

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 OR 30 - 50 hours additional unpaid work/extend length of order/add additional requirements (eg; curfew, programme requirement) OR Band C fine
Medium level of compliance	Revoke the order and re-sentence original offence OR 20 - 30 hours additional unpaid work/extend length of order/add additional requirements (eg; curfew, programme requirement) OR Band B fine
High level of compliance	10 - 20 hours additional unpaid work/extend length of order/add additional requirements (eg; curfew, programme requirement) OR 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*:¹

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.

¹ 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 OR 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 OR 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 OR 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 OR Supervision Default Order in range of 30 - 40 hours unpaid work OR 8 - 12 hour curfew for minimum of 20 days
Medium	Supervision Default Order in range of 20 - 30 hours unpaid work OR 2 - 8 hour curfew for minimum of 20 days OR 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 OR 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)

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.

Category 1	Failure to attend Crown Court hearing results in substantial delay and/or interference with the administration of justice
Category 2	Failure to attend magistrates' court hearing results in substantial delay and/or interference with the administration of justice*
Category 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.

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	Starting point 13 weeks' custody	Starting point 28 days' custody	Starting point 7 days' custody
	Category range 6 weeks' – 40 weeks' custody	Category range High level community order – 13 weeks' custody	Category range Low level community order – 6 weeks' custody
Category 2	Starting point 14 days' custody	Starting point Band C fine	Starting point Band B fine
	Category range High level community order – 13 weeks' custody	Category range Band B fine – High level community order	Category range Band A – Low level community order
Category 3	Starting point 7 days' custody	Starting point Band B fine	Starting point Band A fine
	Category range Low level community order – 6 weeks' custody	Category range Band A fine – Low level community order	Category range 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)

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"> • Flagrant, serious or persistent breach
B	<ul style="list-style-type: none"> • Factors in categories A and C not present
C	<ul style="list-style-type: none"> • Minor breach • 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.

Category 1	Breach causes very serious harm or distress to an individual
Category 2	Factors in categories 1 and 3 not present
Category 3	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	Starting point 2 years' custody	Starting point 36 weeks' custody	Starting point 12 weeks' custody
	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years' custody	Category range Medium level community order – 1 year's custody
Category 2	Starting point 1 years' custody	Starting point 12 weeks' custody	Starting point High level community order
	Category range High level community order – 2 years' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – 26 weeks' custody
Category 3	Starting point 12 weeks' custody	Starting point High level community order	Starting point Low level community order
	Category range Medium level community order – 1 year's custody	Category range Low level community order – 26 weeks' custody	Category range 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)

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"> Flagrant, serious or persistent breach
B	<ul style="list-style-type: none"> Factors in categories A and C not present
C	<ul style="list-style-type: none"> Minor breach 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.

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

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	Starting point 2 years' custody	Starting point 36 weeks' custody	Starting point 12 weeks' custody
	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years' custody	Category range Medium level community order – 1 year's custody
Category 2	Starting point 1 year's custody	Starting point 12 weeks' custody	Starting point High level community order
	Category range High level community order – 2 years' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – 26 weeks' custody
Category 3	Starting point 12 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range Medium level community order – 1 year's custody	Category range Low level community order – 26 weeks' custody	Category range 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))

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"> Flagrant, serious or persistent breach
B	<ul style="list-style-type: none"> Factors in categories A and C not present
C	<ul style="list-style-type: none"> Minor breach 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.

Category 1	Breach causes or risks very serious harm or distress
Category 2	Factors in categories 1 and 3 not present
Category 3	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	Starting point 3 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 – 4 years 6 months' custody	Category range 36 weeks' – 3 years' custody	Category range High level community order – 2 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 36 weeks' – 3 years' custody	Category range High level community order – 2 years' custody	Category range Medium level community order – 26 weeks' custody
Category 3	Starting point 1 year's custody	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 2 years' custody	Category range Medium level community order – 36 weeks' custody	Category range 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)

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"> • Flagrant, attempts to avoid detection • Long period of non compliance
B	<ul style="list-style-type: none"> • Deliberate failure to comply with requirement
C	<ul style="list-style-type: none"> • Minor breach • 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.

Harm 1	Breach causes or risks very serious harm or distress
Harm 2	Factors in categories 1 and 3 not present
Harm 3	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	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 36 weeks' custody
	Category range 1 year's – 4 years' custody	Category range 26 weeks' – 2 years' custody	Category range 26 weeks' – 1 year 6 months' custody
Category 2	Starting point 1 year's custody	Starting point 36 weeks' custody	Starting point High level community order
	Category range 26 weeks' – 2 years' custody	Category range 26 weeks' – 1 year 6 months' custody	Category range Medium level community order – 36 weeks' custody
Category 3	Starting point 36 weeks' custody	Starting point High level community order	Starting point Low level community order
	Category range 26 weeks' – 1 year 6 months' custody	Category range Medium level community order – 36 weeks' custody	Category range 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.

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

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.

Category 1	Breach results in significant risk of or actual serious financial loss or harm to company or others
Category 2	Factors in categories 1 and 3 not present
Category 3	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	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 26 weeks – 1 year 6 months' custody	Category range 12 weeks' – 36 weeks' custody
Category 2	Starting point 26 weeks' custody	Starting point 12 weeks' custody
	Category range 12 weeks' – 36 weeks' custody	Category range High level community order – 26 weeks' custody
Category 3	Starting point 12 weeks' custody	Starting point Medium level community order
	Category range Medium level community order – 26 weeks' custody	Category range 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)

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.

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

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	Starting point 16 weeks' custody	Starting point 8 weeks' custody
	Category range 6 weeks' – 26 weeks' custody	Category range Medium level community order – 16 weeks' custody
Category 2	Starting point 8 weeks' custody	Starting point Medium level community order
	Category range Medium level community order – 16 weeks' custody	Category range Band C Fine – High level community order
Category 3	Starting point Medium level community order	Starting point Band A Fine
	Category range Band C Fine – High level community order	Category range 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.

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If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *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)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 is being committed, or is likely to be committed.)	Triable Summarily Only	A person guilty of obstructing a person acting under section 79 or 85(1) 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.