

**The Imposition of community
and custodial sentences
guideline
Consultation**

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The consultation will end on 21 February 2024

About this consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals or organisations who work in, have an interest in, or have lived experience of the criminal justice system.
- Duration:** From 29 November 2023 to 21 February 2024
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council
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- How to respond:** Please send your response by 21 February 2024:
by email to Jessie Stanbrook:
consultation@sentencingcouncil.gov.uk
or by using the online consultation at:
<https://consult.justice.gov.uk/>
- Response paper:** Following the conclusion of this consultation exercise, a response will be published at: www.sentencingcouncil.org.uk
- Freedom of information:** We will treat all responses as public documents in accordance with the Freedom of Information Act 2000 and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.
In addition, responses may be shared with the Justice Committee of the House of Commons.
Our [privacy notice](#) sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines which courts in England and Wales must follow when passing a sentence. The Council consults on its proposed guidelines before they come into force and on any proposed changes to existing guidelines.

What is this consultation about?

The Sentencing Council is proposing to revise the Imposition of community and custodial sentences guideline.

The existing Imposition of community and custodial sentences guideline was issued on 1 February 2017. The Imposition guideline is the overarching guideline for general principles around imposing community orders and custodial sentences, and in what circumstances a custodial sentence can be suspended. It is also the main guideline for guidance on requesting pre-sentence reports and community requirements and includes a sentencing decision flow chart.

More than six years after it was brought into force, changes to legislation, new case law and case management guidance, further evidence about the experiences of individual offender groups in the criminal justice and important sentencing research, alongside a variety of both general and practitioner feedback, led the Council to undertake a comprehensive review. This review started in July 2022 and has now reached the consultation stage. It includes revisions to all of the existing sections of the guideline, and the addition of several new sections.

Summary of the proposed changes

The revised imposition guideline has been restructured to align better with the chronological order of the court's considerations of a case when it is first heard in a sentencing court. As such, the proposed sections of the guideline, and the information contained within them, are now proposed to be in the following order:

1. Thresholds
2. Pre-Sentence Reports
3. Purposes and Effectiveness of Sentencing
4. Imposition of Community Orders
5. Requirements
6. Community Order Levels
7. Imposition of Custodial sentences
8. Suspended Sentence orders

In addition to the restructuring outlined above, much of the existing content has been amended. There are a number of additional sections, or additions or deletions to existing sections have been made as described in more detail below.

Other changes

In addition to the changes consulted on in this document, the Council made other minor changes to the guideline in June 2022 that were not necessary to consult on for various reasons. These are outlined in Annex A.

Responding to the consultation

Through this consultation process, the Council is seeking views on the usefulness, accuracy and clarity of the proposed changes and anything else that you think should be considered.

In the following sections the proposed changes are outlined in detail and you will be asked to give your views. You can give your views by answering some or all of the questions below either by email to consultation@sentencingcouncil.gov.uk or by using the online consultation at <https://consult.justice.gov.uk/>.

What else is happening as part of the consultation process?

This is a 12 week public consultation. The Council has not planned any open public consultation meetings but would be happy to arrange a meeting to discuss any of the issues raised if this would be helpful. Once the results of the consultation have been considered, the updated guidelines will be published and used by all courts.

Question 1: What is your name?

Question 2: What is your email address?

Question 3: Are you answering as an individual? If so, are you happy for your name to be included in the consultation response document?

Question 4: If you are answering on behalf of an organisation, group or bench, please provide the name of the organisation, group or bench.

Background

The development of the current Imposition guideline began in the development of the Breach guideline in 2015/2016, in which Sentencing Council identified a potential issue with suspended sentence orders being effectively treated as more severe forms of community orders by being passed in circumstances where it may be arguable that the custody threshold had not been reached. A significant driver behind the development of the current Imposition guideline was to address this issue; to reinforce the principle that a suspended sentence order is a custodial sentence, not a standalone sentence to be imposed as a level between a community order and a custodial sentence.

The existing Imposition of community and custodial sentences overarching guideline was issued on 1 February 2017 to replace the Sentencing Guidelines Council guideline [New Sentences: Criminal Justice Act 2003](#). After the guideline was published, the Council identified that it may not be being followed as closely as expected – particularly in relation to the imposition of suspended sentence orders – and so the then Chairman issued a letter which emphasised the need for sentencers to follow the guideline. A [review of trend analysis](#) on these sentencing outcomes in March 2023 concluded that the combination of the Imposition guideline and subsequent letter had been effective in directing sentencers' attention to the guideline and clarifying the principles. However, this review acknowledged the limited scope of the research, and affirmed that the Council would be undertaking a wider policy review of the whole Imposition guideline. This project started in July 2022.

This consultation is the culmination of this policy review and the proposed revised Imposition guideline has been drafted with the intention of providing more comprehensive information around the process through which courts should consider the imposition of a community or custodial sentence. This includes but is not limited to fuller guidance around the circumstances in which courts should request a pre-sentence report, reference to important evidence regarding the effectiveness of immediate custodial sentences of 12 months or less and considerations courts should take into account for specific cohorts in the criminal justice system that are pertinent to the sentencing decision process.

Key changes and additions have been proposed based on the Council's focus on the importance of ensuring courts have the most comprehensive information available to them about the circumstances around the offence, the offender (and any history of compliance with previous court orders) and the available sentencing options in their area before making a sentencing determination. Other significant changes are being proposed based on the Council's focus on encouraging courts to use the full breadth of options available to them and the importance of tailoring the sentence to the individual offender and their circumstances.

It is hoped that the revised guideline will improve the consistency of the application of the principles around sentencing community and custodial sentences and will result in the imposition of more tailored and suitable community and custodial sentences.

The Council is aware of the proposed legislative provisions relating to sentencing and, in particular, on suspended sentences, by the Lord Chancellor in the current Sentencing Bill. The Council will follow their progress through Parliament with interest and consider implications for this and any other guidelines, including the need for any amendments, when these provisions have gained royal assent.

Structure and format

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The current structure of the Imposition guideline is not in a sequential order, unlike offence specific guidelines. Following requests from sentencers to restructure the guideline to have a similar 'stepped' approach as in the offence specific guidelines, the Council is proposing to restructure the Imposition guideline, lightly based on the chronology of a sentencing hearing, as below:

1. Thresholds
2. Pre-Sentence Reports
3. Purposes and Effectiveness of Sentencing
4. Imposition of Community Orders
5. Requirements
6. Community Order Levels
7. Imposition of Custodial sentences
8. Suspended Sentence orders

It is hoped that this new structure will encourage sentencers to work through the sections of the guideline in the order in which they are presented, which Council believes sentencers should follow when approaching the sentencing of an offender for a potential community or custodial order. The sections in the revised guideline are newly numbered (section 1 through to section 8) to further encourage this chronological approach. Bullet points are used throughout to aid easier reading of the information, which has also previously been requested by sentencers for this guideline.

While there was some discussion about whether the 'Thresholds' section or 'Pre-Sentence Reports' section should go first as both may be suitable depending on different cases, the Council decided that it is useful for sentencers to have an initial understanding of the level of the sentence and how close it may be to a particular threshold, both for themselves and also, in suitable situations, to give an indication to Probation when a pre-sentence report is requested.

Question 5: Do you agree with the proposed chronological order of the guideline? Would you make any changes?

Thresholds

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The Council is proposing a new first section on thresholds in the revised Imposition guideline, bringing together existing text in the current version of the guideline.

The intention is for the revised guideline to be clearer on when and in what circumstances courts should consider that a case has passed the threshold for a community order or a custodial sentence by bringing together all the relevant guidance into one place, and structuring this guidance into two halves; one which sets out guidance on the community order threshold, and one which sets out guidance on the custodial sentence threshold.

It starts with acknowledgement that in many cases the court will first be looking at an offence specific guideline to determine whether a case has passed the community or custodial threshold; or when there is no offence specific guideline, a consideration of the harm and culpability, and any relevant previous convictions. There is a new reference and direct link to the General guideline in the first paragraph to remind sentencers that this guideline applies where there is no relevant offence specific guideline.

The section then sets out general principles around both the community order threshold and custodial sentence threshold. Some of these principles are already in the current 'general principles' section (for example, that sentencers must consider all available disposals at the time of sentence even where the threshold for a community order has been passed) and the current Imposition of custodial sentences section (for example, under the first question 'Has the custody threshold been passed?' - A custodial sentence must not be imposed unless the offence or the combination of the offence and one or more offences associated with it was so serious that neither a fine alone nor a community sentence can be justified for the offence.)

While previous convictions are a statutory aggravating factor, legislation does not say how or how much the seriousness of the offence must be aggravated due to previous convictions; this is left up to the discretion of the court. The Council therefore considered issues around previous convictions in their discussions on the Thresholds section, including some academic research which discussed the substantial number of offenders committed to custody by virtue of their previous convictions rather than the seriousness of the current offence (for example, in Roberts and Harris, 2017, Reconceptualising the Custody Threshold). Previous convictions were formerly considered by Council in the [Theft offences guideline assessment](#), published in 2019, which found that the application of previous convictions were likely increasing the severity of sentencing after the guideline was introduced, both from data and from a considerable number of responses to a free text question on the single most important factor affecting sentencing being previous convictions.

The expanded explanation for the statutory aggravating factor of previous convictions in offence specific guidelines sets out both that previous convictions might indicate an underlying problem that could be addressed more effectively in the community, but also that previous significant persistent offending may warrant crossing the community or custodial threshold even if the current offence normally warrants a lesser sentence.

The Council wished to ensure that the influence of previous convictions is only in very rare cases the reason for a case crossing a community or custodial threshold when the current offence would not warrant that. In line with a general approach to encourage sentencers to consider a wider range of community sentences, both in the length of the order and in the combination of requirements (outlined in more detail in other sections of this consultation), it is proposing to limit this with the line:

Relevant previous convictions will be an aggravating factor increasing the seriousness of the offence. They will affect the intensity and length of a community sentence and the length of a custodial sentence. Great caution must be exercised before the existence of relevant previous convictions is used as the sole basis to justify the case passing the custody threshold.

The Council also proposes that the thresholds section in the revised guideline reiterates the line in the expanded explanation for previous convictions that numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction) that could be addressed more effectively through a community order with relevant requirements, and will not necessarily indicate that a custodial sentence is necessary. The Council believes it is important to encourage sentencers to think more broadly across the possibilities that different requirements imposed as part of a community order can bring, rather than automatically 'ratcheting up' to a custodial sentence when faced with an offender with multiple previous convictions, especially if the offence does not necessarily pass the custodial threshold on its own.

The inclusion of this new unified section on thresholds is intended to ensure that all the guidance for considering whether a case has passed a community or custodial threshold is clearer, more comprehensive, and importantly, all together in one place at the start of the guideline so courts consider this at the beginning of their sentencing determinations.

Question 6: Do you have any comments on the unified thresholds section?

Pre-sentence reports

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The Council is proposing a new unified and more comprehensive section on pre-sentence reports (PSRs) in the revised guideline.

A 2023 Ministry of Justice publication on '[The impact of oral and fast delivery pre-sentence reports \(PSRs\) on the completion of court orders](#)' showed statistically significant evidence that those who received an oral or fast delivery (written – short format) PSR in 2016 were more likely to successfully complete their court order compared to a group of similar offenders who did not receive a PSR. The Council believes that PSRs are an important tool to ensure the court has relevant information about an offender and the offence, and other relevant considerations for sentencing such as risks and needs.

The current guideline has separate information on PSRs in both the Imposition of community orders and the Imposition of custodial sentences sections. [Section 30\(2\)](#) of the Sentencing Code 2020 sets out that the “the court must obtain and consider a pre-sentence report before forming the opinion...” The Council agreed that it was important that the guideline is clear that PSRs, when requested, should be done so prior to a final sentencing decision. As such, the Council agreed it was important to bring all guidance on pre-sentence reports together in the same place, regardless of whether the eventual sentence imposed would be a community or custodial sentence, and is proposing this new section as the second section in the revised guideline.

The first line of the revised PSR section on the statutory requirement to request a PSR is intended to align more closely with the legislation referred to above, applicable regardless of the eventual sentence. The Council also believed it was of benefit to make reference to and provide a link to the Before Plea Protocol, which can save time in some relevant cases. This Protocol is also referenced in the [Better Case Management Revival Handbook](#).

The Council believes that more comprehensive guidance on PSRs is necessary generally. Across the criminal justice system, there is differing and sometimes conflicting guidance on PSRs. There is also limited guidance in both the Criminal Procedure Rules and Criminal Practice Directions on the process for requesting a PSR and what it should cover, save for those specifically requested on committal to the Crown Court. With the revision of the Imposition guideline, the Council aims to provide better and more comprehensive uniformity of guidance surrounding pre-sentence reports.

In the legislation, the direction that courts must obtain and consider a pre-sentence report is followed by “unless...the court considers...that it is unnecessary to obtain a PSR”. The Council considered setting out what might make a request for a PSR unnecessary in some detail, and concluded that it did not wish to risk limiting the ability for courts to request PSRs in cases in which it may be beneficial. It is therefore proposing to set out when a PSR is necessary, covering the range of information that Probation could offer courts through the report, and proposes to suggest that a PSR may be unnecessary only if the offender is likely to receive a discharge or a fine.

Cohorts

The Council is proposing to include a list of cohorts for whom a pre-sentence report may be particularly important. Reports from various parliamentary committees, various Inspectorates and other research has placed considerable importance on pre-sentence reports for different cohorts of offenders. The [Equal Treatment Bench Book](#) sets out that “Pre-sentence reports may be particularly important for shedding light on individuals from cultural backgrounds unfamiliar to the judge” and, for example, that “Pre-Sentence Report (‘PSR’) writers must consider requesting a full adjournment for the preparation of a PSR where offenders disclose that they are transgender”.

The current expanded explanations for mitigating and aggravating factors which are presented as drop downs within offence specific guidelines (and the general guideline) outline the value of PSRs for some specific cohorts, such as: primary carers (in the expanded explanation for the factor sole or primary carer for dependant relatives), young adults (in the expanded explanation for the factor age and/or lack of maturity), offenders with various learning disabilities or mental disorders and offenders who have been the victims of domestic abuse, trafficking or modern slavery. The Joint Committee of Human Rights placed particular importance on PSRs for primary carers (Joint Committee on Human Rights: The right to family life: children whose mothers are in prison; Twenty-Second Report of Session 2017–19), HM Inspectorate for Probation placed particular importance on PSRs for black, Asian and ethnic minority offenders (HM Inspectorate of Probation: Thematic Inspection on Race equality in probation: the experiences of black, Asian and minority ethnic probation service users and staff), and the Justice Select Committee placed particular importance on PSRs for female offenders (House of Commons Justice Committee: Women in Prison, First Report of Session 2022–23).

In order to unify all guidance on PSRs and bring together all the cohorts the Council considered relevant to this direction, it is proposing a comprehensive list of cohorts for whom a PSR may be particularly important, on a discretionary basis. This list is non-exhaustive. As proposed in the revised guideline, these are offenders who are:

- at risk of a custodial sentence of 2 years or less
- a young adult (18-25 years)
- female (see further information below at section 3)
- pregnant (see further information below at section 3)
- Sole or primary carer for dependent relatives
- from an ethnic minority, cultural minority, and/or faith minority community
- has disclosed they are transgender
- has any drug or alcohol addiction issues
- has a learning disability or mental disorder
- or; the court considers there to be a risk that the offender may have been the victim of domestic abuse, trafficking, modern slavery, or been subject to coercion, intimidation or exploitation

Indication of sentence to Probation

The Council received suggestions from the Justices’ Legal Advisers and Court Officers’ Service (formerly the Justices’ Clerks’ Society) for amendments to the PSR section to provide sentencers with more guidance on when to give, or not give, an indication of sentence and what information should be highlighted to Probation when requesting a PSR, which the Council considered important improvements. For magistrates’ courts in particular, it is considered useful for courts to indicate a preliminary level of harm and

culpability that it has found for the offence when requesting a PSR, and/or any specific requirements the court would like Probation to consider the offender's suitability for or any specific issues to be addressed. This allows Probation to target their assessments and assess the offender's suitability only for the range of possible sentences and requirements that the court may impose, rather than any that are not likely to be imposed, but does not commit the sentencing bench to any particular sentence or requirement.

Therefore, in the revised guideline, the Council is proposing a line suggesting that it may be helpful for the court to indicate to Probation the preliminary level of harm and culpability it has found for the offence, as well as any specific requirements that Probation should consider the defendant's suitability for and/or any issues or concerns the court would specifically like to be addressed. The Council intends for this direction to ensure courts supply Probation with a better expectation of what the assessments may be that are required for a particular offender and encourage the most relevant and suitable recommendations in PSRs, but does not 'tie the hands' of the sentencing bench to any particular sentence or requirement.

Adjournments and on committal

The number of written PSRs has substantially decreased in recent years (see [Offender Management Statistics](#)) and this has been an area of concern for the Ministry of Justice, outlined in the 2020 white paper, [A Smarter Approach to Sentencing](#). Academic Gwen Robinson noted in her Sentencing Academy paper 'Pre-Sentence Reports: A review of policy and practice published in October 2017 that "*the drive to enhance the efficiency of criminal justice processes and to speed up the disposal of criminal cases*" was the most significant reason for the move from written to oral reports over the years.

The Council considers that the need for efficiency has intensified as a consequence of the pandemic and the continued court backlogs make speedy justice an understandable concern, in particular for victims. However, noting the importance of a PSR in determining suitability of different sentences or requirements, and risk assessments (including risk to the victim), the Council believes it is important that sentencers adjourn for pre-sentence reports where an adjournment is necessary to collect the information needed for a quality report. There are a significant number of assessments that Probation must complete as part of the PSR process and this is influenced by the offender's individual needs. Without these assessments in some cases, the sentencer may not have the most informed view of the offender's circumstances and risks as is possible, or a complete assessment of the offender's suitability for a particular requirement. This risks a sentence that is unsuitable for the offender and their needs, and/or the failure of that sentence not being completed. HM Inspectorate of Probation in their report in 2021 stated that: "Poorer quality reports that fail to consider all relevant factors run the risk of service users receiving more punitive sentences" (Race equality in probation: the experiences of black, Asian and minority ethnic probation service users and staff, HM Inspectorate of Probation; March 2021). Therefore, the Council is proposing that the revised guideline sets out that PSRs may require an adjournment to allow time for the necessary information to be collected by Probation, and for courts to liaise with Probation to understand whether an adjournment is necessary.

The [Criminal Practice Directions](#) and the [Better Case Management Revival Handbook](#) outline that where a magistrates' court is considering committal for sentence, or the defendant has indicated an intention to plead guilty in a matter which is to be sent to the Crown Court, the magistrates court should request a PSR for the Crown Court's use if it considers that (a) there is a realistic alternative to a custodial sentence; or (b) the defendant may satisfy the criteria for classification as a dangerous offender; or (c) there is

some other appropriate reason for doing so.” These same conditions apply to a court requesting a PSR in the case of a defendant, not having done so before, indicating an intention to plead guilty to his representative after being sent for trial but before the Plea and Trial Preparation Hearing.

The Council believes that a PSR request on committal to a Crown Court allows for the report to be available on first appearance, reducing the need for adjournments, and gives Probation more time to gather necessary information. This in turn gives Probation increased capacity for on the day or oral reports for cases not captured at magistrates’ courts’, and encourages proactivity rather than reactivity in report writing. Reports done in advance of the first appearance at Crown court allows for a greater chance that the sentencing judge is made aware of any influential circumstances the defendant may not have previously disclosed, such as caring responsibilities or vulnerabilities on one hand, or risks such as domestic abuse concerns on the other hand, that may influence the potential type of sentence. The Council therefore proposes to include direction that a PSR should be requested on committal to allow Probation as much time as possible to prepare a quality report, minimise any delay and reduce the risk of the need to adjourn at the first hearing.

Finally, in the current pre-sentence report paragraph in the custodial sentence section it was highlighted to the Council that the second bullet point “*the length of imprisonment which represents the shortest term commensurate with the seriousness of the offence*” is not clearly understood. This has been resolved in the proposed revision.

Question 7: Do you have any comments on the first part of the pre-sentence report section, before the list of cohorts?

Question 8: Do you agree with the general inclusion of, and specific cohorts included, in the list of cohorts in the pre-sentence report section?

Question 9: Do you have any comments on second part of the PSR section, specifically on the court giving an indication to Probation, adjournments and on committal?

Deferred sentencing

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The Council is proposing new text on deferred sentencing in the revised imposition guideline, along with further information contained in a drop down underneath this text.

There is currently no reference to deferred sentencing in any sentencing guidelines. Guidance on deferred sentencing was previously held in the Sentencing Guidelines Council guideline [New Sentences: Criminal Justice Act 2003](#), and some guidance is currently set out in the explanatory materials to magistrates' guidelines ([Deferred Sentences](#)). This page is not currently referred to or linked to in any guideline and can only be found through the website search function or through the explanatory materials page. There is no mention of deferred sentencing in the Criminal Procedure Rules or Criminal Practice Directions, nor the Better Case Management (BCM) Handbook. The Equal Treatment Bench Book (ETBB) mentions deferred sentencing, and specifies offender needs that may be addressed during a deferral period, namely addiction or mental health.

Most of the principles set out in the proposed Deferred Sentencing section already exist in the guidance in the current explanatory materials on Deferred sentences, linked above. The Council wished to specify in the revised guideline in what circumstances deferring sentencing should be used, proposing that "Sentencing should only be deferred where at the point of the first sentencing hearing there is no basis for imposing a non-custodial sentence forthwith but there is a real prospect that a period of deferment will allow the imposition of a non-custodial sentence." The Council believes deferring sentencing can be a valuable tool in appropriate circumstances, but that it is important to retain the direction that deferred sentencing will be appropriate only in very limited circumstances. Magistrates in particular should always consult their legal adviser if they are considering deferring a sentence. The Council is also proposing the inclusion of a line that references young adults (18-25 years of age) as a cohort of offenders for whom deferring sentence may be particularly appropriate, along with offenders in transitional life circumstances.

The Council is proposing that remaining information on deferred sentencing is contained in a drop down. A significant amount of the text in the proposed drop down is very similar to that in the current explanatory materials guidance. Much of this information is based on the legislation on deferred sentencing, and the Council does not necessarily intend to influence the use of deferred sentencing by courts. It believes, however, that it is useful to refer to deferred sentencing in the revised Imposition guideline, so that when deferred sentencing is being considered by the court there is easily accessible information.

Finally, the Council is proposing a direct link to the statutory provisions on deferment to ensure that sentencers are able to easily navigate to the full legislative provisions should they consider it appropriate.

Question 10: Do you agree with the inclusion of, and information proposed on deferring sentencing?

Purposes and effectiveness of sentencing

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The Council is proposing a new section on Purposes and Effectiveness of Sentencing in the revised Imposition guideline.

Despite the statutory five purposes of sentencing not being in the current Imposition guideline, it does make reference to them generally, and some individual purposes in a few different places, including in the first line “Community orders can fulfil all of the purposes of sentencing”, and for the latter, most notably punishment, across other sections in relation to the community requirements.

There have been some external calls for guidelines to give more direction to sentencers in referring to the purposes of sentencing, and in particular the importance of rehabilitation as one of these purposes. In response to the Council’s consultation: [What next for the Sentencing Council?](#) in September 2020, the Prison Reform Trust set out that rehabilitation is important for reoffending, making reference to guideline development.

“The CJA 2003 states that the process of sentencing involves a balance of five purposes, only two of which (the reduction of crime (including its reduction by deterrence) and the reform and rehabilitation of offenders) are relevant to reoffending. However, the Council should be transparent about what purposes it chooses to prioritise and the evidence, including on reoffending, that goes into informing its deliberations.”

Transform Justice also set out in their 2020 paper ([The Sentencing Council and criminal justice: leading role or bit part player?](#)) by Rob Allan, that:

“The Council’s guideline on overarching principles rightly points out that courts need to consider which of the five statutory purposes they are seeking to achieve through the sentence that is imposed, but offers no guidance about how courts should set about choosing the purpose in a particular case. Prioritising reform, rehabilitation and reparation will in most cases lead to a more effective sentence than simply choosing punishment.”

The terminology used in [section 57](#) of the Sentencing Code is that the “court must have regard to the following purposes of sentencing”. The Council is proposing that the new line referencing the five purposes of sentencing is aligned with legislation. It is also proposing the inclusion of some principles that it believes are important to remind sentencers of on this topic, for example, that the weighting that each purpose of sentencing should be given will vary from case to case, and that both community and custodial sentences can fulfil all of the purposes of sentencing. These have been included in the first line of the Purposes and Effectiveness of Sentencing section.

Effectiveness

Increasing academic research has covered the importance of rehabilitation in reducing reoffending. A [literature review](#) commissioned by the Council published in September 2022

highlighted that: short custodial sentences are less effective than other disposals at reducing reoffending, increasing lengths of sentences is not effective for reducing reoffending for offenders with addiction or mental health issues and sentences served in the community may be more effective at promoting positive outcomes, among other things. The Council believes it is important to reflect the findings of this report in the revised Imposition guideline.

A [report](#) by academic Anthony Bottoms published in February 2018 suggested an extra step in offence specific guidelines to remind sentencers to consider whether custody was unavoidable. More recently, the [report](#) commissioned by the Council on Equality and Diversity in the work of the Sentencing Council also suggested an extra step to the sentencing process in offence-specific guidelines for sentencers to “review the sentence they had arrived at with mitigating factors and the offender’s personal circumstances in mind.” The Council believes that proposals for the pre-sentence report section of this guideline resolves some of the issues around courts not having or applying relevant matters relating to an offender’s personal circumstances when sentencing. However, the Council does believe that rehabilitation should be considered in all cases and as such, is proposing an extra step in the Purposes and Effectiveness of Sentencing section. This intends to ensure that sentencers are reminded to step back and review whether the sentence they have preliminarily arrived at fulfils the purposes of sentencing. The Council has consciously not used the term “all” before purposes of sentencing, as it does not believe that every sentence should fulfil all the purposes of sentencing, but that the court must have consciously considered the purposes of sentencing in imposing the sentence.

While this fact will be well known and applied by many sentencers already, the Council believed it was also important to set out directly that the effectiveness of a sentence will be based on the individual offender. The Council hopes that this reminder will ensure courts always take any relevant personal circumstances into account to tailor the most suitable sentence for that offender and their individual circumstances. Various proposals to the revised community order and levels sections of the guideline also follow this principle.

Finally, the Council also felt it was important to reference the Equal Treatment Bench Book again in this section which covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It is also proposed that the guideline highlights and links to the overarching guideline on the [sentencing of offenders with mental disorders, developmental disorders, or neurological impairments](#) so sentencers are able to easily navigate to this guideline should it be relevant.

Question 11: Do you have any comments on the Purposes and Effectiveness of Sentencing section?

Young adult offenders

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The Council is proposing a new drop down section on young adults within the Purposes and Effectiveness of Sentencing (“Effectiveness section”) of the revised Imposition guideline.

In November 2021, the Council made a commitment in its [response](#) to its What Next for the Sentencing Council consultation to “Consider whether separate guidance is needed for female offenders or young adults by conducting an evaluation of the relevant expanded explanations”. This review has now begun and the Council intends to publish it in 2024. The Council considered that the Imposition guideline was the appropriate place to set out some points in principle for courts when sentencing young adults offenders.

The independent report that the Council commissioned on [Equality and Diversity in the work of the Sentencing Council](#) considered issues around ‘adulthood’ of children, a point which can affect young adults, for example, who have recently turned 18 (particularly acute for males, looked-after children and those leaving care). The report recommended the Council considers ways in which more guidance can be issued for sentencing young adults to improve consistency and precision in sentence reduction for young adults.

Sentencing considerations for sentencing young adults (aged 18-25) are already contained within the mitigating factor ‘Age and/or lack of maturity’ in the [General Guideline](#) and various offence-specific guidelines in which ‘Age and/or lack of maturity’ is listed as a relevant mitigating factor. The text in the revised Imposition guideline, therefore, is very similar to this text.

It should be noted in this part of the consultation that there is also reference to young adults in the drop down on deferred sentencing. The line reads “Deferred sentencing may be particularly appropriate for young adults (18-25 years of age) or those who are in transitional life circumstances.” This is discussed in more detail in the deferred sentencing part of the consultation and any feedback on this in particular should be included in that section of the consultation.

Question 12: Do you have any comments on the new section on young adult offenders?

Female offenders

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The Council is also proposing a new drop down section on female offenders within the Effectiveness section of the revised Imposition guideline.

There is currently no reference to the sentencing of female offenders in any of the sentencing guidelines or other guidance material published by the Sentencing Council. As set out in regard to young adult offenders, in November 2021, the Council made a commitment in its [response](#) to its What Next for the Sentencing Council consultation to “Consider whether separate guidance is needed for female offenders or young adults by conducting an evaluation of the relevant expanded explanations”. As stated earlier, this expanded explanations review has begun and the Council intends to publish it in 2024.

Since this commitment was made, the Justice Select Committee in their report [Women in Prison](#) in July 2022 recommended the Sentencing Council consider whether an overarching guideline or guidance for sentencing female offenders is required. More recently, the [literature review](#) commissioned by the Council published in September 2022 set out the myriad of issues for sentencing female offenders as well as reoffending data that showed that females are least likely to reoffend when cautioned (12.1 per cent) and most likely to reoffend when given custody (56.1 per cent).

Considering the Imposition guideline applies whenever the court is considering a community or custodial sentence, the Council agreed it was a suitable place to contain points of principle on sentencing female offenders. This does not negate the possibility that a separate overarching guideline for sentencing female offenders could be developed in the future if required, but it is considered a timely opportunity for these points of principle to be set out in an appropriate guideline and to consult on them.

There is a significant amount of research that has been done on the causes of, consequences of, and responses to female offending and sentencing of female offending. The Council has reviewed various research sources on women in the criminal justice system, including the Justice Select Committee Women in Prison report, the Joint Committee on Human Rights report ‘[The right to family life: children whose mothers are in prison](#)’, the Welsh Parliament Equality and Social Justice Committee’s report on [Women’s experiences in the criminal justice system](#), Prison Reform Trust research ‘[Sentencing of mothers](#)’, [research on women](#) from the HM Inspectorate of Probation, and various academic articles on related subjects, such as [An analysis of the impact of maternal imprisonment on dependent children in England and Wales](#) by Dr Shona Minson in the Criminology and Criminal Justice Journal, as well as statistics on women and the criminal justice system from the Ministry of Justice and other government publications such as the Ministry of Justice [Female Offender Strategy](#).

This research has been the basis for the Council’s proposed drop down on female offenders. The Council believes it is important to set out that female offenders offend for different reasons than men and that the impact of custodial sentences on female offenders is different to male offenders. The text proposed covers potential causes of female offending, the fact that women from an ethnic minority background in particular have

distinct needs from both men from an ethnic minority background, and white women, and other issues relating to the differences between female and male offenders.

Within this drop down, the Council is also proposing lines on the sentencing of pregnant offenders. The [report](#) commissioned by the Council on Equality and Diversity in the work of the Sentencing Council recommended that pregnancy should be a distinct item where medical conditions are mentioned. The Council is also aware of several reports published in recent years that indicate that there have been issues with the care of pregnant women and their children in prison and the Council has received representations from campaign groups on this issue.

The current expanded explanation for the factor of Primary or Sole Carer currently states that “when sentencing an offender who is pregnant relevant considerations may include: any effect of the sentence on the health of the offender and any effect of the sentence on the unborn child”. The Council is therefore proposing that the revised Imposition guideline makes reference to pregnancy in multiple places; first in the list of cohorts for whom a PSR may be particularly important (which is distinct from both the primary carer cohort and female offender cohort), and then in more detail in the proposed female offenders drop down, specifying that:

“The impact of custody on pregnant offenders can be harmful for both the offender and the child. Women in custody are likely to have complex health needs which may increase the risks associated with pregnancy for both the offender and the child. There may also be difficulties accessing medical assistance or specialist maternity services in custody.”

A similar paragraph is currently being consulted on as a proposed new factor on Pregnancy and Maternity in [Miscellaneous amendments](#) consultation and any feedback in this consultation may also be taken into account in Imposition guideline review.

It is worth noting that pregnant offenders are also referenced in the Imposition of custodial orders section, under the question ‘Is it unavoidable that a custodial sentence be imposed?’. Here, the Council proposes amending the current line on the same topic to “a custodial sentence may become disproportionate to achieving the purposes of sentencing where there would be an impact on dependants, including on unborn children where the offender is pregnant. Courts should avoid the possibility of an offender giving birth in prison unless the imposition of a custodial sentence is unavoidable.”

The Council is also consulting on adding a line on menopause within the female offenders drop down. While the Council is aware that there is very little research on the link between menopause and offending, there is research and evidence on the link between menopause and mood changes, behaviour changes and the impact on mental health. The Council felt it would be of benefit to remind sentencers of the potential effects of menopause and perimenopause of women within a certain age range. The age range proposed to be included (typically aged 45 to 55) is in line with NHS guidance on menopause.

While the length of the proposed drop down on sentencing female offenders may be considered disproportionate to the number of females sentenced to community and custodial offences compared to males, the Council believes it is important to set out the points of principles as comprehensively as possible.

Question 13: Do you have any comments on the new section on female offenders?

Imposition of community orders

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The Council is proposing some minor amendments and additions to the Imposition of community orders section.

Most of the text in the proposed revised version of the Imposition of community orders section is already contained in various places in the current guideline. The proposal is to include it all within the Imposition of community orders section to bring together like information. The Council is proposing including that the maximum term of a community order is 3 years. This is in an effort to ensure that all important information related to the imposition of community orders is contained in one place to aid sentencers with different levels of experiences.

The Council is also proposing new text in the Imposition of community orders to support sentencers in determining the length of a community order and how to take into account time remanded in custody or on qualifying curfew before imposing a community order. This was prompted in part by the case of *R. v Dawes* [2019] EWCA Crim 848, where an offender was sentenced to 21 days suspended for two years despite having served 83 days on remand.

This information is proposed to be included in two separate drop downs within the Imposition of community orders section, one on 'Determining the length of a Community Order' and one on 'Time remanded in custody or on qualifying curfew before imposing a community order'. The Council proposes this format as this information will not always be relevant or need to be accessed in every case, so sentencers will not have to scroll through it if it is not necessary, but simply drop down the information when it is.

Question 14: Do you have any comments on the imposition of community orders section?

Question 15: Is the new guidance on determining the length of a community order and how courts should consider time remanded in custody or on qualifying curfew clear?

Requirements

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The Council is proposing various changes to the requirements section of the revised Imposition guideline.

There are 14 requirements that may be imposed as part of a community order under legislation, and only 12 of these are listed in the current Requirements section under Community Orders. The two requirements that are not listed are Electronic Monitoring requirements. While the electronic compliance monitoring requirement is not applicable without the imposition of at least another relevant order (such as curfew), the electronic whereabouts monitoring requirement may be imposed without the imposition of another requirement (though in reality is likely to be imposed with another requirement). The Council wishes to ensure that the list of requirements is aligned with the legislation to limit any potential confusion for any stakeholders using the guidelines, therefore it has included the two electronic monitoring requirements in the list in the Requirements section.

These requirements are proposed to be presented in a list of drop down information so this substantial volume of new information does not impact a user's ability to scroll through the guideline easily. While the new structure and order of the Imposition guideline means that it is intended that sentencers scroll through the sections in order, some requirements simply will not be a possibility for some offenders and cases, and therefore the drop down list is being proposed for sentencers to only drop down information against requirements that are relevant to the case they are considering.

The Council's [user testing project](#) found that guideline users are most comfortable with an arrow indicating a drop down box (rather than just an underline), and therefore this is the format that has been suggested for the drop down information against each of the requirements. This allows sentencers to expand the information for any requirement that they are considering without having to read through unnecessary information.

The Council is proposing new comprehensive information against each of the requirements in the requirements list. The information against each of the requirements in the current guideline is not consistent: some of the requirements have detail on their applicability, some have detail on their range and duration and some have detail on the considerations sentencers must take into account before imposing. The Council's intention with the proposed revisions to the requirements section is to make information against each of the requirements consistent and for this information to be much more accessible and much clearer.

This proposed information broadly covers, for each requirement: an overview of the requirement, the volume, length or range of that requirement, and factors that courts should consider when considering imposing them. Specifically, the Council considered it important to include direction on what Probation can or should include as part of a PSR to assess an offender's suitability for relevant requirements. These proposals have been discussed with the HMPPS Probation Court Strategy and Change team. The Council is also proposing text against relevant requirements to safeguard victims where requirements imposed may impact them in certain situations; for example for curfew, that the court must

ensure safeguarding and domestic abuse enquiries are carried out on any proposed curfew address to ensure the accommodation is suitable, others will not be put at risk and the homeowner agrees to the curfew, particularly where vulnerable adults and children are involved. Ordinarily this is a function performed by Probation.

The proposed 14 drop down boxes with information against each of the requirements are in the same order as in the current guideline. This reflects the order in which they are set out in schedule 9 to the Sentencing Code.

The Council has also proposed the inclusion of a table at the end of the guideline with the information against each of the requirements in a table, to cater for sentencers and stakeholders who may find the information easier to access in this format. This table is also proposed to be offered as a downloadable option to save or to print out, as it is not considered that the information against each of these requirements will change very regularly.

Question 16: Do you have any comments on the new information against each of the requirements in the requirements section?

Community order levels

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The Council is proposing some amendments to the community order levels section and corresponding table.

The listed requirements and corresponding intensity and duration in each of the low, medium and high ranges of the community order levels table has not been substantially changed since their inclusion in the Sentencing Guidelines Council guideline [New Sentences: Criminal Justice Act 2003](#). While the current narrative around the levels table states the suggested requirements and corresponding durations are simply ‘examples that might be appropriate’ and courts therefore have the power to depart from these suggestions, the table alludes to a straight sliding scale of volume and duration of both punitive and rehabilitative requirements according to the level of the community order.

The original SGC guideline included the line “In all three ranges there must be sufficient flexibility to allow the sentence to be varied to take account of the suitability of particular requirements for the individual offender and whether a particular requirement or package of requirements might be more effective at reducing any identified risk of re-offending. It will fall to the sentencer to ensure that the sentence strikes the right balance between proportionality and suitability,” alluding to the intention of these suggestions to be used flexibly.

Given the evidence on the effectiveness of sentences discussed in the Purposes and Effectiveness section above, the Council believes that this flexible approach to the levels table should be highlighted, to ensure that community orders are tailored to the individual offender, reflecting the personal circumstances, risks and needs of that offender.

The proposed revisions to the levels table do not go as far as changing the three levels (low, medium, high) as there is no evidence that points to these levels no longer being appropriate. Instead, the amended narrative before the levels table itself seeks to encourage sentencers to consider the full breadth and combinations of requirements that can be imposed on a sentence, and for requirements to be imposed after an assessment of the most effective sentence for the particular offender. The Council hopes that a highlighted focus on the suitability of sentences for offenders will result in the greatest likelihood of the order being completed.

The first of the proposed changes to the levels table in line with these principles is the removal of the line suggesting the specific number of requirements that are appropriate according to each level. In the current guideline, the levels table suggests that only one requirement will be appropriate for a low level community order, and that two or more requirements may be appropriate for a high level community order. However, the Council believes that the seriousness of the offence and the needs of an offender are not necessarily aligned; at its most stark, an offender who commits a low level crime may have high rehabilitative needs, and an offender that commits a high level crime may have low rehabilitative needs. The current suggestion in the levels table that only one requirement will be appropriate for a low level community order may unnecessarily limit sentencers’ ability to address offenders’ needs. For example, a sentencer would have to justify the

imposition of rehabilitative requirement in addition to a punitive requirement on a low level community order, as currently “only one requirement will be appropriate” and one requirement must be imposed for the purposes of punishment. In the same way, a sentencer would have to justify the imposition of only one requirement (regardless of how intensive it is) on a high level community order.

The Council intends for this change to result in courts imposing a greater range and breadth of different community orders with different combinations of requirements, for example, the imposition of a rehabilitative requirement as well as a low level punitive requirement on an offender who has only committed a low level offence but has high needs so their needs can be addressed through, for example, referral to commissioned rehabilitative services.

The second of these changes furthers the Council’s approach that rehabilitative requirements should be determined by the offender’s rehabilitative needs rather than the seriousness of the offence. In the current guideline, the first bullet point in the current table under ‘suitable requirements might include’ reads “any appropriate rehabilitative requirement(s)”. While it does not suggest any increasing number of days across the three levels, the requirements immediately following it do, which may indicate that rehabilitative requirements should increase in volume with the level of the order. In advice written in 2004 from the Sentencing Advisory Panel to the Sentencing Guidelines Council on the new sentencing framework introduced by the Criminal Justice Act 2003, it was alluded to that suggested ranges in the levels table should apply only to punitive requirements.

“The non-exhaustive list of examples of requirements that might be appropriate in the three sentencing ranges focus on punishment in the community, although it is recognised that not all packages will necessarily need to include a punitive requirement. There will clearly be other requirements, such as a residence requirement or a mental health treatment requirement that may or may not be appropriate according to the specific needs of the offender. In addition, when passing sentence in any one of the three ranges, the court should consider whether a rehabilitative intervention such as a programme requirement or a restorative justice intervention might be suitable as an additional or alternative part of the sentence.” (para 77, page 22)

It is clear that requirements being imposed for the purposes of punishment should generally increase in duration/intensity across the levels of community order depending on the seriousness of the offence, however the Council believes this should not be the case for rehabilitative requirements. The Council is therefore proposing removing the bullet point for rehabilitation requirements in the three columns of the table, and instead including a line across all three levels stating that “Any requirement/s imposed for the purpose of rehabilitation should be determined by and aligned with the offender’s needs”. It is also proposing amending the first line in each of the columns from “suitable requirements might include” to “If imposing for the purposes of punishment, suitable requirement ranges might include”, to make this distinction clear.

The current first line of the Community order levels table section reads: “The seriousness of the offence should be the initial factor in determining which requirements to include in a community order.” Further to the above approach, this line is proposed to be amended to specify that:

“The seriousness of the offence should be the initial factor in determining the requirement imposed for the purpose of punishment and its corresponding intensity. Any requirement(s) imposed for the purpose of rehabilitation should be determined by, and align with, the offender’s needs.”

Other proposed lines in the narrative section follow a similar approach, including the proposed line that courts should tailor community orders for each offender according to their specific circumstances and consideration should be given to the broad variety of sentences a community order can offer to be most effective for a particular offender, including different lengths of an order.

The proposed new drop down information on determining the length of a community order in the Imposition of community orders section supports the ability for sentencers to actively determine the length of a community order that is suitable for an offender. (To provide feedback on the information in the drop down on determining the length of a community order specifically, please go to the Imposition of community orders section of the consultation.)

The [Police, Crime, Sentencing and Courts \(PCSC\) Act 2022](#) increased the maximum daily curfew hours and curfew requirement period. The maximum daily curfew hours were increased from 16 hours to 20 hours, and the curfew requirement period was increased from 12 months to 2 years in respect of an offence of which the offender was convicted after the day on which section 150 of the PCSC Act came into force, which was 28 June 2022. The Bill also specified that curfew could not be imposed for “more than 112 hours in any period of 7 days beginning with the day of the week on which the requirement first takes effect.”

After considering a variety of options for how to best reflect these changes in the revised guideline, the Council referred to the policy background within the published Explanatory Notes to the PCSC Act. With this in mind, it is proposing to: change the duration of a curfew requirement from specifying a range (e.g. currently “for a few weeks...for 2-3 months...for 4-12 months”) to using the words “up to”, to give more flexibility to sentencers to define a length of curfew that is most suitable for the offender and their circumstances; slightly increase the potential duration with the proposal of ‘up to’ and the increased maxima in mind (up to 4 weeks in low, up to 6 months in medium and up to 24 months in high); and maintain 16 hours as the intensity of hours in the low and medium level ranges and only change this to 20 hours in the high level range, applicable only for the most serious of offences. Finally, the Council is proposing to refer to the number of hours “in any day” as opposed to “per day” as in the current guideline, to allow for flexibility on different days of the week should the courts consider this of benefit for a particular offender.

Question 17: Do you agree with the new approach to rehabilitative requirements in the Community Order Levels section?

Question 18: Do you have any other comments on the Community order levels section?

Imposition of custodial sentences

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The Council is proposing amendments to the Imposition of custodial sentences section, but the structure and format of the section in the current guideline remains similar.

The Council is proposing a new first line in this section that reiterates the approach to thresholds introduced in the first section of the revised guideline; that a custodial sentence (whether immediate or suspended) can only be considered where the court is satisfied that the seriousness of an offence and all circumstances of the offence and the offender mean that no other sentence is suitable.

The Council proposes to reduce the questions listed for sentencers in determining whether or not a custodial order can be suspended from four to three. The Council considers that the first question in the current guideline ‘Has the custody threshold been passed’ is now already dealt with in the new first section on Thresholds, which brings all guidance on determining the threshold of an offence together into one section. The remaining three questions in this section are the same as those in the current guideline other than minor amendments to make the exact words used more consistent with the rest of the guideline, however it proposes changes and additions to the text under each of these questions.

The first question, ‘Is it unavoidable that a custodial sentence be imposed?’ is proposed to now have a number of bullet points underneath it, some of which are already in the current guideline, and some of which are newly proposed. As stated above in the Effectiveness section of this consultation, the [literature review on Effectiveness](#) commissioned by the Council and published in September 2022 highlighted that short custodial sentences are less effective than other disposals at reducing reoffending, increasing lengths of sentences is not effective for reducing reoffending for offenders with addiction or mental health issues and sentences served in the community may be more effective at promoting positive outcomes, among other things. The Council believes it is important to reflect the findings of this research, which echoes much academic research in this area over the last few years, in the Imposition of custodial sentences section of the guideline as well. As such, it proposes including lines outlining that community orders can be highly punitive, that they last longer than shorter custodial sentences, that they restrict an offender’s day to day liberties and that breach can result in significant adverse consequences.

The Council has also proposed a reference to unborn children where the offender is pregnant and that courts should avoid the possibility of an offender giving birth in prison unless the imposition of a custodial sentence is unavoidable, within the current line stating that a custodial sentence may become disproportionate where there would be an impact on dependants. As introduced above in other sections of this consultation, the [report](#) commissioned by the Council on Equality and Diversity in the work of the Sentencing Council recommended that pregnancy should be a distinct item in guidelines and has received representations from campaign groups on this issue.

The second question, 'What is the shortest term commensurate with the seriousness of the offence?', has a few proposed new lines under it. Similarly, the Council believed it was important to set out here that the [literature review](#) commissioned by the Council on Effectiveness suggested that custodial sentences of up to 12 months are less effective than other disposals at reducing reoffending and can lead to negative outcomes, setting out some of these potential negative outcomes.

Finally, the third question, 'Can the sentence be suspended?' also contains proposed new lines in addition to information that is already within this section in the current guideline. Some of this information is currently contained in the Suspended sentences: general guidance at the end of the current guideline, but the Council considered it to be more relevant under the third question in this section. The proposed text includes a link to the [Breach of Suspended Orders guideline](#) so sentencers can easily access this if relevant, and a direction that the court will usually benefit from Probation's assessment of any relevant circumstances (such as dependents) and whether the offender can be safely managed in the community in the consideration of a suspended sentence order.

The proposed line on statutory minimum terms for offences of 2 years or less, reflects case law on this subject and the Council is proposing its inclusion in an intention to bring together all relevant guidance on the subject in one place.

The Council has retained the table indicating factors to be weighed in considering whether it may be appropriate to suspend a custodial sentence with some proposed changes. First, the left hand column of the table is proposed to now contain factors indicating that it may be appropriate to suspend (rather than the current table containing factors indicating it would not be appropriate to suspend on the left hand column). The Council believes this is a minor but important difference to encourage sentencers to think about the positive factors first. Second, it is proposing an additional fourth factor in the left hand column indicating that it may be appropriate to suspend of "Offender does not present high risk of reoffending or harm". While a factor that could be considered the 'counter factor' is already contained within the column of factors indicating that it may not be appropriate to suspend in current guideline ("Offender presents a risk/danger to the public") the Council believes this is an important addition to slightly balance the factors heavier in the factors indicating it may be appropriate to suspend.

The Council is also proposing to amend the current factor in the column of factors indicating that it would not be appropriate to suspend where there is a 'History of poor compliance with court orders' as it believes it is more important to consider the offender's potential for rehabilitation at the point of sentence rather than on previous convictions. This is in line with other proposals made around previous convictions elsewhere in the guideline and set out in this consultation in detail, in particular in the Thresholds section.

The Council is aware of the proposed legislative provisions relating to sentencing and, in particular, on suspended sentences, by the Lord Chancellor in the current Sentencing Bill. The Council will follow their progress through Parliament with interest and consider implications for this guideline, including the need for any amendments, when these provisions have gained royal assent.

Question 19: Do you have any comments on the Imposition of custodial sentences section? We welcome comments both on content and format/structure.

Question 20: Do you agree with the restructure and new factor in the table of factors indicating it may or may not be appropriate to suspend a custodial sentence?

Suspended sentence orders

Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The Council is proposing some changes to the suspended sentence order section. In the first section, the Council believed it was important to set out the statutory range for which a custodial sentence can be suspended, and the difference between the operational and supervision period. It is also proposing a new paragraph on requirements on a suspended sentence order. While there are some lines on this topic in the current guideline under the table of factors to be weighed in considering whether it is possible to suspend a sentence and under Suspended sentences: general guidance, the Council is proposing this new section to bring information on this topic together.

The first two sentences in this sub section are identical to that in the current guideline, however the Council proposes expanding on this information by referencing the Requirements section of the guideline and reiterates the importance of courts ensuring that requirements imposed are the most suitable for the offender, not excessive and compatible with each other in the case of multiple requirements being imposed.

The Council proposes strengthening the direction that is set out in the current guideline that “A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.” Published [offender management data](#) between 2012-2022 shows that sentencers generally impose more requirements on suspended sentence orders than on community orders, and this has not changed since the introduction of the guideline. The Council therefore proposes setting out more distinctly that requirements imposed as part of a suspended sentence order are more likely to be predominantly rehabilitative in purpose, as the imposition of a custodial sentence, even if suspended, is itself both a punishment and a deterrent.

The Council is also proposing new text in the Imposition of Custodial sentences on determining the operational and supervision periods of a suspended sentence order, as well as how courts should take into account time remanded in custody or on qualifying curfew. These proposals are made on the basis that the court making a suspended sentence order must specify the operational period and supervision period of the order, which are not necessarily the same amount of time. In line with similar proposals in the community order section, it is hoped that the inclusion of this line will remind sentencers to tailor the sentence to the individual circumstances of the offender and the offence, noting some non-exhaustive factors that may be relevant when determining the length of the operational period. The supervision period section also contains proposed non-exhaustive factors which may be relevant when determining the period.

The Council is aware of potential changes to a number of sentencing provisions contained within the Sentencing Bill and Criminal Justice Bill, currently before Parliament. The Council will note the progress of these bills through Parliament with interest and will consider the implications for this, and any other sentencing guidelines, at whatever point the provisions might gain royal assent.

Question 21: Do you have any comments on the suspended sentence order section, including the guidance on requirements of a suspended sentence order?

Question 22: Is the guidance on determining the operational and supervision periods of a suspended sentence order and how courts should consider time remanded in custody or on qualifying curfew clear?

Sentencing flow chart

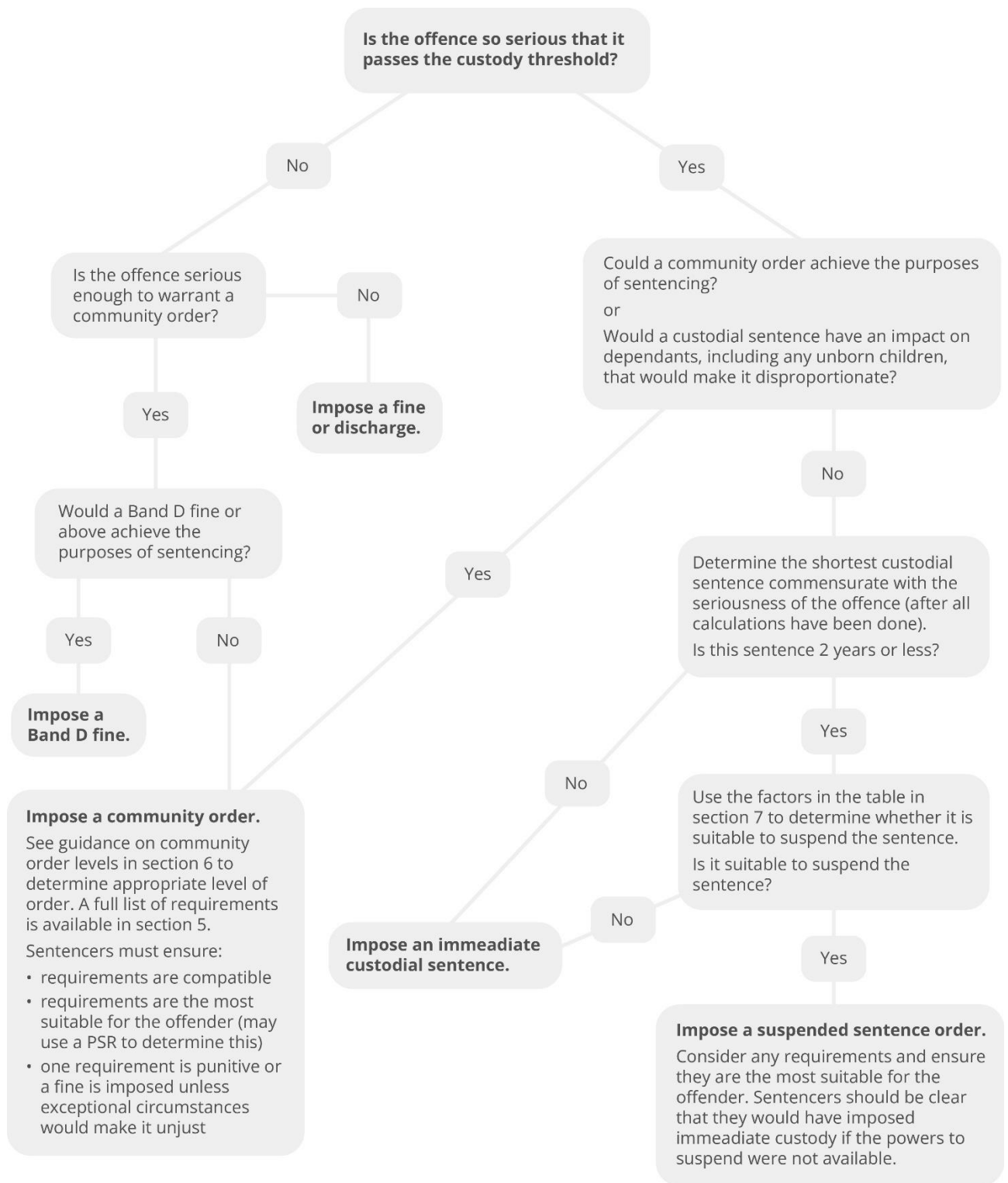
Link to the draft revised imposition guideline: [DRAFT Imposition of community and custodial sentences – revised – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

The flow chart at the end of the current imposition guideline has been updated to align with the proposed new structure and considerations in the revised guideline. The updated flowchart is included below.

Similar to the current flow chart, the revised flow chart starts with a question about thresholds, and similar to the current flow chart, then splits out into two sides broadly covering cases closer to the community order threshold and custodial sentence threshold respectively. On the latter, the second level of questions now reference the purposes of sentencing in addition to the potential impact on dependants including unborn children (in line with the proposed line in the revised guideline).

The flow chart asks sentencers directly whether their determination of the shortest custodial sentence commensurate with the seriousness of the offence is 2 years or less, and then directs sentencers to the factors in the table in section 7 to determine whether it is suitable to suspend the sentence if it is.

All other minor changes made to the flow chart intend to simply align with the proposed changes in the guideline. The Council would be grateful for any feedback on whether this is achieved.



Question 23: Do you think that the flowchart aligns with the proposed new structure in the guideline, and do you have any comments on the sentencing flow chart?

Impact and resource assessment

Resource Assessments consider the resource impact of a new or revised guideline on prison, Probation and youth justice. The [draft resource assessment](#) for the imposition guideline has been published alongside this consultation.

As the document sets out, overall, it will not be possible to quantify precise impacts of the guideline. It is intended that, in the vast majority of cases, the guideline will not change overall sentencing practice but instead assist sentencers to consider a broader range of issues when considering the imposition of community and custodial sentences.

Overall, the guideline is not expected to have a substantial impact on prison resources although it is estimated that the direction of any change would be a reduction. In terms of Probation resource, it is expected that the guideline will lead to changes in the way that Probation resources are required, which may have the effect of an overall increase in demand, but exact changes cannot be quantified.

In particular, the resource assessment sets out possible impacts on Probation resources against each of the restructured and new sections, and new elements of the revised guideline. It suggests that the new direction on consideration of previous convictions in addition to the reference to research showing the inefficacy of short custodial sentences may result in sentencers imposing fewer short immediate custodial sentences. The new direction encouraging broader consideration of the length of community and suspended sentence orders, and the imposition of different lengths/volumes of requirements and combination of requirements, may result in a greater variety in the lengths of orders and volumes and combinations of requirements.

As the resource assessment sets out, changes and additions to the direction on pre-sentence reports may result in increases in requests both for those in particular cohorts and more generally, as well as a possible increase in adjournments. This direction aligns with Probation internal guidance and therefore any increase in demand or impact on Probation resources is unlikely to be solely the result of the revised guideline.

Taken altogether, these changes may lead to an impact in the way that Probation resources are required and will need to be coordinated (for example, between staff in sentence management teams and staff in court teams). The changes will not necessarily result in a net increase (or decrease) on Probation resources required overall, given the Probation resource needed at court, and for both custodial sentences (when offenders are released halfway through their term on licence), and orders served in the community and managed by Probation (suspended sentence orders and community orders.)

To support the development of the guideline and mitigate the risk of the guideline having any unintended impacts that may not have been considered, some small-scale research will be conducted with sentencers during this consultation stage. It is hoped that this research provides further understanding of the likely impact of the guideline on prison and Probation resources, on which to base the final resource assessment accompanying the definitive guideline. There will be, however, some limitations regarding the scenarios that

can be explored because the application of the principles within sentencing decisions are so context dependent and cover such a broad range of offences, so the risk cannot be fully eliminated.

Question 24: Do you have any comments on the resource assessment and/or on the likely impact of the proposals on sentencing practice?

Equality and Diversity

The Sentencing Council considers matters relating to equality and diversity to be important in its work. The Council commissioned a report on [Equality and diversity in the work of the Sentencing Council](#) (“the equality report”) and published this report, alongside the Council’s [response](#) to the report, in January 2023.

The revised guideline is not expected or intended to have any significant negative impacts on any particular demographic group or any group with protected characteristics. Rather, the guideline intends to support more informed sentencing of certain demographic groups and cohorts with some protected characteristics. The review of the Imposition guideline was referenced in a variety of the responses to the recommendations made by the report’s authors.

The first of these was in response to the recommendation of adding an extra step to the existing approach in guidelines to review the sentence the court has arrived at with mitigating factors and the offender’s personal circumstances in mind. This was due to research findings indicating a possibility that the current approach to sentencing places more emphasis on factors that increase sentences as opposed to factors which decrease sentences, which includes mitigation.

The Council has previously considered the necessity of an extra step in guidelines, including in relation to Professor Sir Anthony Bottoms’ [independent review of the Council](#) and in 2020 in relation to the responses to the [consultation on the Council’s strategic objectives](#) for the period 2021-2026. The proposed extra step under Effectiveness at section 3 (Purposes and Effectiveness of Sentencing) is a result of the Council’s recent deliberations on the subject and to reflect the findings in particular to the [literature review](#) commissioned by the Council on Effectiveness published in September 2022.

Regarding mitigating factors specifically, the Council’s own research with sentencers indicates that sentencers do consider relevant mitigating factors, but the Council considered there may be an issue with the amount of information sentencers are aware of about a case rather than sentencers not applying that information, particularly information necessary for courts to be able to apply mitigating factors. As set out earlier in this document, HM Inspectorate of Probation in their report in 2021 stated that: “Poorer quality reports that fail to consider all relevant factors run the risk of service users receiving more punitive sentences” (Race equality in probation: the experiences of black, Asian and minority ethnic probation service users and staff, HM Inspectorate of Probation; March 2021).

Changes and additions proposed to the PSR section in particular seek to ensure that courts have more comprehensive information about the offender by strengthening the direction on the statutory requirement for PSRs to be requested unless considered unnecessary, encourage adjournments where a quality report cannot be completed on the day, encourage PSRs on committal to the Crown Court, and a list of cohorts for whom the Council considers a PSR may be particularly important. This list covers offenders who are:

- at risk of a custodial sentence of 2 years or less
- a young adult (18-25 years)
- female (see further information below at section 3)

- pregnant (see further information below at section 3)
- sole or primary carer for dependent relatives
- from an ethnic minority, cultural minority, and/or faith minority community
- has disclosed they are transgender
- has any drug or alcohol addiction issues
- has a learning disability or mental disorder
- or; the court considers there to be a risk that the offender may have been the victim of domestic abuse, trafficking, modern slavery, or been subject to coercion, intimidation or exploitation

The Council expects this list of cohorts to cover a substantial proportion of offenders for whom courts may be considering the imposition of community or custodial sentences. However, it considered it important to reference groups for whom a PSR will be particularly important, owing to the focus of the Council on ensuring courts have the most comprehensive information available to make the most informed sentencing decision. As set out in the PSR section of the consultation above, a suggestion that a PSR may be particularly important for some of these cohorts is already contained in various expanded explanations of mitigating factors in offence specific guidelines, so the approach to PSRs for some of these cohorts is not new, but by including reference to these cohorts in the revised guideline the Council wishes to ensure that this is clear.

Another recommendation made in the equality report was to consider ways in which more guidance can be issued for sentencing young adults to improve consistency and precision in sentence reduction for young adults. The report considered issues around ‘adulthood’ of children, a point which can affect young adults, for example, who have recently turned 18 (particularly acute for males, looked-after children and those leaving care) and the differences between their emotional and developmental age, and their chronological age. The report also recommended to undertake more research around sentencing of female offenders, and to specify pregnancy and maternity as a discrete phase where medical conditions are referred to.

With all this in mind, the proposed new sections on young adult offenders and female offenders seek to support more informed and considered sentencing of these two cohorts.

As set out above, while considerations for sentencing young adults (aged 18-25) is already contained within the mitigating factor ‘Age and/or lack of maturity’ the Council believed it was important to include in the revised Imposition guideline as well.

Further, while deferred sentencing will apply only in very limited circumstances, the inclusion of a distinct reference to young adults in this section will ensure that courts consider deferring sentence in appropriate cases with young adults.

There are currently no sentencing guidelines that contain any points of principle specifically for sentencing female offenders. As set out earlier in this consultation and within the proposed revised guideline itself, it is well researched that female offenders have different root causes of offending, considerations, risks and consequences of sentencing, so the inclusion of the new section on female offending is considered to be an important addition that will ensure sentencers consider relevant issues. On pregnancy, the current expanded explanation for the factor of Primary or Sole Carer currently states that “when sentencing an offender who is pregnant relevant considerations may include: any effect of the sentence on the health of the offender and any effect of the sentence on the unborn child”. The Council is therefore proposing that the revised Imposition guideline makes reference to pregnancy in multiple places; most substantially in the proposed new

Female Offenders section. A similar paragraph is currently being consulted on as a proposed new factor on Pregnancy and Maternity in [Miscellaneous amendments](#) consultation and any feedback in this consultation may also be taken into account in Imposition guideline review.

The other recommendations in the equality report that had some relevance to the Imposition guideline review were to consider a more integrated approach to developing guidelines by assessing if there are better ways to communicate and engage with Probation and other relevant criminal justice institutions. The Council has been in communication with the relevant teams in Probation throughout the development of the revised Imposition guideline and considers the proposed revisions on PSRs in particular to align with the direction the Probation in courts teams are working towards. Further, the Council welcomes responses in particular from individuals and organisations representing people with experience of the criminal justice system to better understand what impact guidelines have on offenders for whom they are being applied.

The final recommendation in the equality report that had relevance to the Imposition guideline review was to consider more efficient ways of directing sentencers to the Equal Treatment Bench Book. Currently, there is a reference and link to the Equal Treatment Bench Book highlighted in a blue box at the beginning of every guideline (both overarching and offence specific), and the recently published [user testing project](#) did not proactively identify any issues with sentencers accessing this directly from the guidelines. However, with this recommendation in mind, the Council has proposed two additional references with links to the Equal Treatment Bench Book in the PSR and Effectiveness sections to support sentencers accessing important information about aspects of fair treatment and disparity of outcomes for different groups. This is in addition to the standard blue box at the beginning.

It has not been possible to identify any negative impacts of the draft revised guideline on any particular demographic group or group with protected characteristics from the data available. However, to further support the development of the guideline and mitigate the risk of any negative unintended impacts. To further support the development of the guideline and mitigate the risk of any negative unintended impacts, some small-scale research will be conducted with sentencers during the consultation stage. There will be, however, some limitations regarding the scenarios that can be explored because the application of the principles within sentencing decisions are so context dependent and cover such a broad range of offences.

Question 25: Are there any equalities issues relating to the proposed revised guideline that should be addressed?

The Council is aware of the proposed legislative provisions relating to sentencing and, in particular, on suspended sentences, by the Lord Chancellor in the current Sentencing Bill. The Council will follow their progress through Parliament with interest and consider implications for this and any other guidelines, including the need for any amendments, when these provisions have gained royal assent.

Question 26: Are there any other comments you wish to make on the proposed revised guideline?

Questions in this consultation

1. What is your name?
2. What is your email address?
3. Are you answering as an individual? If so, are you happy for your name to be included in the consultation response document?
4. If you are answering on behalf of an organisation, group or bench, please provide the name of the organisation, group or bench.
5. Do you agree with the proposed chronological order of the guideline? Would you make any changes?
6. Do you have any comments on the unified thresholds section?
7. Do you have any comments on the pre-sentence reports section, other than the list of cohorts?
8. Do you agree with the general inclusion of, and specific cohorts included, in the list of cohorts in the pre-sentence report section?
9. Do you have any comments on the information in the PSR section on the court giving an indication to Probation, adjournments and on committal?
10. Do you agree with the inclusion of, and information proposed on deferring sentencing?
11. Do you have any comments on the Purposes and Effectiveness of Sentencing section?
12. Do you have any comments on the new section on young adult offenders?
13. Do you have any comments on the new section on female offenders?
14. Do you have any comments on the imposition of community orders section?
15. Is the new guidance on determining the length of a community order and how courts should consider time remanded in custody or on qualifying curfew clear?
16. Do you have any comments on the new information against each of the requirements in the requirements section?
17. Do you agree with the new approach to rehabilitative requirements in the Community Order Levels section?
18. Do you have any other comments on the Community order levels section?
19. Do you have any comments on the Imposition of custodial sentences section? We welcome comments both on content and format/structure.
20. Do you agree with the restructure and new factor in the table of factors indicating it may or may not be appropriate to suspend a custodial sentence?
21. Do you have any comments on the suspended sentence order section, including the guidance on requirements of a suspended sentence order?
22. Is the guidance on determining the operational and supervision periods of a suspended sentence order and how courts should consider time remanded in custody or on qualifying curfew clear?
23. Do you think that the flowchart aligns with the proposed new structure in the guideline, and do you have any comments on the sentencing flow chart?
24. Do you have any comments on the resource assessment and/or on the likely impact of the proposals on sentencing practice?
25. Are there any equalities issues relating to the proposed revised guideline that should be addressed?
26. Are there any other comments you wish to make on the proposed revised guideline?

Annex A: Other Changes

In addition to the changes consulted on in this document, the Council made other minor changes to the guideline in June 2022 that were not necessary to consult on. These are outlined below:

- **Amending the references to the “National Probation Service” to “Probation Service” (three instances).** Probation services in England and Wales reunified on 26 June 2021 which brought together the National Probation Service and community rehabilitation companies into one administration. The new Probation Service is now responsible for managing all those on a community order or licence following their release from prison in England and Wales.
- **Removing references to Attendance Centres (two instances).** The Police, Crime, Sentencing and Courts Act 2022 effectively removed attendance centres as an active requirement by amending the applicability of this requirement only to those convicted of the offence before the day on which section 152 of the PCSC Act came into force, which was 28 April 2022 (and as before, only if the offender was aged under 25 when convicted of the offence).
- **Amending inconsistencies in the curfew wording across the different levels under the Community Orders Levels Table.** Previously, the wording about curfew in the community order levels table was inconsistent across the three levels of community order in which it was referred. The words “per day” were added to the medium level column, and parentheses and “within the highest range” were added to the wording in the high level column.

