

**Environmental
Offences**
Definitive Guideline

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Effective from 1 July 2014

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all individual offenders aged 18 and older and organisations that are sentenced on or after 1 July 2014, regardless of the date of the offence.

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

“Every court –

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

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

This guideline applies only to individual offenders aged 18 and older or organisations. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Structure, ranges and starting points

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

Starting points define the position within a category range from which to start calculating the provisional sentence. The court should consider further features of the offence or the offender that warrant adjustment of the sentence within the range, including the aggravating and mitigating factors set out at step four. In this guideline, if the proposed sentence is a fine, having identified a provisional sentence within the range at step four the court is required to consider a further set of factors that may require a final adjustment to the sentence. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only after the appropriate sentence has been identified.¹

Information on community orders and fine bands is set out in the annex at page 24.

¹ In the guideline for organisations, guilty pleas are considered at step nine; in the guideline for individuals, guilty pleas are considered at step eight

Organisations

Unauthorised or harmful deposit, treatment or disposal etc of waste

Illegal discharges to air, land and water

Environmental Protection Act 1990 (section 33)

Environmental Permitting (England and Wales) Regulations 2010 (regulations 12 and 38(1), (2) and (3))

Also relevant, with adjustments, to certain related offences (see page 14)

Triable either way

Maximum: when tried on indictment: unlimited fine
when tried summarily: £50,000 fine

Offence range: £100 fine – £3 million fine

Use this guideline when the offender is an organisation. If the offender is an individual, please refer to the guideline for individuals.

Confiscation

Committal to the Crown Court for sentence is mandatory if confiscation (see step two) is to be considered: Proceeds of Crime Act 2002 section 70. In such cases magistrates should state whether they would otherwise have committed for sentence.

Financial orders must be considered in this order: (1) compensation, (2) confiscation, and (3) fine (see Proceeds of Crime Act 2002 section 13).

STEP ONE

Compensation

The court must consider making a compensation order requiring the offender to pay compensation for any personal injury, loss or damage resulting from the offence in such an amount as the court considers appropriate, having regard to the evidence and to the means of the offender.

Where the means of the offender are limited, priority should be given to the payment of compensation over payment of any other financial penalty.

Reasons should be given if a compensation order is not made.

(See section 130 Powers of Criminal Courts (Sentencing) Act 2000)

STEP TWO

Confiscation (Crown Court only)

Confiscation must be considered if either the Crown asks for it or the court thinks that it may be appropriate. Confiscation must be dealt with before any other fine or financial order (except compensation).

(See sections 6 and 13 Proceeds of Crime Act 2002)

See page 5.

STEP THREE**Determining the offence category**

The court should determine the offence category using only the culpability and harm factors in the tables below. The culpability and harm categories are on a sliding scale; there is inevitable overlap between the factors described in adjacent categories. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

Culpability	Harm
<p>Deliberate Intentional breach of or flagrant disregard for the law by person(s) whose position of responsibility in the organisation is such that their acts/omissions can properly be attributed to the organisation; OR deliberate failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence.</p>	<p>Category 1</p> <ul style="list-style-type: none"> • Polluting material of a dangerous nature, for example, hazardous chemicals or sharp objects • Major adverse effect or damage to air or water quality, amenity value, or property • Polluting material was noxious, widespread or pervasive with long-lasting effects on human health or quality of life, animal health or flora • Major costs incurred through clean-up, site restoration or animal rehabilitation • Major interference with, prevention or undermining of other lawful activities or regulatory regime due to offence
<p>Reckless Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken by person(s) whose position of responsibility in the organisation is such that their acts/omissions can properly be attributed to the organisation; OR reckless failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence.</p>	<p>Category 2</p> <ul style="list-style-type: none"> • Significant adverse effect or damage to air or water quality, amenity value, or property • Significant adverse effect on human health or quality of life, animal health or flora • Significant costs incurred through clean-up, site restoration or animal rehabilitation • Significant interference with or undermining of other lawful activities or regulatory regime due to offence • Risk of category 1 harm
<p>Negligent Failure by the organisation as a whole to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence.</p>	<p>Category 3</p> <ul style="list-style-type: none"> • Minor, localised adverse effect or damage to air or water quality, amenity value, or property • Minor adverse effect on human health or quality of life, animal health or flora • Low costs incurred through clean-up, site restoration or animal rehabilitation • Limited interference with or undermining of other lawful activities or regulatory regime due to offence • Risk of category 2 harm
<p>Low or no culpability Offence committed with little or no fault on the part of the organisation as a whole, for example by accident or the act of a rogue employee and despite the presence and due enforcement of all reasonably required preventive measures, or where such proper preventive measures were unforeseeably overcome by exceptional events.</p>	<p>Category 4</p> <ul style="list-style-type: none"> • Risk of category 3 harm

STEP FOUR**Starting point and category range**

Having determined the category, the court should refer to the tables on pages 7 to 10. There are four tables of starting points and ranges: one for large organisations, one for medium organisations, one for small organisations and one for micro-organisations. The court should refer to the table that relates to the size of the offending organisation.

The court should use the corresponding starting point to reach a sentence within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out on page 11.

General principles to follow in setting a fine

The court should determine the appropriate level of fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and the court to take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

Obtaining financial information

Offenders which are companies, partnerships or bodies delivering a public or charitable service, are expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case.

Normally, only information relating to the organisation before the court will be relevant, unless it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

1. *For companies*: annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. **Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.**
2. *For partnerships*: annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited Liability Partnerships (LLPs) may be required to file audited accounts with Companies House. **If adequate accounts are not produced on request, see paragraph 1.**
3. *For local authorities, fire authorities and similar public bodies*: the Annual Revenue Budget ("ARB") is the equivalent of turnover and the best indication of the size of the defendant organisation. It is unlikely to be necessary to analyse specific expenditure or reserves (where relevant) unless inappropriate expenditure is suggested.

4. *For health trusts*: the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via www.monitor-nhsft.gov.uk. Detailed analysis of expenditure or reserves is unlikely to be called for.
5. *For charities*: it will be appropriate to inspect annual audited accounts. Detailed analysis of expenditure or reserves is unlikely to be called for unless there is a suggestion of unusual or unnecessary expenditure.

At step four, the court will be required to focus on the organisation's annual turnover or equivalent to reach a starting point for a fine. At step six, the court may be required to refer to the other financial factors listed above to ensure that the proposed fine is proportionate.

Very large organisations

Where a defendant company's turnover or equivalent very greatly exceeds the threshold for large companies, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

Large

Turnover or equivalent: £50 million and over.

Large	Starting Point	Range
Deliberate		
Category 1	£1,000,000	£450,000 – £3,000,000
Category 2	£500,000	£180,000 – £1,250,000
Category 3	£180,000	£100,000 – £450,000
Category 4	£100,000	£55,000 – £250,000
Reckless		
Category 1	£550,000	£250,000 – £1,500,000
Category 2	£250,000	£100,000 – £650,000
Category 3	£100,000	£60,000 – £250,000
Category 4	£60,000	£35,000 – £160,000
Negligent		
Category 1	£300,000	£140,000 – £750,000
Category 2	£140,000	£60,000 – £350,000
Category 3	£60,000	£35,000 – £150,000
Category 4	£35,000	£22,000 – £100,000
Low / No culpability		
Category 1	£50,000	£25,000 – £130,000
Category 2	£25,000	£14,000 – £70,000
Category 3	£14,000	£10,000 – £40,000
Category 4	£10,000	£7,000 – £25,000

Medium

Turnover or equivalent: between £10 million and £50 million.

Medium	Starting Point	Range
Deliberate		
Category 1	£400,000	£170,000 – £1,000,000
Category 2	£170,000	£70,000 – £450,000
Category 3	£70,000	£40,000 – £180,000
Category 4	£40,000	£22,000 – £100,000
Reckless		
Category 1	£220,000	£100,000 – £500,000
Category 2	£100,000	£40,000 – £250,000
Category 3	£40,000	£24,000 – £100,000
Category 4	£24,000	£14,000 – £60,000
Negligent		
Category 1	£120,000	£55,000 – £300,000
Category 2	£55,000	£25,000 – £140,000
Category 3	£25,000	£14,000 – £60,000
Category 4	£14,000	£8,000 – £35,000
Low / No culpability		
Category 1	£20,000	£10,000 – £50,000
Category 2	£10,000	£5,500 – £25,000
Category 3	£5,000	£3,500 – £14,000
Category 4	£3,000	£2,500 – £10,000

See page 9.

Small

Turnover or equivalent: between £2 million and £10 million.

Small	Starting Point	Range
Deliberate		
Category 1	£100,000	£45,000 – £400,000
Category 2	£45,000	£17,000 – £170,000
Category 3	£17,000	£10,000 – £70,000
Category 4	£10,000	£5,000 – £40,000
Reckless		
Category 1	£55,000	£24,000 – £220,000
Category 2	£24,000	£10,000 – £100,000
Category 3	£10,000	£5,000 – £40,000
Category 4	£5,000	£3,000 – £24,000
Negligent		
Category 1	£30,000	£13,000 – £120,000
Category 2	£13,000	£6,000 – £55,000
Category 3	£6,000	£3,000 – £23,000
Category 4	£3,000	£1,500 – £14,000
Low / No culpability		
Category 1	£5,000	£2,500 – £20,000
Category 2	£2,500	£1,000 – £10,000
Category 3	£1,000	£700 – £5,000
Category 4	£700	£400 – £3,500

See page 10.

Micro

Turnover or equivalent: not more than £2 million.

Micro	Starting Point	Range
Deliberate		
Category 1	£50,000	£9,000 – £95,000
Category 2	£22,000	£3,000 – £45,000
Category 3	£9,000	£2,000 – £17,000
Category 4	£5,000	£1,000 – £10,000
Reckless		
Category 1	£30,000	£3,000 – £55,000
Category 2	£12,000	£1,500 – £24,000
Category 3	£5,000	£1,000 – £10,000
Category 4	£3,000	£500 – £5,500
Negligent		
Category 1	£15,000	£1,500 – £30,000
Category 2	£6,500	£1,000 – £13,000
Category 3	£2,500	£500 – £5,500
Category 4	£1,400	£350 – £3,000
Low / No culpability		
Category 1	£2,500	£500 – £5,000
Category 2	£1,000	£350 – £2,400
Category 3	£400	£175 – £1,000
Category 4	£200	£100 – £700

See page 11.

The table below contains a **non-exhaustive** list of 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 particular, relevant recent convictions and/or a history of non-compliance are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting mitigation
<i>Statutory aggravating factors:</i>	No previous convictions or no relevant/recent convictions
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	Evidence of steps taken to remedy problem
<i>Other aggravating factors include:</i>	Remorse
History of non-compliance with warnings by regulator	Compensation paid voluntarily to remedy harm caused
Location of the offence, for example, near housing, schools, livestock or environmentally sensitive sites	One-off event not commercially motivated
Repeated incidents of offending or offending over an extended period of time, where not charged separately	Little or no financial gain
Deliberate concealment of illegal nature of activity	Effective compliance and ethics programme
Ignoring risks identified by employees or others	Self-reporting, co-operation and acceptance of responsibility
Established evidence of wider/community impact	Good character and/or exemplary conduct
Breach of any order	
Offence committed for financial gain	
Obstruction of justice	

See page 12.

STEPS FIVE TO SEVEN

The court should now ‘step back’ and, using the factors set out in steps five, six and seven, **review whether the sentence as a whole meets, in a fair way, the objectives of punishment, deterrence and removal of gain derived through the commission of the offence.** At steps five to seven, the court may increase or reduce the proposed fine reached at step four, if necessary moving outside the range.

STEP FIVE

Ensure that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit derived from the offending

The court should remove any economic benefit the offender has derived through the commission of the offence including:

- avoided costs;
- operating savings;
- any gain made as a direct result of the offence.

Where the offender is fined, the amount of economic benefit derived from the offence should normally be added to the fine arrived at in step four. If a confiscation order is made, in considering economic benefit, the court should avoid double recovery.

Economic benefit will not always be an identifiable feature of a case. For example, in some water pollution cases there may be strict liability but very little obvious gain. However, even in these cases there may be some avoidance of cost, for example alarms not installed and maintained, inadequate bunding or security measures not installed. Any costs avoided will be considered as economic benefit.

Where it is not possible to calculate or estimate the economic benefit, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

STEP SIX

Check whether the proposed fine based on turnover is proportionate to the means of the offender

The combination of financial orders must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to improve regulatory compliance. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

It will be necessary to examine the financial circumstances of the organisation in the round. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.

In considering the ability of the offending organisation to pay any financial penalty, the court can take into account **the power to allow time for payment or to order that the amount be paid in instalments.**

STEP SEVEN**Consider other factors that may warrant adjustment of the proposed fine**

The court should consider any further factors that are relevant to ensuring that the proposed fine is proportionate having regard to the means of the offender and the seriousness of the offence.

Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of their services.

The **non-exhaustive** list below contains additional factual elements the court should consider in deciding whether an increase or reduction to the proposed fine is required:

- fine impairs offender's ability to make restitution to victims;
- impact of fine on offender's ability to improve conditions in the organisation to comply with the law;
- impact of fine on employment of staff, service users, customers and local economy.

STEP EIGHT**Consider any factors which indicate a reduction, such as 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 NINE**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP TEN**Ancillary orders**

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

Forfeiture of vehicle

The court may order the forfeiture of a vehicle used in or for the purposes of the commission of the offence in accordance with section 33C of the Environmental Protection Act 1990.

Deprivation of property

Where section 33C of the Environmental Protection Act 1990 does not apply, the court may order the offender be deprived of property used to commit crime or intended for that purpose in accordance with section 143 of the Powers of Criminal Courts (Sentencing) Act 2000. In considering whether to make an order under section 143, the court must have regard to the value of the property and the likely effects on the offender of making the order taken together with any other order the court makes.

Remediation

Where an offender is convicted of an offence under regulation 38(1), (2) or (3) of the Environmental Permitting (England and Wales) Regulations 2010, a court may order the offender to take steps to remedy the cause of the offence within a specified period in accordance with regulation 44 of the Environmental Permitting (England and Wales) Regulations 2010.

STEP ELEVEN**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 offending behaviour.

STEP TWELVE**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

Other environmental offences

In sentencing other relevant and analogous environmental offences, the court should refer to the sentencing approach in steps one to three and five to seven of the guideline, **adjusting the starting points and ranges bearing in mind the statutory maxima** for those offences. An indicative list of such offences is set out below.

Offence	Mode of trial	Statutory maxima
Section 1 Control of Pollution (Amendment) Act 1989 – transporting controlled waste without registering	Triable summarily only	<ul style="list-style-type: none"> level 5 fine
Section 34 Environmental Protection Act 1990 – breach of duty of care	Triable either way	<ul style="list-style-type: none"> when tried on indictment: unlimited fine when tried summarily: level 5 fine
Section 80 Environmental Protection Act 1990 – breach of an abatement notice	Triable summarily only	<ul style="list-style-type: none"> where the offence is committed on industrial, trade or business premises: £20,000 fine where the offence is committed on non-industrial etc premises: level 5 fine with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction
Section 111 Water Industry Act 1991 – restrictions on use of public sewers	Triable either way	<ul style="list-style-type: none"> when tried on indictment: imprisonment for a term not exceeding two years or a fine or both when tried summarily: a fine not exceeding the statutory maximum and a further fine not exceeding £50 for each day on which the offence continues after conviction
Offences under the Transfrontier Shipment of Waste Regulations 2007	Triable either way	<ul style="list-style-type: none"> when tried on indictment: a fine or two years imprisonment or both when tried summarily: a fine not exceeding the statutory maximum or three months' imprisonment or both

Individuals

Unauthorised or harmful deposit, treatment or disposal etc of waste

Illegal discharges to air, land and water

Environmental Protection Act 1990 (section 33)

Environmental Permitting (England and Wales) Regulations 2010 (regulations 12 and 38(1), (2) and (3))

Also relevant, with adjustments, to certain related offences (see page 23)

Triable either way

Maximum: when tried on indictment: unlimited fine and/or 5 years' custody
when tried summarily: £50,000 fine and/or 6 months' custody

Offence range: conditional discharge – 3 years' custody

Use this guideline when the offender is an individual. If the offender is an organisation, please refer to the guideline for organisations.

Confiscation

Committal to the Crown Court for sentence is mandatory if confiscation (see step two) is to be considered: Proceeds of Crime Act 2002 section 70. In such cases magistrates should state whether they would otherwise have committed for sentence.

If a fine is imposed, the financial orders must be considered in this order: (1) compensation, (2) confiscation, and (3) fine (see Proceeds of Crime Act 2002 section 13).

STEP ONE
Compensation

The court must consider making a compensation order requiring the offender to pay compensation for any personal injury, loss or damage resulting from the offence in such an amount as the court considers appropriate, having regard to the evidence and to the means of the offender.

Where the means of the offender are limited, priority should be given to the payment of compensation over payment of any other financial penalty.

Reasons should be given if a compensation order is not made.

(See section 130 Powers of Criminal Courts (Sentencing) Act 2000)

STEP TWO
Confiscation (Crown Court only)

Confiscation must be considered if either the Crown asks for it or the court thinks that it may be appropriate. Confiscation must be dealt with before any other fine or financial order (except compensation).

(See sections 6 and 13 Proceeds of Crime Act 2002)

See page 17.

STEP THREE**Determining the offence category**

The court should determine the offence category using only the culpability and harm factors in the tables below. The culpability and harm categories are on a sliding scale; there is inevitable overlap between the factors described in adjacent categories. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

Culpability	Harm
<p>Deliberate Where the offender intentionally breached, or flagrantly disregarded, the law</p>	<p>Category 1</p> <ul style="list-style-type: none"> • Polluting material of a dangerous nature, for example, hazardous chemicals or sharp objects • Major adverse effect or damage to air or water quality, amenity value, or property • Polluting material was noxious, widespread or pervasive with long-lasting effects on human health or quality of life, animal health, or flora • Major costs incurred through clean-up, site restoration or animal rehabilitation • Major interference with, prevention or undermining of other lawful activities or regulatory regime due to offence
<p>Reckless Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken</p>	<p>Category 2</p> <ul style="list-style-type: none"> • Significant adverse effect or damage to air or water quality, amenity value, or property • Significant adverse effect on human health or quality of life, animal health or flora • Significant costs incurred through clean-up, site restoration or animal rehabilitation • Significant interference with or undermining of other lawful activities or regulatory regime due to offence • Risk of category 1 harm
<p>Negligent Offence committed through act or omission which a person exercising reasonable care would not commit</p>	<p>Category 3</p> <ul style="list-style-type: none"> • Minor, localised adverse effect or damage to air or water quality, amenity value, or property • Minor adverse effect on human health or quality of life, animal health or flora • Low costs incurred through clean-up, site restoration or animal rehabilitation • Limited interference with or undermining of other lawful activities or regulatory regime due to offence • Risk of category 2 harm
<p>Low or no culpability Offence committed with little or no fault, for example by genuine accident despite the presence of proper preventive measures, or where such proper preventive measures were unforeseeably overcome by exceptional events</p>	<p>Category 4</p> <ul style="list-style-type: none"> • Risk of category 3 harm

STEP FOUR**Starting point and category range**

Having determined the category, the court should refer to the starting points on page 19 to reach a sentence within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out on page 20.

General principles to follow in setting a fine

The court should determine the appropriate level of fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and the court to take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

Obtaining financial information

In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to their financial position as will enable it to assess what they can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. **In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case.**

See page 19.

Starting points and ranges

Where the range includes a potential sentence of custody, the court should consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

However, even where the community order threshold has been passed, a fine will normally be the most appropriate disposal. Where confiscation is not applied for, consider, if wishing to remove any economic benefit derived through the commission of the offence, combining a fine with a community order.

Offence category	Starting Point	Range
Deliberate		
Category 1	18 months' custody	1 – 3 years' custody
Category 2	1 year's custody	26 weeks' – 18 months' custody
Category 3	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Category 4	Band E fine	Band D fine or low level community order – Band E fine
Reckless		
Category 1	26 weeks' custody	Band F fine or high level community order – 12 months' custody
Category 2	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Category 3	Band E fine	Band D fine or low level community order – Band E fine
Category 4	Band D fine	Band C fine – Band D fine
Negligent		
Category 1	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Category 2	Band E fine	Band D fine or low level community order – Band E fine
Category 3	Band D fine	Band C fine – Band D fine
Category 4	Band C fine	Band B fine – Band C fine
Low / No culpability		
Category 1	Band D fine	Band C fine – Band D fine
Category 2	Band C fine	Band B fine – Band C fine
Category 3	Band B fine	Band A fine – Band B fine
Category 4	Band A fine	Conditional discharge – Band A fine

The table below contains a **non-exhaustive** list of 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 particular, relevant recent convictions and/or a history of non-compliance are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Compensation paid voluntarily to remedy harm caused
<i>Other aggravating factors include:</i>	Evidence of steps taken to remedy problem
History of non-compliance with warnings by regulator	One-off event not commercially motivated
Location of the offence, for example, near housing, schools, livestock or environmentally sensitive sites	Little or no financial gain
Repeated incidents of offending or offending over an extended period of time, where not charged separately	Self-reporting, co-operation and acceptance of responsibility
Deliberate concealment of illegal nature of activity	Good character and/or exemplary conduct
Ignoring risks identified by employees or others	Mental disorder or learning disability, where linked to the commission of the offence
Established evidence of wider/community impact	Serious medical conditions requiring urgent, intensive or long-term treatment
Breach of any order	Age and/or lack of maturity where it affects the responsibility of the offender
Offence committed for financial gain	Sole or primary carer for dependent relatives
Obstruction of justice	
Offence committed whilst on licence	

See page 21.

STEPS FIVE AND SIX

Where the sentence is or includes a fine, the court should ‘step back’ and, using the factors set out in steps five and six, **review whether the sentence as a whole meets, in a fair way, the objectives of punishment, deterrence and removal of gain derived through the commission of the offence.** At steps five and six, the court may increase or reduce the proposed fine reached at step four, if necessary moving outside the range.

STEP FIVE

Ensure that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit derived from the offending

The court should remove any economic benefit the offender has derived through the commission of the offence including:

- avoided costs;
- operating savings;
- any gain made as a direct result of the offence.

Where the offender is fined, the amount of economic benefit derived from the offence should normally be added to the fine arrived at in step four. If a confiscation order is made, in considering economic benefit, the court should avoid double recovery.

Economic benefit will not always be an identifiable feature of a case. For example, in some water pollution cases there may be strict liability but very little obvious gain. However, even in these cases there may be some avoidance of cost, for example alarms not installed and maintained, inadequate bunding or security measures not installed. Any costs avoided will be considered as economic benefit.

Where it is not possible to calculate or estimate the economic benefit derived from the offence, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

STEP SIX

Consider other factors that may warrant adjustment of the proposed fine

The court should consider any further factors that are relevant to ensuring that the proposed fine is proportionate having regard to the means of the offender and the seriousness of the offence.

The **non-exhaustive** list below contains additional factual elements the court should consider in deciding whether an increase or reduction to the proposed fine is required:

- fine impairs offender’s ability to make restitution to victims;
- impact of fine on offender’s ability to improve conditions to comply with the law;
- impact of fine on employment of staff, service users, customers and local economy.

STEP SEVEN**Consider any factors which indicate a reduction, such as 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 EIGHT**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP NINE**Ancillary orders**

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

Disqualification of director

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

Disqualification from driving

The court may order disqualification from driving where a vehicle has been used in connection with the commission of the offence (section 147 of the Powers of Criminal Courts (Sentencing) Act 2000).

The court may disqualify an offender from driving on conviction for any offence either in addition to any other sentence or instead of any other sentence (section 146 of the Powers of Criminal Courts (Sentencing) Act 2000).

The court should inform the offender of its intention to disqualify and hear representations.

Forfeiture of vehicle

The court may order the forfeiture of a vehicle used in or for the purposes of the commission of the offence in accordance with section 33C of the Environmental Protection Act 1990.

Deprivation of property

Where section 33C of the Environmental Protection Act 1990 does not apply, the court may order the offender to be deprived of property used to commit crime or intended for that purpose in accordance with section 143 of the Powers of Criminal Courts (Sentencing) Act 2000. In considering whether to make an order under section 143, the court must have regard to the value of the property and the likely effects on the offender of making the order taken together with any other order the court makes.

Remediation

Where an offender is convicted of an offence under regulation 38(1), (2) or (3) of the Environmental Permitting (England and Wales) Regulations 2010, a court may order the offender to take steps to remedy the cause of the offence within a specified period in accordance with regulation 44 of the Environmental Permitting (England and Wales) Regulations 2010.

STEP TEN**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 offending behaviour.

STEP ELEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TWELVE**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.

Other environmental offences

In sentencing other relevant and analogous environmental offences, the court should refer to the sentencing approach in steps one to three and five and six of the guideline, **adjusting the starting points and ranges bearing in mind the statutory maxima** for those offences. An indicative list of such offences is set out below.

Offence	Mode of trial	Statutory maxima
Section 1 Control of Pollution (Amendment) Act 1989 – transporting controlled waste without registering	Triable summarily only	<ul style="list-style-type: none"> level 5 fine
Section 34 Environmental Protection Act 1990 – breach of duty of care	Triable either way	<ul style="list-style-type: none"> when tried on indictment: unlimited fine when tried summarily: level 5 fine
Section 80 Environmental Protection Act 1990 – breach of an abatement notice	Triable summarily only	<ul style="list-style-type: none"> where the offence is committed on industrial, trade or business premises: £20,000 fine where the offence is committed on non-industrial etc premises: level 5 fine with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction
Section 111 Water Industry Act 1991 – restrictions on use of public sewers	Triable either way	<ul style="list-style-type: none"> when tried on indictment: imprisonment for a term not exceeding two years or a fine or both when tried summarily: a fine not exceeding the statutory maximum and a further fine not exceeding £50 for each day on which the offence continues after conviction
Offences under the Transfrontier Shipment of Waste Regulations 2007	Triable either way	<ul style="list-style-type: none"> when tried on indictment: a fine or two years imprisonment or both when tried summarily: a fine not exceeding the statutory maximum or three months' imprisonment or both

Annex:

Fine bands and community orders

FINE BANDS

In this guideline, fines are expressed as one of six fine bands (A, B, C, D, E or F).

Fine Band	Starting point (<i>applicable to all offenders</i>)	Category range (<i>applicable to all offenders</i>)
Band A	50% of relevant weekly income	25–75% of relevant weekly income
Band B	100% of relevant weekly income	75–125% of relevant weekly income
Band C	150% of relevant weekly income	125–175% of relevant weekly income
Band D	250% of relevant weekly income	200–300% of relevant weekly income
Band E	400% of relevant weekly income	300–500% of relevant weekly income
Band F	600% of relevant weekly income	500–700% of relevant weekly income

Band F is provided as an alternative to a community order or custody in the context of this guideline.

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium or high). An illustrative description of examples of requirements that might be appropriate for each level is provided below.

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

LOW	MEDIUM	HIGH
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include one or more of: <ul style="list-style-type: none"> • 40–80 hours unpaid work; • prohibited activity requirement; • curfew requirement within the lowest range (for example, up to 12 hours per day for a few weeks). 	Suitable requirements might include one or more of: <ul style="list-style-type: none"> • greater number of hours of unpaid work (for example, 80–150 hours); • prohibited activity requirement. • an activity requirement in the middle range (20–30 days); • curfew requirement within the middle range (for example, up to 12 hours for 2–3 months). 	Suitable requirements might include one or more of: <ul style="list-style-type: none"> • 150–300 hours unpaid work; • activity requirement up to the maximum of 60 days; • curfew requirement up to 12 hours per day for 4–6 months; • exclusion order lasting in the region of 12 months.

The *Magistrates' Court Sentencing Guidelines* includes further guidance on fines and community orders.

