the proposed levels of penalty are appropriate?
- Q9 Do you have any general comments on the section relating to the unjust test? Please state if there are other factors which you consider are relevant to the assessment of whether activation would be unjust.
- Q10 Do you have any comments on the structure and presentation of information in the guideline?
- Q11 Do you consider that the penalty imposed in case study A is appropriate? If you do not agree, please tell us what penalty should be imposed and why.
- Q12 What penalty would you think is appropriate in case study B, and why?
- Q13 Do you have any general comments on the draft breach of suspended sentence order guideline?

**Section four: Breach of Post Sentence Supervision**

- Q14 Do you agree with the proposed approach to the assessment of seriousness of breach of Post Sentence Supervision?
- Q15 Do you have any general comments on the proportionality of the proposed sentences?
- Q16 Is there any other information or guidance which should be included within the breach of PSS guideline?

**Section five: Failing to Surrender to Bail**

- Q17 Do you agree with the proposed culpability factors?
- Q18 Do you agree with the proposed approach to the assessment of harm? Please state your reasons if you do not.
- Q19 Do you have any general comments on the sentence ranges and starting points?
- Q20 Are there any aggravating or mitigating factors that should be added or removed?
- Q21 Do you have any other general comments on the draft guideline for failure to surrender to bail?

**Section six: Breach of a Protective Order**

- Q22 Do you agree with the proposed approach to the assessment of culpability?
- Q23 Do you agree with the proposed approach to the assessment of harm?
- Q24 Do you have any general comments on the sentence ranges and starting points?
- Q25 Are there any aggravating or mitigating factors that should be added or removed?
- Q26 Do you have any other general comments on the draft guideline for breach of a protective order?

**Section seven: Breach of a Criminal Behaviour Order**

- Q27 Do you agree with the proposed approach to the assessment of culpability?
- Q28 Do you agree with the proposed approach to the assessment of harm?
- Q29 Do you have any general comments on the sentence ranges and starting points?
- Q30 Are there any aggravating or mitigating factors that should be added or removed?
- Q31 Do you have any other general comments on the draft guideline for breach of a criminal behaviour order?

**Section eight: Breach of a Sexual Harm Prevention Order**

- Q32 Do you agree with the proposed approach to the assessment of culpability?
- Q33 Do you agree with the proposed approach to the assessment of harm?
- Q34 Do you have any general comments on the sentence ranges and starting points?
- Q35 Are there any aggravating or mitigating factors that should be added or removed?
- Q36 Do you have any other general comments on the draft guideline for breach of a sexual harm prevention order?

**Section nine: Failing to comply with a notification requirement**

- Q37 Do you agree with the proposed approach to the assessment of culpability?
- Q38 Do you agree with the proposed approach to the assessment of harm?
- Q39 Do you have any general comments on the sentence ranges and starting points?
- Q40 Are there any aggravating or mitigating factors that should be added or removed?
- Q41 Do you have any other general comments on the draft guideline for breach of a notification requirement?

**Section ten: Breach of a disqualification from acting as a director**

- Q42 Do you agree with the proposed approach to the assessment of culpability?
- Q43 Do you agree with the proposed approach to the assessment of harm?
- Q44 Are there any aggravating or mitigating factors that should be added or removed?
- Q45 Do you have any other general comments on the draft guideline for breach of a disqualification from acting as a director?

**Section eleven: Breach of a disqualification from keeping an animal**

- Q46 Do you agree with the proposed approach to the assessment of culpability?
- Q47 Do you agree with the proposed approach to the assessment of harm?
- Q48 Are there any aggravating or mitigating factors that should be added or removed?
- Q49 Do you have any other general comments on the draft guideline for breach of a disqualification from keeping an animal?

**Section twelve: Analogous orders**

Q50 Do you agree with the proposed list of analogous breaches and the approach to dealing with these, and that they should be included within the definitive guideline?

**Section thirteen: Orders not included**

Q51 Do you agree with the breaches not included in the draft guideline and the rationale for not including them? Please give your reasons if you do not.

**Equality and diversity**

Q52 Are there any equality and diversity issues that the guideline does not take into account?

# Annex B: Background to guidelines

## Statutory requirements

In producing these draft guidelines, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are stated in section 142 of the Criminal Justice Act 2003:

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

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;<sup>4</sup>
- the Council must publish a resource assessment in respect of the guidelines;<sup>5</sup> and
- the Council must monitor the operation and effect of its sentencing guidelines.<sup>6</sup>

Under the previous bodies (the SGC and SAP), courts had to ‘*have regard to any guidelines which are relevant to the offender’s case*’<sup>7</sup> and give reasons if a sentence fell outside of the range.<sup>8</sup> Section 125(a) of the Coroners and Justice Act 2009 states that, ‘*every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case*’. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so. Therefore, the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

4 s.120 Coroners and Justice Act 2009

5 s.127(2) *ibid*

6 s.128(1) *ibid*

7 s.172(1) Criminal Justice Act 2003

8 s.174(2) *ibid*

When preparing sentencing guidelines, the Council must have regard to the following matters:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and
- the results of monitoring the operation and effect of its sentencing guidelines.<sup>9</sup>

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.<sup>10</sup>

In order to achieve these requirements, the Council has considered case law on the offences included within the guidelines, where it is available, evidence on current sentencing practice and drawn on members' own experience of sentencing practice. The intention is for the decision making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more clarity on sentencing for the victims and the public, so that they too can have a better understanding of how a sentence has been reached.

The Council has had regard to these duties throughout the preparation of this draft guideline. In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence and these are contained in the resource assessment which accompanies this consultation paper.

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<sup>9</sup> s.120(11) Coroners and Justice Act 2009

<sup>10</sup> s.127(3) *ibid*

# **Annex C: Draft guidelines**

## **Breach of a Community Order** Criminal Justice Act 2003 (Schedule 8)

## Breach of Community Order by Failing to Comply with Requirements

The court must take into account the extent to which the offender has complied with the requirements of the community order when imposing a sentence.

In assessing the level of compliance with the order the court should consider:

- i) overall attitude and engagement with the order as well as the proportion of elements completed;
- ii) the impact of any completed or partially completed requirements on the offender's behaviour; and
- iii) proximity of breach to imposition of order.

Overall compliance with order	Level of penalty
Wilful and persistent non-compliance	Revoke the order and re-sentence imposing custodial sentence (even where the offence seriousness did not originally merit custody)
Low level of compliance	Revoke the order and re-sentence original offence <b>OR</b> 30 - 50 hours additional unpaid work/extend length of order/add additional requirements (eg; curfew, programme requirement) <b>OR</b> Band C fine
Medium level of compliance	Revoke the order and resentence original offence <b>OR</b> 20 - 30 hours additional unpaid work/extend length of order/add additional requirements (eg; curfew, programme requirement) <b>OR</b> Band B fine
High level of compliance	10 - 20 hours additional unpaid work/extend length of order/add additional requirements (eg; curfew, programme requirement) <b>OR</b> Band A fine

- i) If imposing more onerous requirements the length of the order may be extended up to 3 years or six months longer than the previous length, whichever is longer (but only once).
- ii) If imposing unpaid work as a more onerous requirement and an unpaid work requirement was not previously included, the minimum number of hours that can be imposed is 20.
- iii) The maximum fine that can be imposed is £2,500.
- iv) If re-sentencing, a suspended sentence **MUST NOT** be imposed as a more severe alternative to a community order. A suspended sentence may only be imposed if it is fully intended that the offender serve a custodial sentence in accordance with the Imposition of Community and Custodial sentences guideline.
- v) Where the order was imposed by Crown Court, magistrates should consider their sentencing powers in dealing with a breach. Where the judge imposing the order reserved any breach proceedings commit the breach for sentence.



### **Powers of the court following a subsequent conviction**

A conviction for a further offence does not constitute a breach of a community order. However, in such a situation, the court should consider the following guidance from the *Offences Taken into Consideration and Totality guideline*:<sup>1</sup>

#### ***Offender convicted of an offence while serving a community order***

*The power to deal with the offender depends on his being convicted whilst the order is still in force; it does not arise where the order has expired, even if the additional offence was committed whilst it was still current.*

*If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.*

*Where an offender, in respect of whom a community order made by a Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence and the additional offence.*

*The sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence.*

*If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.*

<sup>1</sup> [https://www.sentencingcouncil.org.uk/wp-content/uploads/Definitive\\_guideline\\_TICs\\_\\_totality\\_Final\\_web.pdf](https://www.sentencingcouncil.org.uk/wp-content/uploads/Definitive_guideline_TICs__totality_Final_web.pdf) p.14

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# **Breach of a Suspended Sentence Order**

**Criminal Justice Act 2003 (Schedule 12)**

## Breach of a Suspended Sentence Order

### 1) Failure to comply with a community requirement during the supervision period of the order

The court must take into account the extent to which the offender has complied with the suspended sentence order when imposing a sentence.

In assessing the level of compliance with the order the court should consider:

- i) the overall attitude and engagement with the order as well as the proportion of elements completed;
- ii) the impact of any completed or partially completed requirements on the offender's behaviour; and
- iii) the proximity of breach to imposition of order.

Breach involves	Penalty
Low level of compliance	Full activation of original custodial term
Medium level of compliance	Activate custodial sentence but apply reduction to original custodial term proportionate to unpaid work or curfew requirements completed <b>OR</b> Impose more onerous requirements and/or extend supervision period and/or extend operational period and/or impose fine
High level of compliance	Impose more onerous requirements and/or extend supervision period and/or extend operational period and/or impose fine

See page 67.

## 2) Conviction for further offence committed during operational period of order

The nature of the new offence is the primary consideration in assessing the action to be taken on the breach.

Where the breach is in the second category below, the prior level of compliance is also relevant. In assessing the level of compliance with the order the court should consider:

- i) the overall attitude and engagement with the order as well as the proportion of elements completed;
- ii) the impact of any completed requirements on the offender's behaviour;
- iii) the proximity of breach to imposition of order.

Breach involves	Penalty
Multiple and/or serious new offences committed <b>OR</b> New offence similar in type and gravity to offence for which Suspended Sentence Order imposed	Full activation of original custodial term
New offence less serious than original offence but requires a custodial sentence and:  Low level of compliance with Suspended Sentence Order  High level of compliance with Suspended Sentence Order	Full activation of original custodial term  Activate sentence but apply reduction to original custodial term proportionate to any unpaid work and/or curfew requirements completed
New offence does not require custodial sentence	Activate sentence but apply reduction to original custodial term proportionate to any unpaid work and/or curfew requirements completed <b>OR</b> Impose more onerous requirements and/or extend supervision period and/or extend operational period and/or impose fine

**Unjust in all the circumstances**

The court **must activate the custodial sentence** unless it would be unjust in all the circumstances to do so. The predominant factors in determining whether activation is unjust relate to the level of compliance with the suspended sentence order and the nature of any new offence. These factors are already provided for by the guideline.

In determining if there are other factors which would cause activation to be unjust, the court may consider all factors including:

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether immediate custody will result in significant impact on others

**The court dealing with the breach should remember that the court imposing the original sentence determined that a custodial sentence was appropriate in the original case.**

In cases where the court considers that it would be unjust to order the custodial sentence to take effect, it must state its reasons and it **must** deal with the offender in one of the following ways:

- (a) impose a fine not exceeding £2,500; **OR**
- (b) extend the operational period (to a maximum of two years from date of original sentence); **OR**
- (c) if the SSO imposes community requirements, do one or more of:
  - (i) impose more onerous community requirements;
  - (ii) extend the supervision period (to a maximum of two years from date of original sentence);
  - (iii) extend the operational period (to a maximum of two years from date of original sentence).

# **Breach of Post Sentence Supervision**

## 256AC to the Criminal Justice Act (as added by Offender Rehabilitation Act 2014)

## Breach of Post Sentence Supervision Order

The court must take into account the extent to which the offender has complied with the requirements of the Post Sentence Supervision Order when imposing a sentence.

In assessing the level of compliance with the order the court should consider:

- i) the offender's overall attitude and engagement with the order as well as the proportion of elements completed;
- ii) the impact of any completed or partially completed requirements on the offender's behaviour;
- iii) the proximity of the breach to the imposition of the order.

Level of Compliance	Level of penalty
Low	Up to 14 days' committal to custody <b>OR</b> Supervision Default Order in range of 30 - 40 hours unpaid work <b>OR</b> 8 - 12 hour curfew for minimum of 20 days
Medium	Supervision Default Order in range of 20 - 30 hours unpaid work <b>OR</b> 2 - 8 hour curfew for minimum of 20 days <b>OR</b> Band B fine
High	Band A fine

## Breach of Supervision Default Order

Level of Compliance	Level of penalty
Low	Revoke Supervision Default Order and order up to 14 days' committal to custody
Medium	Revoke Supervision Default Order and impose new order in range of 40 - 60 hours unpaid work <b>OR</b> 8 - 16 hour curfew for minimum of 20 days
High	Band B fine

- i) A Supervision Default Order must include **either**:  
an unpaid work requirement of between 20 hours - 60 hours)  
**OR**  
a curfew requirement to remain indoors for between 2 - 16 hours for a minimum of 20 days and no longer than end of PSS period.
- ii) The maximum fine which can be imposed is £1,000.



# Failing to Surrender to Bail

Bail Act 1976 (section 6)

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**Triable either way**

**Maximum: 12 months' custody Crown Court, 3 months' custody magistrates' court**

**Offence range: Discharge – 12 months' custody**

## Failing to Surrender to Bail

### STEP ONE

#### Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

A	Deliberate attempt to evade or delay justice
B	Factors in categories A and C not present
C	Breach just short of reasonable excuse

#### Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

<b>Category 1</b>	Failure to attend Crown Court hearing results in substantial delay and/or interference with the administration of justice
<b>Category 2</b>	Failure to attend magistrates' court hearing results in substantial delay and/or interference with the administration of justice*
<b>Category 3</b>	Factors in categories 1 and 2 not present

\* In particularly serious cases where the failure to attend is in the magistrates' court and the consequences of the delay have a severe impact on victims and witnesses the case should be committed to the Crown Court pursuant to s.6(6)a Bail Act 1976 and the Crown Court should sentence the case according to the range in Category A1.

## 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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting point</b> 13 weeks' custody	<b>Starting point</b> 28 days' custody	<b>Starting point</b> 7 days' custody
	<b>Category range</b> 6 weeks' – 40 weeks' custody	<b>Category range</b> High level community order – 13 weeks' custody	<b>Category range</b> Low level community order – 6 weeks' custody
<b>Category 2</b>	<b>Starting point</b> 14 days' custody	<b>Starting point</b> Band C fine	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 13 weeks' custody	<b>Category range</b> Band B fine – High level community order	<b>Category range</b> Band A – Low level community order
<b>Category 3</b>	<b>Starting point</b> 7 days' custody	<b>Starting point</b> Band B fine	<b>Starting point</b> Band A fine
	<b>Category range</b> Low level community order – 6 weeks' custody	<b>Category range</b> Band A fine – Low level community order	<b>Category range</b> Discharge – Band B fine

Maximum sentence in Magistrates' court – 3 months' imprisonment  
Maximum sentence in Crown Court – 12 months' imprisonment

The table over the page contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

**Factors increasing seriousness*****Statutory aggravating factor:***

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

***Other aggravating factors:***

Breach committed shortly after order made

History of breach of court orders or police bail

Distress to victims and witnesses

**Factors reducing seriousness or reflecting personal mitigation**

Genuine misunderstanding of bail or requirements

Prompt voluntary surrender

Sole or primary carer for dependant relatives

See page 75.

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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *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 *Offences Taken into Consideration and Totality* guideline.

**STEP SIX****Ancillary orders**

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

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 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.

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# Breach of a Protective Order (Restraining and non-molestation orders)

Restraining orders: Protection from Harassment Act (Section 5(5))

Non-molestation orders: Family Law Act 1996 (Section 42)

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Triable either way

Maximum: 5 years' custody

Offence range: Fine – 5 years' custody

## Breach of a Protective Order

### STEP ONE

#### Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

A	<ul style="list-style-type: none"> <li>• Flagrant, serious or persistent breach</li> </ul>
B	<ul style="list-style-type: none"> <li>• Factors in categories A and C not present</li> </ul>
C	<ul style="list-style-type: none"> <li>• Minor breach</li> <li>• Breach just short of reasonable excuse</li> </ul>

#### Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

<b>Category 1</b>	Breach causes very serious harm or distress to an individual
<b>Category 2</b>	Factors in categories 1 and 3 not present
<b>Category 3</b>	Breach causes little or no harm or distress to an individual

See page 79.



## 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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> Medium level community order – 1 year's custody
Category 2	<b>Starting point</b> 1 years' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 26 weeks' custody
Category 3	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Band B fine – High level community order

The table above refers to single offences. Where there are multiple offences consecutive sentences may be appropriate – please refer to the *Offences Taken Into Consideration and Totality* guideline.

The table on the next page contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

**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:***

Breach committed shortly after order made

History of disobedience to court orders

Breach involves a further offence (where not separately prosecuted)

Using contact arrangements with a child/children to instigate offence and/or proven history of violence or threats by offender

Breach results in victim or protected person being forced to leave their home

Impact upon children or family members

Victim or protected subject of order breached is particularly vulnerable

Offender takes steps to prevent victim or subject harmed by breach from reporting an incident or seeking assistance

**Factors reducing seriousness or reflecting personal mitigation**

Breach committed after long period of compliance

Prompt voluntary surrender/admission of breach or failure

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to the commission of the offence

Sole or primary carer for dependant relatives

Contact not initiated by offender – a careful examination of all the circumstances is required before weight is given to this factor

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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *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 *Offences Taken into Consideration and Totality* guideline.

**STEP SIX****Ancillary orders**

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

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 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.

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# **Breach of a Criminal Behaviour Order (also applicable to Anti-Social Behaviour Orders)**

**Anti-Social Behaviour, Crime and Policing Act 2014 (Section 30)**

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**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Fine – 5 years' custody**

## Breach of a Criminal Behaviour Order

### STEP ONE

#### Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

A	<ul style="list-style-type: none"> <li>• Flagrant, serious or persistent breach</li> </ul>
B	<ul style="list-style-type: none"> <li>• Factors in categories A and C not present</li> </ul>
C	<ul style="list-style-type: none"> <li>• Minor breach</li> <li>• Breach just short of reasonable excuse</li> </ul>

#### Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

<b>Harm 1</b>	<ul style="list-style-type: none"> <li>• Breach causes very serious harm or distress</li> <li>• Breach demonstrates a continuing risk of serious criminal and/or anti-social behaviour</li> </ul>
<b>Harm 2</b>	<ul style="list-style-type: none"> <li>• Factors in categories 1 and 3 not present</li> </ul>
<b>Harm 3</b>	<ul style="list-style-type: none"> <li>• Breach causes little or no harm or distress</li> <li>• Breach demonstrates a continuing risk of minor criminal and/or anti-social behaviour</li> </ul>

See page 85.

## 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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> Medium level community order – 1 year's custody
Category 2	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 26 weeks' custody
Category 3	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order
	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 26 weeks' custody	<b>Category range</b> Band B fine – High level community order

**NOTE:** A Conditional Discharge **MAY NOT** be imposed for breach of a Criminal Behaviour Order.

The table on the next page contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

**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:***

Offence is a further breach, following earlier breach proceedings

Breach committed shortly after order made

History of disobedience of court orders or orders imposed by local authorities

Breach constitutes a further offence (where not separately prosecuted)

Targeting of a person the order was made to protect or a witness in the original proceedings

Victim or protected subject of order breached is particularly vulnerable due to age, disability, culture, religion, language, or other factors

**Factors reducing seriousness or reflecting personal mitigation**

Genuine misunderstanding of terms of order

Breach committed after long period of compliance

Prompt voluntary surrender/admission of breach or failure

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependant relatives

**See page 87.**



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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *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 *Offences Taken into Consideration and Totality* guideline.

**STEP SIX****Ancillary orders**

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

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 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.

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# Breach of Sexual Harm Prevention Orders (also applicable to Sexual Offence Prevention Orders)

Anti-Social Behaviour, Crime and Policing Act 2014 (Section 103(I))

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**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Fine – 5 years' custody**

## Breach of a Sexual Harm Prevention Order

### STEP ONE

#### Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

A	<ul style="list-style-type: none"> <li>Flagrant, serious or persistent breach</li> </ul>
B	<ul style="list-style-type: none"> <li>Factors in categories A and C not present</li> </ul>
C	<ul style="list-style-type: none"> <li>Minor breach</li> <li>Breach just short of reasonable excuse</li> </ul>

#### Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

<b>Category 1</b>	Breach causes or risks very serious harm or distress
<b>Category 2</b>	Factors in categories 1 and 3 not present
<b>Category 3</b>	Breach causes or risks little or no harm or distress

See page 91.

## 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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 2 – 4 years 6 months' custody	<b>Category range</b> 36 weeks' – 3 years' custody	<b>Category range</b> High level community order – 2 years' custody
Category 2	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order
	<b>Category range</b> 36 weeks' – 3 years' custody	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> Medium level community order – 26 weeks' custody
Category 3	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> High level community order – 2 years' custody	<b>Category range</b> Medium level community order – 36 weeks' custody	<b>Category range</b> Band B fine – High level community order

The table on the next page contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

**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:***

Breach committed shortly after order made

History of disobedience of court orders

Breach involves a further offence (where not separately prosecuted)

Targeting of particular individual the order was made to protect

Victim or protected subject of order breached is particularly vulnerable

Offender takes steps to prevent victim or subject harmed by breach from reporting an incident or seeking assistance

**Factors reducing seriousness or reflecting personal mitigation**

Breach committed after long period of compliance

Prompt voluntary surrender/admission of breach

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to the commission of the offence

Sole or primary carer for dependant relatives

**See page 93.**

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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *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 *Offences Taken into Consideration and Totality* guideline.

**STEP SIX****Ancillary orders**

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

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 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.

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# Failing to Comply with Notification Requirement

## Sexual Offences Act 2003 (Section 91)

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Triable either way  
Maximum: 5 years' custody

Offence range: Fine – 5 years' custody

## Failing to Comply with Notification Requirement

### STEP ONE

#### Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

A	<ul style="list-style-type: none"> <li>• Flagrant, attempts to avoid detection</li> <li>• Long period of non compliance</li> </ul>
B	<ul style="list-style-type: none"> <li>• Deliberate failure to comply with requirement</li> </ul>
C	<ul style="list-style-type: none"> <li>• Minor breach</li> <li>• Breach just short of reasonable excuse</li> </ul>

#### Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

<b>Harm 1</b>	Breach causes or risks very serious harm or distress
<b>Harm 2</b>	Factors in categories 1 and 3 not present
<b>Harm 3</b>	Breach causes or risks little or no harm or distress

See page 97.

**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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 36 weeks' custody
	<b>Category range</b> 1 year's – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> 26 weeks' – 1 year 6 months' custody
Category 2	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> 26 weeks' – 1 year 6 months' custody	<b>Category range</b> Medium level community order – 36 weeks' custody
Category 3	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> 26 weeks' – 1 year 6 months' custody	<b>Category range</b> Medium level community order – 36 weeks' custody	<b>Category range</b> Band B fine – Medium level community order

The table on the next page contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

**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:***

Breach committed shortly after order made

History of disobedience of court orders

Breach constitutes a further offence (where not separately prosecuted)

**Factors reducing seriousness or reflecting personal mitigation**

Breach committed after long period of compliance

Prompt voluntary surrender/admission of breach or failure

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to the commission of the offence

Sole or primary carer for dependant relatives

**See page 99.**

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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *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 *Offences Taken into Consideration and Totality* guideline.

**STEP SIX****Ancillary orders**

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

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 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.

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# **Breach of disqualification from acting as a director**

**Company Directors Disqualification Act 1986  
(Sections 11 & 13)**

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**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Discharge – 2 years' custody**

## Breach of disqualification from acting as a director

### STEP ONE

#### Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

A	Flagrant breach
B	All other cases

#### Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

<b>Category 1</b>	Breach results in significant risk of or actual serious financial loss or harm to company or others
<b>Category 2</b>	Factors in categories 1 and 3 not present
<b>Category 3</b>	Breach results in very low risk of or little or no financial loss or harm to company or others

See page 103.



## 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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features.

Harm	Culpability	
	A	B
Category 1	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 26 weeks – 1 year 6 months' custody	<b>Category range</b> 12 weeks' – 36 weeks' custody
Category 2	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 12 weeks' – 36 weeks' custody	<b>Category range</b> High level community order – 26 weeks' custody
Category 3	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Band C Fine – High level community order

#### 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:*

Breach involves deceit/dishonesty in relation to role within company and/or deliberate concealment of disqualified status

Breach committed shortly after order made

#### Factors reducing seriousness or reflecting personal mitigation

Breach not motivated by personal gain

Breach committed after long period of compliance

Genuine misunderstanding of terms of disqualification

Sole or primary carer for dependant relatives

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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *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 *Offences Taken into Consideration and Totality* guideline.

**STEP SIX****Ancillary orders**

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

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 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.

# **Breach of disqualification from keeping an animal**

## **Animal Welfare Act 2006 (Sections 32)**

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**Triable either way**  
**Maximum: 6 months' custody**

**Offence range: Discharge – 6 months' custody**

## Breach of disqualification from keeping an animal

### STEP ONE

#### Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

A	Flagrant breach
B	All other cases

#### Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>Breach causes or risks death or very serious harm or suffering to animal(s)</li> <li>Breach results in risk of or actual serious harm to individual(s)</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>Factors in categories 1 and 3 not present</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>Breach causes or risks little or no harm or suffering to animal(s)</li> <li>Breach results in very low risk of or little or no harm to individual(s)</li> </ul>

See page 107.

## 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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features.

Harm	Culpability	
	A	B
Category 1	<b>Starting point</b> 16 weeks' custody	<b>Starting point</b> 8 weeks' custody
	<b>Category range</b> 6 weeks' – 26 weeks' custody	<b>Category range</b> Medium level community order – 16 weeks' custody
Category 2	<b>Starting point</b> 8 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> Medium level community order – 16 weeks' custody	<b>Category range</b> Band C Fine – High level community order
Category 3	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band A Fine
	<b>Category range</b> Band C Fine – High level community order	<b>Category range</b> Discharge – Band B Fine

The table on the next page contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

**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:***

Breach committed shortly after order made

History of disobedience to court orders

Breach conducted in commercial context

Breach involves deceit regarding ownership of/responsibility for animal

**Factors reducing seriousness or reflecting personal mitigation**

Breach committed after long period of compliance

Genuine misunderstanding of terms of order

Prompt voluntary surrender/admission of breach or failure

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to the commission of the offence

Sole or primary carer for dependant relatives

**See page 109.**

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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *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 *Offences Taken into Consideration and Totality* guideline.

**STEP SIX****Ancillary orders**

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

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 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.

# Analogous orders

In sentencing other relevant and analogous breach offences, the court should refer to the sentencing approach in step one of the guideline for Breach of a Criminal Behaviour Order to determine culpability and harm, and determine an appropriate sentence bearing in mind the maximum penalty for the offence. An indicative list of such offences is set out below.

Offence	Mode of Trial	Maximum Sentence
Breach of Football Banning Order (S)14) Football Spectators Act 1989	Triable Summarily Only	A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.
Failure to Comply with Dispersal Order Part 3 Anti-social Behaviour, Crime and Policing Act 2014 (Requires a person committing, or likely to commit ASB to leave an area for up to 48 hours.)	Triable Summarily Only	A person guilty of an offence under subsection (1) (Failure to move on) is liable on summary conviction - to imprisonment for a period not exceeding 3 months, or to a fine not exceeding level 4 on the standard scale. A person guilty of an offence under subsection (3) (Failure to hand over items) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
Community Protection Notice Part 4, Chapter 1 Anti-social Behaviour, Crime and Policing Act 2014 (Stops a person, business or organisation committing ASB which spoils the community's quality of life.)	Triable Summarily Only	A person guilty of an offence under this section is liable on summary conviction - to a fine not exceeding level 4 on the standard scale, in the case of an individual; to a fine of up to £20,000, in the case of a body. (If dealt with by way of Fixed Penalty, a fixed penalty notice of up to £100.)
Breach of Public Spaces Protection Order Part 4, Chapter 2 Anti-social Behaviour, Crime and Policing Act 2014 (Stops people committing ASB in a particular public place.)	Triable Summarily Only	A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. (If dealt with by way of Fixed Penalty, a fixed penalty notice of up to £100.)
Closure Power Part 4, Chapter 3 Anti-social Behaviour, Crime and Policing Act 2014 (Allows the police or local council to close premises where ASB is being committed, or is likely to be committed.)	Triable Summarily Only	A person guilty of obstructing a person acting under <a href="#">section 79</a> or <a href="#">85(1)</a> is liable on summary conviction - (a) to imprisonment for a period not exceeding 3 months, or (b) to a fine A person who is guilty of remaining on or entering premises in contravention of a closure order is liable on summary conviction - (a) to imprisonment for a period not exceeding 6 months, or (b) to a fine, or to both.



# Annex D:

## Fine bands and community orders

### FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B, C).

Fine Band	Starting point ( <i>applicable to all offenders</i> )	Category range ( <i>applicable to all offenders</i> )
Band A	50% of relevant weekly income	25–75% of relevant weekly income
Band B	100% of relevant weekly income	75–125% of relevant weekly income
Band C	150% of relevant weekly income	125–175% of relevant weekly income

### COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

An illustrative description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003).

Low	Medium	High
Offences only just cross 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 the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> <li>• 40–80 hours of unpaid work;</li> <li>• prohibited activity requirement;</li> <li>• curfew requirement within the lowest range (for example, up to 16 hours per day for a few weeks);</li> <li>• attendance centre requirement (where available);</li> <li>• exclusion requirement, without electronic monitoring, for a few months</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• greater number of hours of unpaid work (for example, 80–150 hours);</li> <li>• prohibited activity requirement;</li> <li>• curfew requirement within the middle range (for example, up to 16 hours for 2–3 months);</li> <li>• exclusion requirement lasting in the region of 6 months</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• 150–300 hours of unpaid work;</li> <li>• curfew requirement up to 16 hours per day for 4–6 months;</li> <li>• exclusion order lasting in the region of 12 months</li> </ul>

The tables are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.

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