

Ancillary orders

Response to consultation

June 2025

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Foreword



This consultation exercise was slightly different from those the Council usually puts out, in that the content was largely factual and technical. The Council is, as ever, grateful to those who took the trouble to respond and there were many very useful suggestions among the responses.

The Council hopes that providing clear and detailed information on the range of ancillary orders available to courts will prove to be a useful aid to sentencers and other guideline users.

Lord Justice Tim Holroyde

Vice Chairman, Sentencing Council

Introduction

In September 2024 the Sentencing Council published a consultation on a package of guidance on ancillary orders. The guidance was a combination of new and revised guidance on a wide range of topics.

The Council was looking to improve the consistency, accessibility and presentation of the information provided on ancillary orders and to provide more detailed guidance for both magistrates' courts and the Crown Court.

The Council sought views on the usefulness, accuracy and clarity of the proposed changes. This document sets out any changes made as a result of the comments received.

The full text of all the guidance is published on the Council's website.

Summary of responses

There were 45 responses to the consultation. Some of the responses were from groups or organisations, and some from individuals.

Breakdown of respondents

Type of respondent	Number of responses
Academic	3
Charity or non-governmental organisation	1
Government	3
Judges	3
Legal professional	3
Magistrates	22
Member of the public/ unknown	8
Prosecutor or police	2

Overarching issues

The current Sentencing Council guidance on ancillary orders sits within the magistrates' courts sentencing guidelines supplementary information (previously called explanatory materials) and is only relevant to magistrates.

The Sentencing Council consulted on providing more detailed guidance on a wider range of ancillary orders so that the guidance could be accessed from the supplementary information page of the website, with dropdowns of guidance on specific orders within the relevant guidelines and that the guidance should apply to the Crown Court as well as magistrates' courts.

Consultation responses were supportive of the proposed approach and the Council therefore decided to implement the proposed structure.

Animal deprivation order

This guidance was largely supported by respondents, many of whom said it was clear and useful. A couple of respondents disagreed with the terminology used within the guidance:

The proposed changes to the law in relation to the theft of a pet have recognised that such animals are more than mere "belongings". This guidance should, in my opinion, reflect those changes. The use of terms such as "Disposal" and "Destruction" do not, again in my opinion, reflect the sentient nature of such animals or their importance to owners and their families. **Magistrate**

I take issue with the wording "and for its disposal, including by destruction". At this stage, rehoming is an option and I find the word disposal offensive as this is a living sentient being. I would rather AT THIS STAGE say "for its rehoming or destruction".
Magistrate

The terms used are taken directly from the legislation. The Sentencing Council considered that it is appropriate for the guidance to reflect the legislative language as to use different terms may cause confusion to a person reading the guidance alongside the legislation.

Animal destruction order – animal welfare

One respondent suggested it may be helpful to provide examples of circumstances where the court may order the destruction of fighting animals following a conviction for a fighting offence under section 8(1) or (2), otherwise than in the interests of the animal.

The Council has amended the guidance by providing an example:

Availability other than in the interests of the animal	<p>The court by or before which a person is convicted of an offence under section 8 (1) or (2) may order the destruction of an animal in relation to which the offence was committed on grounds other than the interests of the animal, for example, if the animal is considered to be a danger to public safety.</p> <p>The court must give the owner of the animal an opportunity to be heard, unless it is satisfied that it is not reasonably practicable to communicate with the owner.</p>
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Animal disqualification order

The Ministry of Justice noted that there was no guidance provided in relation to the seizure of animals. The Council has now added the following:

Seizure of animals

Where it appears to the court that the offender owns or keeps any animal contrary to the disqualification, it may order that all such animals be taken into possession.

Where any animal taken into possession is owned by the offender subject to the disqualification, the order has effect as an order for the disposal of the animal.

Any animal taken into possession who is not owned by the offender subject to the disqualification, should be dealt with in such manner as the court may order. The Court cannot make an order for its disposal unless the owner has had the opportunity to be heard, or the court is satisfied that it is not reasonably practicable to communicate with them.

The only other comment made on this section, which was made by a number of respondents, was that it would be useful to have guidance on how long a disqualification should be.

The Council has added the following:

Length of the order

For such period as the court thinks fit.

In determining the length of the order, the court will consider:

- the circumstances of the offence
- the current and potential future circumstances of the offender to determine their ability to protect any future animals
- the extent of insight the offender has into the needs of animals. Where the offender has no or limited insight a lengthy or lifetime ban may be appropriate

The court may also specify a period during which the offender may not make an application under section 43(1) for termination of the order.

Compensation order

Most respondents did not comment on the proposed guidance. Some made general comments in support of the guidance, others made specific points.

One respondent was concerned that the language used in paragraphs 1 and 9 of the guidance appeared to relate only to physical loss or injury. The Council noted that the wording ‘personal injury, loss or damage’ in paragraph 1 comes from [section 133 of the Sentencing Code](#). The Council considered that the wording at paragraph 9 could be amended to address the concern raised. It now reads (additional words underlined):

Considerations

9. The court should consider two types of loss:

- financial loss sustained as a result of the offence such as the cost of repairing damage or, in case of injury, any loss of earnings or medical expenses
- pain and suffering caused (whether physical or psychological) and any interference with day to day activities. This should be assessed in light of all factors that appear to the court to be relevant, including any medical evidence, the victim’s age and personal circumstances.

The Justices’ Clerks’ Society commented:

The wording at ‘3’ under ‘Availability’ could be misinterpreted to the effect that a compensation order attaches to a victim rather to an offence.

A short paragraph dealing with multiple offences against a single victim would be welcome, which in turn could address the situation where there is a duty to give reasons where one offence may be subject to a compensation order, but where another was not despite it having been available (noting that that the reference to the duty at ‘1’ under ‘Availability’ refers to ‘any case’ rather than ‘any offence’).

The Council agreed to amend paragraph 3 to read:

Availability

3. If there are multiple victims who are to receive compensation, a separate compensation order must be made in relation to each offence. Where there are multiple offences against the same victim, one order for compensation can be made and attached to the most serious of those offences. The duty to

give reasons also applies where compensation is awarded in respect of some offences but not all.

In respect of paragraph 4, a respondent queried whether compensation could be awarded to cover the amount that the victim would have to contribute towards their insurance claim. The Council noted that section 136 of the Sentencing Act 2020 states that a compensation order **cannot** be made in respect of a road accident unless it is an offence under the Theft Act 1968, or the offender is uninsured, and the Motor Insurers' Bureau will not cover the loss. However, the Council considered that it would be helpful to clarify that in those limited cases, compensation can include loss of no claims bonus. Paragraph 4 has been amended to read (additional words underlined):

Availability

4. Where the personal injury, loss or damage arises from a road accident, a compensation order may be made only if there is a conviction for an offence under the Theft Act 1968, or the offender is uninsured and the Motor Insurers' Bureau will not cover the loss ([Sentencing Code s. 136](#)). In such cases compensation can include loss of all or part of a victim's no claims bonus.

In relation to the tables of compensation levels, several respondents noted the higher compensation levels proposed and some made suggestions relating to the presentation of the information, particularly the order of the list.

The Council agreed to put the list in a more logical order and to add some wording above the table to deal with the situation where a victim has suffered more than one injury.

Where a single victim has suffered more than one injury, the court should apply the principle of totality to arrive at a fair figure for the overall injuries suffered.

The Council agreed that the suggested compensation ranges should be updated periodically to maintain the alignment with those awarded in civil damages.

It was agreed that compensation guidance should be included in the strangulation and suffocation guideline.

Confiscation order

In a detailed response the Gambling Taskforce stated:

The application of POCA to gambling-related crimes raises complex issues, particularly concerning people with gambling disorders, who resort to crime to fuel their addiction. For example, this could be an individual who commits fraud, stealing from their employer and using that money in a gambling service. The Howard League's Commission on Crime and Gambling Related Harms highlighted the potentially counterproductive consequences of applying POCA orders to people experiencing gambling harms and their families, who often bear the financial burden without any realistic means to repay the debts, as those with such a disorder often use up all their funds to fuel their gambling activities.

The Council noted the points made by the Gambling Taskforce but in light of the fact that the guidance on confiscation is very brief and is completely neutral on the merits of confiscation, it concluded that no reference to those whose offending is linked to problem gambling could be incorporated into the guidance.

The CPS and the Law Society, while recognising that the guidance was necessarily brief, both made suggestions for additions. The Council agreed to make some changes as a result of these suggestions: in paragraph 1 a reference to the fact that a confiscation order is not a sentence in its own right; revised wording at paragraph 4 regarding the relationship with other financial orders; a note at the top of the guidance pointing out that the guidance is only a brief overview; and to indicate clearly that while an order can only be made by the Crown Court, there is guidance for magistrates on committal powers. The revised sections are:

Note:	The guidance provided here is only a very brief overview of confiscation orders
May be made by:	The Crown Court (see below for magistrates' powers of committal)
Relevant legislation	Part 2 of the Proceeds of Crime Act 2002
Availability	1. Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The order is not a sentence in its own right, it may only be made in addition to a sentence. The Crown Court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the

Crown Court believes it is appropriate for it to do so. See [section 6 of POCA](#).

2. Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there ([section 70 POCA](#)).
3. Where, but for the prosecutor's application under s.70, the magistrates' court would have committed the offender for sentence to the Crown Court anyway it must say so. Otherwise, the powers of sentence of the Crown Court will be limited to those of the magistrates' court.
4. If postponing confiscation, the court must adjourn all other financial orders, including compensation, costs and a fine (see [section 15 of POCA](#)). Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation and trafficking reparation order (STRO) or unlawful profit order (UPO)). If the court makes both a confiscation order and an order for compensation (or STRO or UPO) and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order. (See [section 13 of POCA](#))

There were some suggestions for additions to the list of guidelines to which the guidance should apply and the Council agreed to add the following:

- Arranging or facilitating sexual exploitation of a child
- Arranging or facilitating commission of a child sex offence
- Causing or inciting prostitution for gain
- Controlling prostitution for gain
- Funding terrorism
- Producing a psychoactive substance
- Bribery
- Blackmail
- Kidnap and false imprisonment

Criminal behaviour order

The legal committee of HM Council of District Judges (Magistrates' Courts) suggested that the following guidelines should also include a link to this guidance:

- section 5 of the Public Order Act 1986
- drunk & disorderly
- assault etc
- Arson/criminal damage

The Council agreed and added the link to these guidelines.

Deprivation of property order

Sir Nic Dakin, the Sentencing Minister at the Ministry of Justice, wrote to the Council in response to the consultation, specifically commenting on Deprivation of Property Orders:

Ministers have heard from police, campaigners and academics who are concerned that sentencers are insufficiently aware of the availability of these orders when sentencing offenders for offences relating to intimate image abuse (the specific offences are: “Disclosing private, sexual photographs without consent with intent to cause distress”, section 33, Criminal Justice and Courts Act 2015, or the new “sharing intimate photographs without consent” offences at section 66B Sexual Offences Act 2003).

When sentencing for these offences, this order would also allow the court the power to deprive the offender of laptops or mobile phones used for committing these offences, or which the offender intends to use to commit further offences, as well as the images themselves. We have heard evidence from police and individual victims that these are not regularly used in such cases and instead that offenders are being given back (following time spent in custody) the same computer used to commit the offence, which may still contain the photographs/films that were shared.

Of course, I recognise that not all these cases will be suitable for such orders, but I would urge the Council to consider adding a drop down of the deprivation order guidance to sentencing guidelines for the above offences to raise awareness of these orders amongst sentencers.

There is currently a Sentencing Council guideline for Disclosing or threatening to disclose private sexual images, which could be amended to include a link to this guidance. However, the offence to which this guideline relates was repealed on 31 January 2024 and the Council has only kept the guideline available for sentencing cases where the offence was committed prior to this date.

The Council has not yet produced a guideline for the new offence of sharing intimate photographs without consent which commenced on 31 January 2024. In addition to this new offence the Council is aware that there are likely to be further new offences created by the Crime and Policing Bill and the Data (Use and Access) Bill. The new offences will concern taking intimate images and producing deepfake sexually explicit images.

The Council is expecting to start work on a project to produce guidelines for all offences in this area once the offences have received Royal Assent. When the Council commences work on this new project it will look again at the Deprivation order guidance to consider whether any appropriate wording could be added to the content of the relevant guidelines, that might be more tailored to the offending.

Destruction and contingent destruction order - Dangerous Dogs Act

One consultee proposed a rewording to the availability section of the guidance as set out below (new wording underlined):

Destruction Order Availability	<p>Where a person is convicted of:</p> <ul style="list-style-type: none"> • an offence under section 1 (dogs bred for fighting); • an offence under section 3(1) (keeping dogs under proper control); or • an offence created by an order under section 2 (other specifically dangerous dogs) <p>the court may order the destruction of any dog in respect of which the offence was committed and shall do so in the case of an offence under section 1 or an aggravated offence under section 3(1) (injury caused), unless the court is satisfied that the dog would not constitute a danger to public safety.</p> <p><u>The court may order the destruction of any dog in respect of which the offence was committed.</u></p> <p><u>The court shall order the destruction of any dog in respect of which an offence under section 1 or an aggravated offence under section 3(1) (injury caused) was committed, unless the court is satisfied that the dog would not constitute a danger to public safety.</u></p>
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The Council agreed and has made this change.

Both Defra and the Chief Magistrate suggest wording should be added about the owner of the dog, where the owner is not the offender. The underlined wording has been added to the consideration section:

Considerations	<p>When deciding whether a dog would constitute a danger to public safety, the court must consider:</p>
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- the temperament of the dog and its past behaviour, and
- whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog,

and may consider any other relevant circumstances.

Fit and proper person:

In determining whether a person is a fit and proper person to be in charge of a dog the following non-exhaustive factors may be relevant:

- any relevant previous convictions, cautions or penalty notices;
- the nature and suitability of the premises that the dog is to be kept at by the person;
- where the police have released the dog pending the court's decision whether the person has breached conditions imposed by the police; and
- any relevant previous breaches of court orders.

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court

Disqualification order- Dangerous Dogs Act

There have been no changes made to the consultation version of this guidance.

Disqualification from being a company director

The draft guidance was generally welcomed. A magistrate suggested that in individual guidelines it would be helpful to indicate what would amount to “serious” and “less serious” cases. Another magistrate asked for further information on what amounts to “taking part in the promotion, formation or management of a company”.

The National Trading Standards and the Association of Chief Trading Standards Officers felt it would be beneficial to include the following as ‘relevant offences’ in the same manner as they are identified in the guidance for forfeiture under Trade Mark Act offences.

- an offence under the Business Protection from Misleading Marketing Regulations 2008
- an offence under the Consumer Protection from Unfair Trading Regulations 2008
- an offence under the Digital Markets, Competition and Consumers Act 2024
- any offence involving dishonesty or deception

However, the Council noted that there is no list of ‘relevant offences’ set out in legislation for this order, and it may be confusing to purport to provide such a list. The CPS noted that: “as the order is available following a conviction for any criminal offence, provided the relevant tests are met, it is available for more offences than those dealt with in the relevant sentencing guidelines which will include this guidance”. The Council of HM Circuit Judges suggested adding the guidance on director disqualification to the theft guideline.

The Health & Safety Executive noted with approval the wording: “The purpose of the disqualification is to protect the public from directors who could seek to abuse their position, as a director, of a limited liability company in the future” which was in line with the case of *Re Sevenoaks Stationers (Retail) Limited* [1991] Ch.164; C.A.(Civ. Div.). They suggested adding further guidance from that case – that the court should consider a) whether the serious failures came about deliberately or with knowledge of their potential result and the harm they would cause, or innocently and through lack of knowledge or incompetence, and b) whether the failures were “one off” or part of a pattern.

Other respondents made the following points:

- There is no reference to s.1(2) CDDA where the order commences 21 days after the order is made unless the court orders otherwise. The purpose of this is to allow the offender to resign if a director and to make provision for a replacement etc.
- Effect of the order: could add “directly or indirectly” more closely to follow the legislation. Also prevents the offender from acting as an insolvency practitioner.

- Suggest adding “Breach of disqualification from acting as a director” guideline to list of relevant guidelines.

Taking all of these points into consideration the Council has made the following changes (additions underlined):

May be made by	A magistrates’ court or the Crown Court
Relevant legislation	<u>Company Directors Disqualification Act 1986</u>
Availability	<p>A court may make a disqualification order</p> <ol style="list-style-type: none"> 1. Where an offender has been convicted of an indictable offence in connection with the promotion, formation, management, liquidation or striking off of a company, with the receivership of a company’s property or with his being an administrative receiver of a company (Company Directors Disqualification Act 1986, s.2) or 2. Where an offender has been convicted of an offence involving a failure to file documents with, or give notice to, the registrar of companies. If the offence is triable only summarily, disqualification can be ordered only where the offender has been the subject of three default orders or convictions in the preceding five years (Company Directors Disqualification Act 1986, s.5)
Considerations	The purpose of the disqualification is to protect the public from directors who could seek to abuse their position, as a director, of a limited liability company in the future <u>whether through dishonesty, naivety or incompetence.</u>
Period of disqualification	<p>(Subject to the maximum – see below)</p> <p>The period should be fixed by reference to the charges alleged and made out against the director.</p> <p>Disqualification periods of 10 years and over should only be imposed in particularly serious cases such as a second disqualification.</p> <p>Disqualification periods of six to 10 years apply to serious cases.</p> <p>Disqualification periods of up to five years are appropriate in less serious cases.</p> <p><u>In assessing seriousness, relevant considerations may include:</u></p> <ul style="list-style-type: none"> • <u>whether the failures came about deliberately or with knowledge of their potential result and the harm they</u>

	<p><u>would cause, or through lack of knowledge or incompetence, and</u></p> <ul style="list-style-type: none"> • <u>whether the failures were "one off" or part of a pattern.</u> <p>The length of the order should not be subject to a guilty plea discount, but factors such as previous good character and a plea of guilty may be relevant considerations in determining the level of seriousness.</p> <p><u>Where a disqualification order is made against a person who is already subject to such an order, the periods specified in those orders shall run concurrently.</u></p>
Effect of the order	<p>Disqualifies an offender from being a director or taking part <u>whether directly or indirectly</u> in the promotion, formation or management of a company; <u>or from acting as an insolvency practitioner.</u></p> <p><u>Unless the court orders otherwise, the period of disqualification will begin at the end of the period of 21 days beginning with the date of the order. (Company Directors Disqualification Act 1986, s.1(2))</u></p>
Maximum length of order	<p>Magistrates' court – 5 years</p> <p>Crown Court – 15 years</p>
Consequences of breach	<p>Breach of a disqualification order is a criminal offence, maximum penalty 2 years' imprisonment. See the Breach of disqualification from acting as a director guideline</p>

The guidance will also be added to the Theft general guideline and the Breach of disqualification from acting as a director guideline.

Football banning order – on conviction

The Sentencing Academy recommended including guidance on adjournments and notice. The Council has therefore added the following:

Adjournments	<p>The court may adjourn hearing the application for a football banning order until after the offender has been sentenced for the offence.</p> <p>If the offender fails to appear on the adjourned date, the court has the power to further adjourn or issue a warrant for the offender's arrest.</p>
Notice	<p>The prosecutor must serve a notice of intention to apply for a football banning order as soon as practicable (Criminal Procedure Rule 31.3)</p>

In addition a number of respondents suggested that the assault guidelines and bladed article/ offensive weapon guidelines should include a link to this guidance. The Council agreed.

Forfeiture of drugs

There have been no changes made to the consultation version of this guidance.

Forfeiture or suspension of personal licence (supply of alcohol) – Licensing Act 2003

There have been no changes made to the consultation version of this guidance.

Forfeiture of money or property for the purposes of terrorism (section 23 Terrorism Act 2000)

There have been no changes made to the consultation version of this guidance.

Forfeiture of money or property used for the purposes of terrorism (section 23A Terrorism Act 2000)

The Chief Magistrate suggested including guidance for the section 23A power which provides for forfeiture of any money or property. The Council agreed and has prepared the following guidance:

May be made by	A magistrates' court or the Crown Court
Relevant legislation	Terrorism Act 2000, Part III, section 23A and section 120A
Availability	<p>Where a person is convicted of an offence listed below, the court may order the forfeiture of any money or other property if the money or property was, at the time of the offence, in the possession or control of the person convicted and -</p> <ul style="list-style-type: none"> • it had been used for the purposes of terrorism, • it was intended by that person that it should be used for the purposes of terrorism, or • the court believes that it will be used for the purposes of terrorism unless forfeited.
Offences	<ul style="list-style-type: none"> • Terrorism Act 2000 <ul style="list-style-type: none"> ◦ section 54 (weapons training); ◦ section 57, 58 or 58A (possessing things and collecting information for the purposes of terrorism); ◦ section 58B (entering or remaining in a designated area) ◦ section 59, 60 or 61 (inciting terrorism outside the United Kingdom); • Terrorism Act 2006 <ul style="list-style-type: none"> ◦ section 2 (dissemination of terrorist publications); ◦ section 5 (preparation of terrorist acts); ◦ section 6 (training for terrorism); ◦ sections 9 to 11 (offences involving radioactive devices or materials).

Additional forfeiture powers (section 120A)	<ul style="list-style-type: none"> Any ancillary offence, as defined in section 94 of the Counter-Terrorism Act 2008. Any offence which has been determined to have a terrorist connection (in accordance with section 69 Sentencing Code). 	
	In addition to those powers set out above the court has the following powers of forfeiture:	
	Section 54 (weapons training)	Anything that the court considers to have been in the possession of the person for purposes connected with the offence.
	Section 57 (possession for terrorist purposes)	Any article that is the subject matter of the offence.
	Section 58 (collection of information)	Any document or record containing information of the kind mention in sub section (1)(a) of that section.
	Section 58A (eliciting, publishing or communicating information about members of armed forces etc)	Any document or record containing information of the kind mentioned in subsection (1)(a) of that section.
Considerations	<p>When considering the powers of forfeiture under section 23A the court shall have regard to—</p> <ul style="list-style-type: none"> the value of the property, and the likely financial and other effects on the convicted person of the making of the order (taken together with any other order that the court contemplates making). <p>Before making a forfeiture order under s23A or s120A the court must give an opportunity to be heard to any person, (other than the offender), who claims to be the owner or otherwise interested in anything which can be forfeited under that section.</p>	
Implementing the order	Where the court makes a forfeiture order under section 23A or section 120A it may also make any other order it	

deems necessary to give effect to the forfeiture in particular it may:

- require any of the forfeited property to be paid or handed over to the proper officer or to a constable designated for the purpose by the chief officer of police of a police force specified in the order;
- direct any of the forfeited property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds (if any) to be paid to the proper officer;
- appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the proper officer;
- direct a specified part of any forfeited money, or of the proceeds of the sale, disposal or realisation of any forfeited property, to be paid by the proper officer to a specified person who the court is satisfied is the owner, or an interested person.

In force

A forfeiture order under section 23A or section 120A does not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).

Forfeiture of offensive weapons

There have been no changes made to the consultation version of this guidance.

Forfeiture of equipment used in animal welfare offences

There have been no changes made to the consultation version of this guidance.

Forfeiture order – trade mark offences

The National Trading Standards and the Association of Chief Trading Standards Officers pointed out that from April 2025, the Digital Markets, Competition and Consumers Act 2024 will replace the Consumer Protection from Unfair Trading Regulations and incorporate the offences. Offences committed before the transition, but within the statutory time limit for instituting legal proceedings may still be tried under Consumer Protection from Unfair Trading Regulations.

The Council therefore decided to add the underlined wording to the relevant offences section:

- an offence under the Consumer Protection from Unfair Trading Regulations 2008
- an offence under Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024

The Chief Magistrate suggested that since the majority of the final section concerns the conditional release of forfeited goods as opposed to their destruction, it may assist to amend the heading to ‘Destruction or conditional release of forfeited goods’ to clarify it covers both outcomes. The Council agreed and has made this change.

Licensed premises- exclusion order

Several responses to this guidance proposed changes that would require changes to the legislation. Others appeared to misunderstand what was meant by licensed premises and/or missed the fact that the order applies only to **specified** licensed premises. The Council considered that these issues could be addressed by giving more information in the guidance.

There were suggestions for other guidelines that should contain this guidance, however, these were for non-violent offences and so would not apply.

Taking these points into consideration the Council has made the following changes (additions underlined):

May be made by	A magistrates' court or the Crown Court
Relevant legislation	Licensed Premises (Exclusion of Certain Persons) Act 1980
Availability	<p>A court may make an exclusion order Where an offender has been convicted of an offence committed on licensed premises* involving the use or threat of violence.</p> <p>An exclusion order can be made in addition to any other sentence including an absolute or conditional discharge</p> <p>* <u>premises licensed for the supply of alcohol for consumption on the premises</u></p>
Considerations	<p><u>An exclusion order may specify one or more licensed premises. The name and address of each of the specified premises must be set out in the order and a copy of the order must be sent to the licensee of each of the premises. (section 4)</u></p> <p><u>The purpose of the order is to prevent the offender from creating a nuisance and possible danger to the licensee or customers of licensed premises.</u></p>
Effect of the order	The order prohibits the offender from entering specified licensed premises without the express consent of the licensee.
Length of order	Minimum three months, maximum two years
Consequences of breach	Breach of an exclusion order is a criminal offence, maximum penalty one month's custody or a level 4 fine.

Parenting order – Child

The majority of respondents were content with this guidance. A couple of respondents made requests for changes that really related to the underlying legislative provisions.

At consultation the Council proposed listing this guidance in all offence specific guidelines that related to the sentencing of children and young people. The Chief Magistrate suggested that it should also be included in the Overarching guideline for sentencing children and young people. The Council agreed and added the link to this guideline.

Parenting order – Education Act

There were few comments on this guidance, however, the Ministry of Justice asked that further detail be provided on who can act as a responsible officer. The following information has been added:

Responsible Officer

- The parenting order must specify the responsible officer.
- The responsible officer must be—
 - an officer of a provider of probation services acting in the local justice area in which it appears to the court that the parent resides or will reside,
 - a social worker of the local authority in whose area it appears to the court that the parent resides or will reside,
 - a person nominated by—
 - a person appointed as director of children's services under section 18 of the Children Act 2004, or
 - a person appointed as chief education officer under section 532 of the Education Act 1996, or
- a member of a youth offending team established by the local authority in whose area it appears to the court that the parent resides or will reside.

Restitution order

Several responses proposed changes that would require changes to legislation. However, there were some suggestions that are within the Council's remit:

It may also be helpful to note that there are other provisions by which a victim can seek or receive redress and that if these are being pursued then these will form part of the consideration of making a restitution order. Examples include compensation orders under Chapter 2 of Part 7 of the Sentencing Act 2020, private civil litigation etc. [It is noted that, unlike compensation orders, there is no interaction contemplated with confiscation orders under section 13 of the Proceeds of Crime Act 2002].

CPS

The power to make restitution orders are detailed in sections 147 – 151 of the Sentencing Act 2020 and are complex. It is then surprising how few authorities there are. As is the case with compensation orders, we believe that complex cases are best dealt with in civil courts. This echoes the view expressed in Calcutt (1985) 7 Cr.App.R.(S.) 385:

‘[Criminal] courts are not the appropriate forum in which to satisfactorily ventilate complex issues as to the ownership of such money and goods. In cases of doubt it is better to leave the victim to pursue his civil remedies, or alternatively, to apply to the magistrates’ court under the Police (Property) Act 1897’ (at p.390).

The Sentencing Academy

To address the point made by the CPS, all of the guidelines that will have the restitution order guidance will also have the compensation guidance. To address the point made by the Sentencing Academy the Council decided to add the following wording to the availability section:

Restitution orders are for straightforward cases and a court should not embark on a detailed inquiry as to the ownership of money and goods – that is better left to civil proceedings.

Restraining order on conviction

In their response the Sentencing Academy referenced the case of *Khellaf* [2016] EWCA Crim 1297 which outlined principles for imposing a restraining order in cases involving violent offences committed in a domestic setting and noted that the principles in that judgment had clearly influenced the proposed guidance. They went on to say:

It is suggested that the issue of whether, and in what circumstances, an order can be imposed when the person to be protected does not want an order is critical and merits further attention. Despite the judge having a well-founded fear of future harm, a restraining order was quashed in *Herrington* [2017] EWCA Crim 889 where the victim wished to continue her relationship with Herrington. (There was no evidence of duress or lack of capacity.) The views of the victim are clearly of relevance but should not in our opinion be determinative. However, it is difficult to frame guidance on when the victim's wishes should be overridden. The guidance should emphasise the requirements of the Criminal Procedure Rules at Part 31.3 paragraph (6) that impose a duty on the prosecutor to serve a draft order on the court and defendant as [soon as] practicable, without waiting for verdict.

The Chief Magistrate commented:

The proposed table appropriately rectifies the brevity of information available on restraining orders on the SC website currently. I endorse the clarification of the legal test and considerations. Though I do not think the section on 'effect of the order' serves any purpose beyond that covered in the section on consequences of breach.

On the issue of situations where the person protected does not want an order, the Council was satisfied that the guidance adequately reflects case law and provides practical guidance for offences in a domestic context. The Council agreed that the information on notice could be improved and has reworded it as follows:

Notice

The general rule is that the offender **must** be given an opportunity to consider:

- what order is proposed and why, and
- any evidence in support of the application

(see Criminal Procedure Rules 31.2 and 31.3 for further details)

The Council agreed with the two suggestions for additions to the list of guidelines that will include a dropdown of this guidance: Attempted murder and Strangulation and suffocation.

Serious crime prevention order on conviction

One respondent requested further information on the courts powers to vary orders. The Council have added the following:

Powers of Crown Court to vary orders on conviction

Where the Crown Court is dealing with a person who has been convicted of having committed a serious offence in England and Wales **and** is the subject of a SCPO:

- The Court may, in addition to dealing with the person in relation to the offence, vary the order if the court has reasonable grounds to believe that the terms of the order as varied, would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.
- Such a variation may only be made on an application by the relevant applicant authority.
- A variation can only be made in addition to a sentence imposed in respect of the offence concerned (including conditional discharge).
- A variation may include an extension of the period during which the order, or any provision of it, is in force)

Sexual harm prevention order on conviction

The CPS suggested including this guidance in the manslaughter, kidnapping and false imprisonment guidelines as these offences are all ‘relevant offences’ for the purposes of the order. The Council agreed and have added a link to the guidance.

The Chief Magistrate proposes some additional guidance in relation to the length of the notification period. The Council have added the following underlined guidance:

Length of the order

Within the SHPO the Court must specify the period for which each prohibition or requirement is to have effect (the specified period).

The specified period must either be a fixed period of not less than 5 years or an indefinite period (so that the prohibition or requirement has effect until further order).

The order may specify different periods for different prohibitions or requirements.

As a guide, the specified period would normally be the same length as the statutory notification period. Where the specific period is longer than the statutory notification period, the offender will remain subject to the notification requirements for the full duration of the sexual harm prevention order.

Slavery and trafficking prevention order

There were some suggestions from Home Office officials that the guidance should cover the power to make an order on application (as opposed to on conviction) – however this misunderstands the Council's remit. They also say:

Does the updated text sufficiently set out in the **consideration section**, a direction on how to weigh up the balance of risk when looking at whether it can be addressed by the nature and length of the sentence imposed, so that it's clearer and also takes into consideration that the nature of the defendants offending can still pose a risk whilst the defendant is in prison. This is to ensure that the nature of organised crime offending is recognised and considered by judges, as it does not always automatically stop when a person goes to prison. Setting this out would be beneficial to the guidance.

The relevant section states:

Considerations

- The risk that the offender may commit a slavery or human trafficking offence must be real, not remote, and must be sufficient to justify the making of such an order. In considering whether such a risk is present in a particular case, the court is entitled to have regard to all the information before it, including the contents of a pre-sentence report, or information in relation to any previous convictions, or in relation to any previous failure to comply with court orders.
- In determining whether any order is necessary, the court must consider whether the risk is sufficiently addressed by the nature and length of the sentence imposed, and/or the presence of other controls on the offender. The court should consider the ability of a chief officer of police to apply for an order if it becomes necessary to do so in the future.
- The criterion of necessity also applies to the individual terms of the order. The order may prohibit the defendant from doing things in any part of the UK, and anywhere outside the UK. These prohibitions must be both reasonable and proportionate to the purpose for which it is made. The court should take into account any adverse effect of the order on the offender's rehabilitation, and the realities of life in an age of electronic means of communication.

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| | <ul style="list-style-type: none">• The terms of the order must be clear, so that the offender can readily understand what they are prohibited from doing and those responsible for enforcing the order can readily identify any breach.• A draft order must be provided to the court and to all defence advocates in good time to enable its terms to be considered before the sentencing hearing. |
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-

The Council considered that the proposed guidance was sufficient, and it would be for the judge to assess on the facts and circumstances of individual cases whether the risk was sufficient to justify the making of an order.

Slavery and trafficking reparation order

The only substantive comments on this guidance came from Home Office officials:

[I]n the STRO guidance it sets out that ‘a slavery and trafficking reparation order cannot be made if the court has made a compensation order under section 134 of the Sentencing Code.’ Looking at this section, we cannot see where it makes a link to an STRO not being made if a compensation order has been made under that section, it only seems to reference road accidents (section 136). Is it possible to provide further information/clarity on this as does not feature in section 8 the Modern Slavery Act 2015 either.

The Council agreed that it would be clearer to amend the legislative references in the ‘Considerations’ section to say:

Considerations
In every eligible case, the court must consider whether to make a slavery and trafficking reparation order, and if one is not made the judge must give reasons. However, a slavery and trafficking reparation order cannot be made if the court has made a compensation order under section 134 of the Sentencing Code (see section 10(1) of the Modern Slavery Act 2015).

Sub-letting - Unlawful profit order

The only comments on this guidance related to the scope of the legislation and therefore no changes have been made to the consultation version.

Travel restriction order

The only substantive response was from the Sentencing Academy:

The proposed guidance is consistent with the principles outlined in detail in Mee [2004] EWCA Crim 629 where it was recognised that restricting someone's right to travel was significant and should occur only where it is necessary for public protection. When considering the risk of reoffending, Mee said that relevant concerns included the offender's age, previous convictions, family contacts and employment. The Court of Appeal have used these factors subsequently and have, on occasion, quashed travel restriction orders where the perceived risk of reoffending is insufficient (e.g. Fuller [2005] EWCA Crim 1029).

The Council agreed that it would be helpful to include some guidance on assessing the risk of re-offending. The underlined text below has been added:

Duty of the court	<p>The court must consider making an order where it is available.</p> <p>It is appropriate to make an order where there is reason to believe that it will reduce the risk of re-offending on release from prison.</p> <p>If it does not make an order the court must give reasons.</p>
Length of the order	<p>The minimum length of an order is two years from the date of the offender's release from custody. There is no maximum length. The length should be that which is required to protect the public in the light of the assessment of the degree of risk which is presented by the facts of the case and the circumstances of the offender. <u>Relevant considerations may include (but are not limited to): the quantity and type of drug, the degree of sophistication of the offence(s), the offender's role, the offender's age, previous convictions, past and prospective employment, family and work connections abroad. The court should invite submissions on the relevant considerations before making the order.</u></p>

Equalities and impact

Equalities

The consultation included a question: ‘Are there any equalities issues relating to the proposals that should be addressed?’ Most respondents either did not answer the question or indicated that there were no issues that they could think of. A magistrate commented on the number of people who come before courts with mental health difficulties who find the court environment difficult. This comment was not linked to any particular aspect of the matters consulted on, nor was there any suggestion as to how it could be addressed in relation to ancillary orders.

The only other substantive comment was from a magistrate who thought that the requirement in the Football banning order guidance that “the court must, in ordinary language, explain its effect to the subject of the order”, might be viewed as patronising to football supporters and should apply to all orders. That language is taken from the relevant legislation. The same wording is used in relation to parenting orders.

The Council thought that the suggestion that all ancillary orders should be explained in ordinary language was a good one, but noted that the pronouncements used in court are produced by the Judicial College. The Council will liaise with the Judicial College to see if pronouncements can be provided for all of the ancillary orders referred to in guidelines.

The Council consulted on having the following reference to the Equal Treatment Bench Book (ETBB) at the top each ancillary order dropdown:

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

On reflection the Council wondered if it was helpful to repeat the reference to the ETBB which appears at the top of every guideline. The Council noted that much of the information given on ancillary orders is purely factual and therefore the ETBB was of limited relevance. Insofar as it may be relevant the Council felt that there was a danger that frequent repetition would cause it to lose impact rather than to reinforce it.

The Council therefore decided to display the ETBB wording at the top of the Ancillary orders page – but not to repeat it in the text of every order.

Impact

The Council stated in the consultation that it did not anticipate any impact on prison and probation resources from the proposals, but asked for views of respondents on this point.

No respondents raised any issues relating to the likely impact of the proposals.

The Council recognises that it is important that information on ancillary orders is accurate and is presented in a user-friendly way. The Council intends to keep the information in the guidance up to date and will make technical, factual changes to the ancillary orders information without further consultation. The Council may also make presentational changes in response to user feedback over time.

List of respondents to consultation

9 individuals
Alexander Matthieu
Beaver Meadow
Brian Watt
British Transport Police
Chief Magistrate
Criminal Subcommittee of the Council of HM Circuit Judges
Crown Prosecution Service
David Murtagh
David Taylor
Fiona Levack
Gary Knight
Graham Higgins
Guy Cecil
Health & Safety Executive
Heather Rothwell
Helena Taylor JP
Ian Jones
Jackie Hamilton JP
Jon Steadman
Justices' Clerks' Society
Katherine Long
Ken Palframan JP
Kiran Dhillon
Law Society
Legal Committee of HM Council of District Judges (Magistrates' Courts)
Martin Alderman
Ministry of Justice Minister Dakin
National Taskforce on Gambling Related Harm and Crime
National Trading Standards and The Assoc of Chief Trading Standards Officers
Paul Hinson
Professor Michael Levi
Professor Peter Hungerford Welch
Robert Burrow
Sentencing Academy
Steven Jonas
Suffolk Magistrates Bench

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