

**Miscellaneous  
amendments to  
sentencing guidelines  
Consultation**

September 2024



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# About this consultation

To:	This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
Duration:	From 5 September to 27 November 2024
Enquiries (including requests for the paper in an alternative format) to:	Office of the Sentencing Council Tel: 020 7071 5793 Email: <a href="mailto:info@sentencingcouncil.gov.uk">info@sentencingcouncil.gov.uk</a>
How to respond:	Please send your response by 28 November 2024 to: Ruth Pope Email: <a href="mailto:consultation@sentencingcouncil.gov.uk">consultation@sentencingcouncil.gov.uk</a> or by using the online consultation at: <a href="https://consult.justice.gov.uk/">https://consult.justice.gov.uk/</a>
Response paper:	Following the conclusion of this consultation exercise, a response will be published at: <a href="http://www.sentencingcouncil.org.uk">www.sentencingcouncil.org.uk</a>
Freedom of information:	<p>We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.</p> <p>In addition, responses may be shared with the Justice Committee of the House of Commons.</p> <p>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. It is published on our website at: <a href="http://www.sentencingcouncil.org.uk/privacy">www.sentencingcouncil.org.uk/privacy</a>.</p>

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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 has built up a large body of sentencing guidelines and accompanying materials that are in use in courts throughout England and Wales. Over time guidelines require updating because users have pointed out issues (often using the feedback function on all guidelines) or case law or new legislation may render aspects of guidelines out of date. The Council therefore holds an annual consultation on miscellaneous amendments to guidelines and the materials that accompany them. This is the fourth of these annual consultations in which the Council seeks the views of guideline users on proposals to make amendments to existing guidelines and supporting materials.

The proposed changes relate to magistrates' courts and the Crown Court.

## Summary of the proposed changes

Matters relevant primarily to magistrates' courts:

- Supplementary information: new guidance on setting a fine for those on a variable income
- New guideline for the offence of using or keeping heavy goods vehicle if levy not paid
- Careless Driving: revising the guideline to change the factors to align with newer guidelines and replace reference to 'pedestrians' with 'vulnerable road users'
- Drive otherwise than in accordance with a licence: add clarification to the guideline regarding offenders who are entitled to a licence but do not hold one
- Allocation guideline: various changes including changing the name of the guideline; updating the legislative references; changing 'youths' to 'children'; clarifying wording relating to community orders; adding a reference to the Criminal Practice Directions in the Committal for sentence section; and providing additional information by way of an Annex

Matters relevant to magistrates' courts and the Crown Court:

- Sentencing children and young people guideline: changing references to 'children and young people' to 'children' in both the title of this (and other guidelines relating to sentencing under 18s) and in the text of all sentencing guidelines; and adding a reference to sentencing young adults at the beginning of the guideline
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- Assistance to the prosecution: adding a dropdown to guidelines summarising the approach to be taken.
  - Sentencing very large organisations: adding some guidance on sentencing very large organisations to relevant guidelines
  - Revenue fraud: adding a sentence table for offences where the maximum sentence has increased from 7 years to 14 years.
  - Standard language in guidelines: establishing a standard form of wording in guidelines
  - Totality: adding further guidance to the Totality guideline
  - Shop theft and Benefit fraud guidelines: adding an expanded explanation to the mitigating factor 'offender experiencing exceptional hardship'
  - Wording relating to community orders in guidelines: clarifying the wording relating to sex offending and adding a note relating to committal to the Crown Court
  - Wording on mandatory minimum sentences: adding a reference stating where the burden of showing that exceptional circumstances exist lies
  - Domestic abuse: changing the name of the overarching guideline, rewording the aggravating factor in offence specific guidelines and adding that factor to more guidelines

## Other changes

In addition to the changes consulted on in this document, the Council has made other changes to guidelines which, while not requiring consultation, it was felt should be drawn to the attention of those responding to this consultation.

A list of any changes not referred to elsewhere in this consultation is annexed to the end of this document.

## 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](mailto: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 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.

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**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.**

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# Setting a fine for those on a variable income

## The issue

The Council received a suggestion that it would be helpful to include information (in the fines guidance for magistrates' courts) on how to assess relevant weekly income for those whose income varies from week to week. We sought the views of magistrates' courts users and noted that they had different experiences of how courts deal with the assessment of means (for example, some use the means form and others do not) but generally they felt that this could be helpful. The current guidance is [here](#).

The Council also considered whether it would be helpful to develop a guideline on the imposition of fines for use in all courts and agreed that this should be added to the work plan.

## The proposed change

The Council proposes to add the following to the current fines guidance:

Where an offender's income varies, the court should take an average of four to six weeks' income to assess the relevant weekly income.

Where an offender expresses their income in terms of an hourly rate, the court should make enquiries as to how many hours work they typically work each week and, if appropriate, take an average of the last four to six weeks to assess the relevant weekly income.

## The impact

This change which relates only to fines will not have an impact on prison or probation resources. Any impact will be to help courts make a more accurate assessment of an offender's means and consequently set fines at an appropriate level.

**Question 5: Do you agree with the proposed addition to the fines guidance? If not, please provide any alternative suggestions.**

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# Offence of using or keeping heavy goods vehicle if levy not paid

## The issue

Under [section 11 of the HGV Road User Levy Act 2013](#), all goods vehicles are required to pay an annual levy to use the roads and it is an offence not to do so. The maximum penalty is a level 5 (unlimited) fine. Prosecutions had been dealt with at Swansea Magistrates' Court, for all offences in England and Wales but from March 2024 they have been dealt with under the Single Justice Process and may fall to be dealt with by magistrates who have no experience of sentencing them. There is currently no sentencing guideline for this offence but the Justices' Clerks' Society (JCS) has issued some guidance.

Similar offences are covered by simple guidelines that can be seen here:

<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/offences-appropriate-for-imposition-of-fine-or-discharge/5-offences-appropriate-for-imposition-of-fine-or-discharge/>

## The proposed change

The Council proposes to add this to the above page:

Offence	Maximum	Points	Starting point	Special considerations
Using or keeping heavy goods vehicle if levy not paid (HGV Road User Levy Act 2013, s.11)	L5	–	B (driver) B* (owner-driver) C (owner-company)	

## The impact

This proposal which relates to an offence that can only be sentenced to a fine will not have an impact on prison or probation resources. It reflects current informal guidance on fine levels and therefore no significant impact on fines is expected.

**Question 6: Do you agree to add the proposed guideline for the offence of using or keeping heavy goods vehicle if levy not paid? If not, please provide any alternative suggestions.**

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# Careless driving

## The issue

When various motoring guidelines were revised in 2022-2023, [the careless driving guideline](#) was not included, as it had been revised in 2017. The consequence of this is that there are inconsistencies between the culpability factors in the simple careless driving guideline and the causing death and causing serious injury by careless driving guidelines.

The Council considered that it would be logical and preferable for the culpability factors in all three guidelines for careless driving to be the same and for the harm factors and the step 2 factors in simple careless driving to be aligned with those for simple dangerous driving.

## The proposed change

The Council proposes to change the Careless driving guideline to read:

### Step 1 – Determining the offence category

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

#### Culpability

Where there are factors present from more than one category of culpability, the court should weigh those factors in order to decide which category most resembles the offender's case.

#### A

- Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a culpability B factor

#### B

- Unsafe manoeuvre or positioning
  - Engaging in a brief but avoidable distraction
  - Driving at a speed that is inappropriate for the prevailing road or weather conditions
  - Driving impaired by consumption of alcohol and/or drugs
  - Driving vehicle which is unsafe or where driver's visibility or controls are obstructed
  - Driving impaired as a result of a known medical condition and/or in disregard of advice relating to the effects of medical condition or medication
  - Driving when deprived of adequate sleep or rest
- 
-

- The offender's culpability falls between the factors as described in culpability A and C

**C**

- Standard of driving was just over threshold for careless driving
- Momentary lapse of concentration

**Harm**

## Category 1

- Offence results in injury to others
- Damage caused to vehicles or property

## Category 2

- All other cases

**Step 2 – Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Harm 1	<b>Starting point</b> Band D fine	<b>Starting point</b> Band C fine	<b>Starting point</b> Band B fine
Harm 2	<b>Starting point</b> Band C fine	<b>Starting point</b> Band B fine	<b>Starting point</b> Band A fine

**Fines [dropdown]**

- **Must endorse and may disqualify. If no disqualification impose 3 – 9 points**

Culpability level	Disqualification/points
A	Consider disqualification <b>OR</b> 7 – 9 points
B	5 – 6 points
C	3 – 4 points

**See Step 6 for more information on driving disqualification**

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The court should then consider adjustment for any aggravating or mitigating factors. Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

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### Factors increasing seriousness

#### Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

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#### Other aggravating factors:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, motorcyclists etc
- Driving for commercial purposes
- Driving a goods vehicle, PSV etc
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop and/or obstructed or hindered attempts to assist at the scene
- Passengers in the offender's vehicle, including children
- Vehicle poorly maintained
- Offence committed on licence or while subject to court order(s)

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### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
  - Good driving record
  - Actions of the victim or a third party contributed significantly to collision
  - Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
  - Genuine emergency
  - Efforts made to assist or seek assistance for victim(s)
  - Remorse
  - Serious medical condition requiring urgent, intensive or long-term treatment
  - Age and/or lack of maturity (which may be applicable to offenders aged 18-25)
  - Mental disorder or learning disability
  - Sole or primary carer for dependent relatives
  - Pregnancy, childbirth and post-natal care
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- 
- Difficult and/or deprived background or personal circumstances
  - Prospects of or in work, training or education
- 

### Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

### Step 5 – Totality principle

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

### Step 6 – Disqualification, compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

- [Ancillary orders – Magistrates' Court](#)

### Disqualification guidance [Drop down]

### Step 7 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

### The impact

The maximum sentence for Careless driving is an unlimited fine and so the proposal will not have an impact on prison or probation resources.

The proposed guideline has six starting points in the sentence table (compared to three in the existing guideline) but only four different starting points. The proposal adds a band D fine as a starting point for the most serious cases. There are no category ranges in the proposed table as the sentence levels for this offence are very limited, but each fine band

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represents a range. For example, a band B fine has a starting point of 100% of relevant weekly income with a range of 75 – 125% of relevant weekly income.

In the existing guideline suggested penalty points or disqualification are given in the sentence table for each of the three sentence levels. Moving to a six-box sentence table makes this more difficult and so – given that the standard of driving is more pertinent to both future road safety and punishment – what is proposed is to link the points or disqualification to the three levels of culpability in a separate table below the sentence table.

It is not clear whether the proposed changes would result in more or fewer cases of disqualification. Disqualification remains as an option alongside points, so there may not be any material difference.

Careless driving is a relatively high volume offence with around 12,000 adult offenders sentenced in 2023 (source: [Criminal Justice System statistics quarterly: December 2023](#)), and so responses from those who sentence in magistrates' courts will be valuable in understanding the potential impact of the changes.

**Question 7: Do you agree with the proposed changes to the Careless driving guideline? If not, please provide any alternative suggestions.**

**Question 8: Do you have any views on the likely impact of the proposals on fines or disqualification?**

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# Drive otherwise than in accordance with a licence

## The issue

A guideline user asked for an explanation of '(where could be covered)' to be included in the [Drive otherwise than in accordance with a licence \(where could be covered\) guideline](#). This is a single line guideline in the 'Motoring offences appropriate for imposition of fine or discharge' section of the magistrates' guidelines and sits alongside the more commonly prosecuted version of the offence:

Offence	Maximum	Points	Starting point	Special considerations
Drive otherwise than in accordance with licence (where could be covered) (Road Traffic Act 1988, s.87(1))	L3	–	A	
Drive otherwise than in accordance with licence (Road Traffic Act 1988, s.87(1))	L3	3 – 6	A	Aggravating factor if no licence ever held

Schedule 2 to the Road Traffic Offenders Act 1988 states:

Provision creating offence	(2) General nature of offence	(3) Mode of prosecution	(4) Punishment	(5) Disqualification	(6) Endorsement	(7) Penalty points
RTA section 87(1)	Driving otherwise than in accordance with a licence	Summarily	Level 3 on the standard scale.	Discretionary in a case where the offender's driving would not have been in accordance with any licence that could have been granted to him	Obligatory in the case mentioned in column 5	3 – 6

What this means in practice is that someone who is entitled to a driving licence for the vehicle driven but does not hold a current one (for example because they have failed to renew it when entitled to do so) need not have points put on their licence, but those who have no entitlement to a licence must have their licence endorsed with 3-6 points.

The Council considered that it would be helpful to reflect the statutory wording in the guideline.

### The proposed change

Offence	Maximum	Points	Starting point	Special considerations
Drive otherwise than in accordance with licence (where could be covered*) (Road Traffic Act 1988, s.87(1))	L3	–	A	* This applies where the offender's driving would have been in accordance with any licence that could have been granted to them
Drive otherwise than in accordance with licence (Road Traffic Act 1988, s.87(1))	L3	3 – 6	A	Aggravating factor if no licence ever held

### The impact

The maximum sentence for driving otherwise than in accordance with a licence is a £1,000 fine and so the proposal will not have an impact on prison or probation resources.

The proposed change is simply to provide information and therefore no impact on sentence levels is anticipated.

**Question 9: Do you agree with the proposed change to the Drive otherwise than in accordance with a licence guideline? If not, please provide any alternative suggestions.**

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# Allocation guideline

## The issue

The Council considered that it would be helpful to make some changes to the [Allocation guideline](#) to:

- update the legislative references
- change ‘youths’ to ‘children’ (see also the proposed changes to the Sentencing children and young people guideline later in this consultation)
- clarify wording relating to community orders in the Committal for sentence section
- add a reference to the Criminal Practice Directions in the Committal for sentence section (see also the proposed changes relating to very large organisations below)
- embed legislative references in the text (rather than use footnotes)
- provide additional information by way of an Annex.

In doing so, the Council also considered that it would be helpful to rename the guideline ‘Allocation and committal for sentence’.

## The proposed changes

Rename the guideline: ‘Allocation and committal for sentence’

Amend the Applicability dropdown to read:

### Applicability

In accordance with section 122(2) of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all defendants in the magistrates’ court (including children jointly charged with adults) whose cases are dealt with on or after 1 March 2016.

It also applies to allocation decisions made in the Crown Court pursuant to section 46ZA of the Senior Courts Act 1981 and section 25A of the Sentencing Code.

It will not be applicable in the youth court where a separate statutory procedure applies.

Amend the Committal for sentence section to read:

### Committal for sentence

There is ordinarily no statutory restriction on committing an either way case for sentence following conviction. The general power of the magistrates’ court to commit to the Crown Court for sentence after a finding that a case is suitable for summary trial and/or conviction continues to be available where the court is of the

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opinion ‘that the offence or the combination of the offence and one or more offences associated with it was so serious that the Crown Court should have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment’ ([Sentencing Code s.14](#)).

In cases involving very large fines the court should have regard to the relevant practice direction ([CPD 5.16](#)).

However, where the court proceeds to the summary trial of certain offences relating to criminal damage, upon conviction there is no power to commit to the Crown Court for sentence (Magistrates’ Courts Act 1980, [s.22](#) and [Sch. 22](#))

The court should refer to any definitive guideline to arrive at the appropriate sentence taking into account all of the circumstances of the case including personal mitigation and the appropriate guilty plea reduction.

In borderline cases the court should consider obtaining a pre-sentence report before deciding whether to commit to the Crown Court for sentence.

Where the offending is so serious that the court is of the opinion that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (this will allow the Crown Court to deal with any breach of a community order or offence committed during such an order, if that is the sentence passed).

The Council also proposes to add an annex to the guideline setting out the powers to commit adult offenders for sentence. This will not form part of the guideline but will be provided for information only. The proposed content is:

Description of power	Type of offence	Statutory provision
Magistrates’ court is of the opinion that the offence (or combination of offences) is so serious that the Crown Court should have power to deal with it	Either Way	Sentencing Code, s.14(1), (2)
Specified violent, sexual or terrorism offence and the magistrates’ court is of the opinion that an extended sentence would be available	Either way	Sentencing Code, s.15(1), (2) (and Sch.17 for specified offences)

Serious terrorism offence and the magistrates' court is of the opinion that the circumstances are such that a serious terrorism sentence may be required to be imposed	Either way	Sentencing Code, s.15(1A), (2) (and Sch.17A for serious terrorism offences)
Guilty plea to offence which is related to one or more offences sent to the Crown Court for trial	Either way	Sentencing Code, s.18(1)
Where the court commits for sentence under this provision and it is of the opinion that it also has the power under section 14(2) or 15(2) it <b>may</b> make a statement to that effect: see s.18(4). If no such statement is made, the powers of the Crown Court are limited to those of the magistrates' court: see s.21(4), (5).		
Summary only or either way offence committed in breach of conditional discharge made by the Crown Court	Summary only or either way	Sentencing Code, Sch.2 para.5(4)
Summary only or either way offence committed while community order made by the Crown Court is in force	Summary only or either way	Sentencing Code, Sch.10, para.24(2)
Summary only or either way offence committed while suspended sentence made by the Crown Court is in force	Summary only or either way	Sentencing Code, Sch.16, para.11(2)
Conditions for making a hospital order are satisfied and it appears to magistrates' court that a restriction order should also be made	Summary only or either way	Mental Health Act 1983, s.43
Offender convicted of absconding whilst released on bail		Bail Act 1976, s.6(6)
Offender convicted of agreeing to indemnify sureties		Bail Act 1976, s.9(3)
Offender deemed to be an incorrigible rogue		Vagrancy Act 1824

<p>Magistrates' court commits offender for sentence for an <b>either way offence</b> under any of the powers above and the court has the power to deal with offender in respect of another summary only or either way offence, it may also commit that other offence for sentence</p>	Either way	Sentencing Code, s.20(2)
<p>Where the magistrates' court commits an either way offence for sentence under this provision, the powers of Crown Court are limited to those of the magistrates' court: see s.23</p>		
<p>Magistrates' court commits offender for sentence for a <b>summary only offence</b> under any of the powers above and the court has the power to deal with offender in respect of another summary only or either way offence, it may also commit that other offence for sentence provided that it is</p>	Summary only	Sentencing Code, s.20(4)
<ul style="list-style-type: none"> <li>- punishable by imprisonment, or</li> <li>- punishable by a driving disqualification, or</li> <li>- a suspended sentence made by a magistrates' court and the offender has committed an offence during the operational period</li> </ul>		
<p>Where the magistrates' court commits an either way offence for sentence under this provision, the powers of Crown Court are limited to those of the magistrates' court: see s.23</p>		
<p>Summary only or either way offence and request by prosecution with a view to consideration of confiscation order</p>	Summary only or Either way	Proceeds of Crime Act 2002, s.70
<p>Where the court commits an either way offence for sentence under this provision and it could have committed for sentence under section 14(2) it <b>must</b> state whether it would have done so. If no such statement is made that it would have done so, the powers of the Crown Court are limited to those of the magistrates' court: see s.71(5).</p>		

**The impact**

These changes which are designed to assist sentencers and prevent errors will not have an impact on prison or probation resources.

**Question 10: Do you have any comments on the accuracy or clarity of the proposed additions to the Allocation guideline? Please provide any alternative suggestions.**

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# Sentencing children and young people guideline

## The issue

A judge with a particular interest and expertise in sentencing children, invited the Council to consider changing the name of the [Sentencing children and young people guideline](#), to the Sentencing children guideline. The reason for this would be to make it clear to all sentencers (but particularly to judges sentencing children in the Crown Court) that children should not be dealt with as mini adults. The change would also align with the approach being taken in other publications such as the Crown Court Compendium.

Prior to the publication of the Council's 'Sentencing children and young people' guideline there was a Sentencing Guidelines' Council publication entitled 'Overarching Principles – Sentencing Youths'. In 2016 the Sentencing Council published a consultation paper proposing a new guideline and seeking views. At that stage the Council called its new draft guideline Overarching Principles – Sentencing Youths. However, although the Council did not ask a direct question seeking views on the name of the guideline, a number of respondents commented on it. As a result of this feedback the Council decided to adopt the title 'Sentencing children and young people'.

There are other guidelines specifically for sentencing under 18s which have 'children and young people' in the titles:

[Bladed articles and offensive weapons \(having in public/education premises and threats\) – children and young people](#)

[Child sex offences committed by children or young persons \(sections 9-12\) \(offender under 18\)/ Sexual activity with a child family member \(offender under 18\)/ Inciting a child family member to engage in sexual activity \(offender under 18\)](#)

[Robbery – Sentencing children and young people](#)

[Sexual offences – Sentencing children and young people](#)

The Council also considered whether all references across sentencing guidelines to 'children and young people' or 'child or young person' should be changed to 'children' or 'child' as appropriate and concluded that this should be done.

In addition, the Council considered that it would be helpful to add a short section to the General approach section at the beginning of the Sentencing children and young people guideline explaining the transition of under 18 year olds to adulthood and including the

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relevant information available in the expanded explanation of the mitigating factor 'Age and/or lack of maturity' from the sentencing guidelines for adults.

### **The proposed changes**

The Council therefore seeks views on the following:

1. Changing the name of all guidelines for sentencing under 18s to use the term 'children' rather than 'children and young people'
2. Changing all references to offenders aged under 18 throughout sentencing guidelines and supporting materials to 'child' or 'children'
3. Adding the following note to the beginning of the Sentencing children and young people guideline:

Note: This guideline applies to sentencing those aged under 18 at the date of finding of guilt, but many of the principles will also be relevant to sentencing young adults. Where an offender has turned 18 between the commission of the offence and conviction the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed, but applying the purposes of sentencing adult offenders. See paragraphs 6.1 to 6.3 below.

### **The impact**

The Council does not anticipate any impact on prison or probation resources from these changes.

**Question 11: Do you agree with the proposed changes relating to offenders aged under 18? If not, please provide any alternative suggestions.**

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# Assistance to the prosecution

## The issue

The Council received a request from the Serious Fraud Office (SFO) in July 2022 to provide sentencing guidelines covering the reduction to be afforded to offenders who enter into an agreement to assist the prosecution. This was discussed by the Council in October 2022 and the conclusion arrived at was that the best approach would be to add a note (as a dropdown) to the relevant step in guidelines summarising the case law regarding SOCPA agreements. The SFO were content with this approach.

The Council had intended to consult on this in last year's miscellaneous amendments consultation, but at the relevant time the Court of Appeal (Criminal Division) had heard a case on the subject and was due to give judgment. It was therefore decided to await that judgment ([R v Royle and others \[2023\] EWCA Crim 1311](#)).

## The proposed change

At the relevant step of guidelines (in most guidelines this is Step 3) add a drop down as follows:

### Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

#### **Guidance on the effect of providing assistance to law enforcement authorities on sentencing**

Case law has established that there are no inflexible rules as to the method by which any reduction should be assessed nor the amount of the reduction. It will be a fact specific decision in each case. The rationale for making a reduction is the same whether the statutory procedure or the common law "text" procedure has been engaged. In principle, there is no reason to distinguish between the two procedures in terms of the extent of the reduction which is made.

The following sequence of matters for a sentencing court to consider reflects the judgment [R v Royle and others \[2023\] EWCA Crim 1311](#):

1. The court should assess the seriousness of the offences being sentenced following any relevant sentencing guidelines.
2. The court should then consider the quality and quantity of the material provided by the offender in the investigation and subsequent prosecution of crime. Particular value should be attached to those cases where the offender provides evidence in the form of

a witness statement or is prepared to give evidence at any subsequent trial, especially where the information either produces convictions for the most serious offences, or prevents them, or which leads to disruption of major criminal networks.

3. This consideration should be made in the context of the nature and extent of the personal risks to, and potential consequences faced by, the offender and members of the offender's family.
4. A guilty plea is not an essential prerequisite of the making of a reduction for information and assistance provided, but contesting guilt may be one of the factors relevant to the extent of the reduction made for that assistance. The extent to which an offender has been prepared to admit the full extent of their criminality is relevant to the level of the reduction.
5. Any reduction for a guilty plea is separate from and additional to the appropriate reduction for assistance provided by the offender. The reduction for the assistance provided by the offender should be assessed first to arrive at a notional sentence and any guilty plea reduction applied to that notional sentence.
6. A mathematical approach to determining the level of reduction for assistance to the authorities is liable to produce an inappropriate answer – the totality principle is fundamental.
7. Where the statutory procedure applies, the court should take into account that this requires offenders to reveal the whole of their previous criminal activities which will often entail pleading guilty to offences which the offender would never otherwise have faced.
8. An informer can generally only expect to receive credit once for past information or assistance, and for that reason the court should be notified whether particular information and assistance has been taken into account in imposing a previous sentence or when making an application to the Parole Board.
9. The court should enquire whether an offender has received payment for assistance provided and if so, how much. Financial reward and a reduction in sentence are complementary means of incentivising the disclosure of the criminal activities of others and therefore a financial reward, unless exceptionally generous, should play only a small, if any, part in the sentencer's decision.
10. The totality principle is critical in the context of an offender who is already serving a sentence, and who enters into an agreement to provide information which discloses previous criminal activities and comes before the court to be sentenced for the new crimes, as well as for a review of the original sentence (under section 388 of the Sentencing Code).
11. Where an offender has committed serious crimes, neither the statutory nor common law process provide immunity from punishment, and, subject to appropriate reductions, an appropriate sentence should be passed. By providing assistance to the authorities the offender is entitled to a reduction from the sentence which would otherwise be appropriate to reflect the assistance provided to the administration of justice, and to encourage others to do the same.
12. It is only in the most exceptional case that the appropriate level of reduction would exceed three quarters of the total sentence which would otherwise be passed. The normal level for the provision of valuable information will be a reduction of somewhere between one half and two thirds of that sentence.

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13. In cases where the information provided was of limited value, the reduction may be less than one half and where the information given is unreliable, vague, lacking in practical utility or already known to the authorities, any reduction made will be minimal.
14. The risk to an offender who provides information, and the importance of the public interest in encouraging criminals to inform on other criminals, will often mean that the court will not be able to make any explicit reference to the provision of information or the reduction of the sentence on that ground. The duty to give reasons for the sentence will be discharged in such cases by the judge stating that the court has considered all the matters of mitigation which have been brought to its attention.

### **The impact**

This change which reflects current case law is not expected to have an impact on prison or probation resources.

**Question 12: Do you agree with the proposed addition of information on assistance to the prosecution? If not, please provide any alternative suggestions.**

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# Sentencing very large organisations

## The issue

In response to last year's consultation (which included proposed changes to the environmental guideline for individuals), the Environment Agency (EA) took the opportunity to raise an issue of fines where the offender is a very large organisation (VLO). The EA submitted that the current wording in guidelines for sentencing a VLO is too limited and that courts would benefit from more and clearer guidance. This submission was endorsed by the Secretary of State for Environment, Food & Rural Affairs.

The EA also drew attention to: "the fact that the majority of the VLO cases we prosecute are now being sentenced in the Magistrates' Court rather than the Crown Court". The EA expressed the view that it would be preferable for some of these cases to be committed to the Crown Court for sentence.

## The proposed change

The Council considered that it is undesirable for courts routinely to need to have recourse to case law in order to apply a sentencing guideline and that it would be useful to encapsulate the guidance given by the Court of Appeal on sentencing a VLO in the relevant guidelines so that the information is clear, accurate and readily available to all guideline users.

The current wording in the [environmental guideline for organisations](#) reads:

### Very large organisations

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

The proposal is to expand this to say:

### Very large organisations

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

There is no precise level of turnover at which an organisation becomes "very large". In the case of most organisations it will be obvious if it either is or is not very large.

In the case of very large organisations the appropriate sentence cannot be reached by merely applying a mathematical formula to the starting points and ranges for large organisations.

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In setting the level of fine for a very large organisation the court must consider the seriousness of the offence, the purposes of sentencing (including punishment and deterrence) and the financial circumstances of the offending organisation. Regard should be had to the principles set out under “General principles in setting a fine” above and at steps 5 to 7 below.

Particular regard should be had to making the fine proportionate to the means of the organisation, sufficiently large to constitute appropriate punishment, and sufficient to bring home to the management and shareholders the need for regulatory compliance.

There is similar wording relating to sentencing very large organisations in the following guidelines:

- [Organisations: Breach of duty of employer towards employees and non-employees/ Breach of duty of self-employed to others/ Breach of Health and Safety regulations](#)
- [Organisations: Breach of food safety and food hygiene regulations](#)
- [Organisations: Sale of knives etc by retailers to persons under 18](#)

If adopted, the expanded wording would also be added to these guidelines (suitably adjusted to take account of different numbering of steps etc.).

The allocation of either way cases to magistrates’ courts or the Crown Court is governed by the [Allocation guideline](#) (produced by the Sentencing Council) and by Criminal Practice Directions (made by the Lord Chief Justice last updated in 2023). Matters relating to the Criminal Practice Directions and their application are outside the Council’s remit, but the Council did consider that it would be helpful for the Allocation guideline to cross refer to the relevant practice direction (see the Allocation section above).

### **The impact**

An organisation cannot be sentenced to a community order or imprisonment and therefore these proposals will not have any impact on prison or probation resources.

As the proposed change to guidelines reflects current case law, the impact of the change is likely to be minimal. However, it is possible that the change could result in higher fines in a small number of cases.

**Question 13: Do you agree with the proposed addition of wording relating to sentencing very large organisations? If not, please provide any alternative suggestions.**

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# Revenue fraud

## The issue

[Section 32 of the Finance Act 2024](#) has doubled the maximum penalty for various revenue fraud offences to 14 years. The [Revenue fraud guideline](#) covers several offences:

- Conspiracy to defraud, common law, Maximum: 10 years' custody
- Fraud Act 2006, s.1, Maximum: 10 years' custody
- Theft Act 1968, s.17, Maximum: 7 years' custody
- Customs and Excise Management Act 1979 (sections 50, 170 and 170B), Maximum: 7 years' custody
- Taxes Management Act 1970 (section 106A), Maximum: 7 years' custody
- Value Added Tax Act 1994 (section 72) Maximum: 7 years' custody
- Cheat the public revenue, common law, Maximum: Life imprisonment

For offences committed on or after February 22, 2024 the maximum is now **14 years** for:

- Customs and Excise Management Act 1979 (sections 50, 170 and 170B)
- Taxes Management Act 1970 (section 106A)
- Value Added Tax Act 1994 (section 72)

The Revenue fraud guideline already has three sentence tables:

- Table 1 for offences with a maximum of 10 years
- Table 2 for offences with a maximum of 7 years, and
- Table 3 for offences with a maximum of life imprisonment.

## The proposed change

The Council noted that the [policy paper](#) relating to the legislative change states that the increase relates to “the most egregious examples of tax fraud”. With regard to operational impacts the paper states: “There may be increased prison costs associated with longer sentencing if imposed by Sentencing Council”.

The Council is therefore proposing to add a fourth table to the Revenue fraud guideline for offences with a 14 year statutory maximum that maintains sentences at the lower end of seriousness at current levels but allows for higher sentences were the amount defrauded is over £2 million (harm categories 1, 2 and 3).

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<b>Culpability</b>			
<b>Harm</b>	<b>A</b>	<b>B</b>	<b>C</b>
Category 1 £50 million or more Starting point based on £80 million	<b>Starting point</b> 11 years' custody	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 9 – 13 years' custody	<b>Category range</b> 6 – 11 years' custody	<b>Category range</b> 4 – 7 years' custody
Category 2 £10 million– £50 million Starting point based on £30 million	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 7 – 11 years' custody	<b>Category range</b> 5 – 9 years' custody	<b>Category range</b> 3 – 6 years' custody
Category 3 £2 million–£10 million Starting point based on £5 million	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 5 – 9 years' custody	<b>Category range</b> 4 – 7 years' custody	<b>Category range</b> 2 – 5 years' custody
Category 4 £500,000 – £2 million Starting point based on £1 million	<b>Starting point</b> 5 years 6 months' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody
	<b>Category range</b> 4 years' – 6 years 6 months' custody	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 1 year 3 months' – 3 years 6 months' custody
Category 5 £100,000 – £500,000 Starting point based on £300,000	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 1 year 3 months' custody
	<b>Category range</b> 2 years 6 months' – 5 years' custody	<b>Category range</b> 1 year 3 months' – 3 years 6 months' custody	<b>Category range</b> 26 weeks' – 2 years 6 months' custody
Category 6 £20,000 – £100,000	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 1 year 3 months' custody	<b>Starting point</b> High level community order
	<b>Category range</b>	<b>Category range</b>	<b>Category range</b>

Starting point based on £50,000	1 year 3 months' – 3 years 6 months' custody	High level community order – 2 years 6 months' custody	Low level community order – 36 weeks' custody
Category 7 Less than £20,000	<b>Starting point</b> 1 year 3 months' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
Starting point based on £12,500	<b>Category range</b> 26 weeks' – 2 years 6 months' custody	<b>Category range</b> Medium level community order – 1 year 3 months' custody	<b>Category range</b> Band C fine – High level community order

In the interim the Council has added a note to the guideline to indicate that the change in the statutory maximum has not yet been reflected in the guideline (see the annex below).

### The impact

As set out in the policy paper, this change is proposed to impact only the most serious offending, therefore the proposed changes to the guideline are intended to reflect this and limit any impact on prison resources. Sentences will only exceed current levels if they are at the highest level of seriousness and any increase in sentences would be attributable to the change in legislation rather than to the guideline.

**Question 14: Do you agree with the proposed new sentence table in the Revenue fraud guideline? If not, please provide any alternative suggestions.**

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# Standard language in guidelines

## The issue

The Council received some feedback from a judge regarding the inconsistency of language in guidelines and a lack of clarity as to whether a sentencer can take a starting point higher or lower than that in the sentencing table before adjusting for aggravating and mitigating factors.

The Council was clear that adjustment from the starting point before further adjustment for aggravating and mitigating factors was permissible and agreed that the wording in guidelines should make this clearer. The Council looked the various forms of wording used across guidelines and concluded that it would be preferable for these to be standardised wherever possible.

## The proposed change

The Council proposes to adopt the following standard for steps 1 and 2 in guidelines. Variations in wording may be required for particular offences and these will be considered on an individual guideline basis, but absent any special requirements this is the proposed standard wording. In addition to using this wording in guidelines currently under development and future guidelines, the Council intends to review all existing guidelines and import the new standard language unless there is a particular reason not to do so.

## Step 1 – Determining the offence category

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

### Culpability

Where there are factors present from more than one category of culpability, the court should weigh those factors in order to decide which category most resembles the offender's case.

#### A – High culpability

- Factors
- Factors

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#### B – Medium culpability

- Factors
- Factors

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#### C – Lesser culpability

- Factors
  - Factors
-

**Harm**

Where there are factors present from more than one category of harm, the court should weigh those factors in order to decide which category most resembles the offender's case

**Category 1**

- Factors
- Factors

**Category 2**

- Factors
- Factors

**Category 3**

- Factors
- Factors

**Step 2 – Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

An adjustment of the starting point, upwards or downwards, may then be necessary to reflect particular features of culpability and/or harm (for example, the presence of multiple factors within one category, the presence of factors from more than one category, or where a case falls close to a borderline between categories.)

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> Sentence	<b>Starting point</b> Sentence	<b>Starting point</b> Sentence
	<b>Category range</b> Sentence – Sentence	<b>Category range</b> Sentence – Sentence	<b>Category range</b> Sentence – Sentence
Category 2	<b>Starting point</b> Sentence	<b>Starting point</b> Sentence	<b>Starting point</b> Sentence
	<b>Category range</b> Sentence – Sentence	<b>Category range</b> Sentence – Sentence	<b>Category range</b> Sentence – Sentence
Category 3	<b>Starting point</b> Sentence	<b>Starting point</b> Sentence	<b>Starting point</b> Sentence
	<b>Category range</b> Sentence – Sentence	<b>Category range</b> Sentence – Sentence	<b>Category range</b> Sentence – Sentence

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

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### Factors increasing seriousness

#### Statutory aggravating factors:

- Factors
- Factors

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#### Other aggravating factors:

- Factors
- Factors
- Factors

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### Factors reducing seriousness or reflecting personal mitigation

- Factors
  - Factors
  - Factors
- 

### The impact

The proposed changes are not anticipated to have a direct impact on the requirement for prison or probation resources. They are merely designed to improve clarity and consistency in guidelines.

**Question 15: Do you agree with the proposed standard wording in guidelines? If not, please provide any alternative suggestions.**

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# Totality

## The issue

A revised [Totality guideline](#) came into force in July 2023. The Council has received suggestions for helpful additions to the guidance on imposing a sentence when there is an existing custodial sentence. Currently the guideline states:

Existing determinate sentence, where determinate sentence to be passed	
Circumstance	Approach
<b>Offender serving a determinate sentence (instant offences committed after offences sentenced earlier)</b>	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender's criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Where a prisoner commits acts of violence in prison custody, any reduction for totality is likely to be minimal.
<b>Offender subject to licence, post sentence supervision or recall</b>	The new sentence should start on the day it is imposed: <a href="#">section 225 of the Sentencing Code</a> prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. If the new offence was committed while subject to licence or post sentence supervision, the sentence for the new offence should take that into account as an aggravating feature. However, the sentence must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to any recall period (which will be an unknown quantity in most cases); this is so even if the new sentence will in consequence add nothing to the period actually served.
<b>Offender subject to an existing suspended sentence order</b>	Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to be activated, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.

Also, the Justices' Clerks' Society has recently issued guidance to magistrates' courts on the procedure to be followed when imposing unpaid work when an offender has an existing unpaid work requirement. It appears that although the preferred practice is to revoke the existing order and impose a single new order to take into account all offences, this does not always happen. One reason that it may be preferable to allow the existing order to continue is to avoid the delay that may occur before the new order starts which could disrupt any good progress that an offender is making on an existing order.

The dropdown on community orders includes the following:

<b>Community orders</b>	
<b>Circumstance</b>	<b>Approach</b>
<b>Offender convicted of an offence while serving a community order</b>	<p>The power to deal with the offender depends on the offender being convicted while the order is still in force; it does not arise where the order has expired, even if the additional offence was committed while it was still current.</p> <p>(Paragraphs <a href="#">22</a> and <a href="#">25</a> of Schedule 10 to the Sentencing Code)</p> <p><b>Community order imposed by magistrates' court</b> If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.</p> <p><b>Community order imposed by the Crown Court</b> Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence. The magistrates' court may also commit the new offence to the Crown Court for sentence where there is a power to do so.</p> <p>Where the magistrates' court has no power to commit the new offence it should sentence the new offence and commit the</p>

offender to the Crown Court to be re-sentenced for the original offence.

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

Finally, a user raised an issue using the feedback function on the website:

“It is not clear where the power to order consecutive sentences arises, which statute or rule of law, it would help to have this included.”

### The proposed changes

In respect of the last of these suggestions, the Council proposes to add a reference to the legislative provision relating to the commencement of sentences to the General principles section of the guideline:

#### General principles

When sentencing for more than one offence, the overriding principle of totality is that the overall sentence should:

- reflect all of the offending behaviour with reference to overall harm and culpability, together with the aggravating and mitigating factors relating to the offences and those personal to the offender; and
- be just and proportionate.

Sentences can be structured as **concurrent** (to be served at the same time) or **consecutive** (to be served one after the other) under [section 384 of the Sentencing Code](#) . There is no inflexible rule as to how the sentence should be structured.

- If consecutive, it is usually impossible to arrive at a just and proportionate sentence simply by adding together notional single sentences. Ordinarily some downward adjustment is required.



- If concurrent, it will often be the case that the notional sentence on any single offence will not adequately reflect the overall offending. Ordinarily some upward adjustment is required and may have the effect of going outside the category range appropriate for a single offence.

In respect of imposing a determinate sentence where there is an existing sentence, the Council proposes to amend the guidance as follows (note some of this guidance repeats guidance provided later in the guideline but it is proposed to include it for completeness):

### Existing sentence, where determinate sentence to be passed

Circumstance	Approach
<b>Offender subject to an existing community order imposed by a magistrates' court</b>	<p>If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence (see below under non-custodial sentences for further guidance).</p> <p><b>When sentencing both the original offence and the new offence</b> the sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p>
<b>Offender subject to an existing community order imposed by the Crown Court</b>	<p>Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence. The magistrates' court may also commit the new offence to the Crown Court for sentence where there is a power to do so. Where the magistrates' court has no power to commit the new offence it should sentence the new offence and commit the offender to the Crown Court to be re-sentenced for the original offence.</p>

	<p><b>When sentencing both the original offence and the new offence</b> the sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p>
<p><b>Offender serving a determinate sentence (instant offences committed after offences sentenced earlier)</b></p>	<p>Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender's criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Where a prisoner commits acts of violence in custody, any reduction for totality is likely to be minimal.</p>
<p><b>Offender subject to licence, post sentence supervision or recall</b></p>	<p>The new sentence should start on the day it is imposed: <a href="#">section 225 of the Sentencing Code</a> prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. If the new offence was committed while subject to licence or post sentence supervision, the sentence for the new offence should take that into account as an aggravating feature. However, the sentence must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to any recall period (which will be an unknown quantity in most cases); this is so even if the new sentence will in consequence add nothing to the period actually served.</p>
<p><b>Offender subject to an existing suspended sentence order</b></p>	<p>Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to be activated, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.</p>

**Offender subject to an existing extended sentence**

The court can order a determinate sentence to run consecutively to an extended sentence. The determinate sentence will commence on the expiry of the appropriate custodial term of the extended sentence and the offender will become eligible for a parole review after becoming eligible for release from the determinate sentence. The court should consider the total sentence that the offender will serve before becoming eligible for consideration for release. If this is not just and proportionate, the court can reduce the length of the determinate sentence, or alternatively, can order the second sentence to be served concurrently.

**Offender subject to an existing indeterminate sentence**

The court can order a determinate sentence to run consecutively to an indeterminate sentence. The determinate sentence will commence on the expiry of the minimum term of the indeterminate sentence and the offender will become eligible for a parole review after becoming eligible for release from the determinate sentence. The court should consider the total sentence that the offender will serve before becoming eligible for consideration for release. If this is not just and proportionate, the court can reduce the length of the determinate sentence, or alternatively, can order the second sentence to be served concurrently.

In respect of community orders, the Council proposes to add to the existing guidance as follows:

**Community orders****Circumstance****Approach****Offender convicted of an offence while serving a community order**

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

(Paragraphs [22](#) and [25](#) of Schedule 10 to the Sentencing Code)

**Community order imposed by magistrates' court**

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

### **Community order imposed by the Crown Court**

Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence. The magistrates' court may also commit the new offence to the Crown Court for sentence where there is a power to do so.

Where the magistrates' court has no power to commit the new offence it should sentence the new offence and commit the offender to the Crown Court to be re-sentenced for the original offence.

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

Where the offender was subject to an unpaid work requirement on the earlier order, the number of hours remaining to be completed on that earlier order should be added to the number of hours of unpaid work the court would impose for the new offence.

If the aggregate number of hours would exceed 300 (which cannot be exceeded in the new order), the court should consider imposing a further punitive requirement (or a fine) in addition to unpaid work.

While it is generally preferable to revoke any earlier order, there may be situations where for reasons of continuity it would be helpful to allow an existing order to continue

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alongside a new order. It is not unlawful for the court to leave the existing community order running and impose a new community order even if the aggregate number of hours of unpaid work exceeded 300. However, it will be generally undesirable to make an order which imposes a significantly longer total period.

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### **The impact**

The proposed changes to the Totality guideline are not anticipated to have a direct impact on the requirement for prison or probation resources. They are merely designed to provide additional helpful information on existing best practice.

**Question 16: Do you agree with the proposed additions to the Totality guideline? If not, please provide any alternative suggestions.**

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# Shop theft and Benefit fraud guidelines

## The issue

Following the addition in April 2024 of a new mitigating factor 'Difficult and/or deprived background or personal circumstances' to most offence specific sentencing guidelines, some magistrates queried how this factor relates to the mitigating factor of 'Offender experiencing **exceptional** financial hardship' in the [Theft from a shop or stall](#) guideline.

The latter factor reflects the fact that for the offence of shop theft in particular, the offending may be motivated by extreme hardship, for example stealing food when unable to pay for it. It differs from the new factor 'Difficult and/or deprived background or personal circumstances', in that it specifically relates to the offender's circumstances at the time of the offence rather than more generally. There is a similar factor in the [Benefit fraud](#) guideline: 'Offender experiencing significant financial hardship or pressure at time fraud was committed due to **exceptional** circumstances'.

There is no expanded explanation for the 'exceptional circumstances' factors.

## The proposed change

In order to clarify how the factors relating to financial hardship in the shop theft and benefit fraud guideline should be applied, the Council proposes:

1. Rewording the factor in the theft from a shop or stall guideline to: 'Offender experiencing exceptional financial hardship at the time the theft was committed'
2. Adding an expanded explanation (as a dropdown) to the factors in both guidelines which reads:

**Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm**

Where the offence was motivated by circumstances arising out of exceptional and immediate financial hardship, this may be relevant to the offender's responsibility for the offence.

This factor may apply independently of or in conjunction with the wider factor of 'Difficult and/or deprived background or personal circumstances'

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**The impact**

These changes are designed to clarify rather than to change practice and therefore no impact on prison or probation resources is anticipated.

**Question 17: Do you agree with the proposed additions relating to financial hardship? If not, please provide any alternative suggestions.**

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# Wording relating to community orders in guidelines

## The issue

The Council noted that there is some potential conflict between guidance in the Allocation guideline relating to committing cases to the Crown Court even if a community order may be the appropriate sentence, and the wording used in various guidelines that refer to community orders as an alternative to a short custodial sentence. For example, the [Possession of indecent photograph of child/ Indecent photographs of children guideline](#) currently states:

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under [part 3 of Schedule 9 of the Sentencing Code](#) can be a proper alternative to a short or moderate length custodial sentence.

The Council also noted that the reference to the sex offender treatment programme might not be appropriate in all cases, particularly where the offender is assessed as low risk.

## The proposed change

The Council therefore proposes to change this wording to:

Where there is a sufficient prospect of rehabilitation, a community order with programme requirement under [part 3 of Schedule 9 of the Sentencing Code](#) (an accredited programme for people convicted of sexual offences) can be a proper alternative to a short or moderate length custodial sentence. Alternatively, in appropriate cases, the probation service may be able to address the offending behaviour through a community order with a rehabilitation activity requirement.

However, if a magistrates' court is of the opinion that that the offending is so serious that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (see the Allocation guideline).

This second paragraph would also be added to guidelines where other programme requirements are referenced. For example, the [Theft from a shop or stall](#) guideline:

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under [part 10](#), or an alcohol treatment requirement under [part 11](#), of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.

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Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under [part 9 of Schedule 9 of the Sentencing Code](#) may be a proper alternative to a short or moderate custodial sentence.

However, if a magistrates' court is of the opinion that that the offending is so serious that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (see the Allocation guideline).

### **The impact**

These changes are designed to improve consistency of information and guidance across guidelines and to ensure that the guidance is up to date. The changes will not affect the types of sentence imposed but may have a small impact on the venue of the sentencing. As such, no impact on prison or probation resources is anticipated.

**Question 18: Do you agree with the proposed changes relating to community orders? If not, please provide any alternative suggestions.**

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# Wording on mandatory minimum sentences

## The issue

In all guidelines where a mandatory minimum sentence applies, there is a step setting out the provisions and the matters to be taken into account in deciding whether there are exceptional circumstances that would justify not imposing the minimum term.

It was pointed out to the Council that it may be helpful to add a reference stating where the burden of showing that exceptional circumstances exist lies.

## The proposed change

The Council proposes to add the following line to the minimum terms step (immediately after the reference to Newton hearings) in all relevant guidelines:

The burden of establishing that exceptional circumstances exist is on the offender.

## The impact

This change merely states what is established practice for the purposes of transparency and clarity and therefore no impact on prison or probation resources is anticipated.

**Question 19: Do you agree with the proposed addition relating to minimum terms? If not, please provide any alternative suggestions.**

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# Domestic abuse

## The issue

Several guidelines have an aggravating factor:

- Offence committed in a domestic context

There is an expanded explanation for this factor which states:

**Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence**

Refer to the [Overarching Principles: Domestic Abuse Definitive Guideline](#)

The Council has received feedback that it would be helpful if the link to the overarching guideline was more prominent within offence specific guidelines.

The Council considered this and decided to:

1. To change the name of the guideline to: 'Domestic abuse: overarching principles', to make it more obvious in a list of guidelines, and
2. To reword the aggravating factor to: 'Offence committed in a domestic abuse context', to align the factor more closely with the overarching guideline

The above changes have already been made and are not subject to consultation (see the Annex for a list of guidelines where the factor has been changed)

## The proposed change

Aggravating factors in guidelines are non-exhaustive and so the domestic abuse factor can be applied in relevant cases even if the factor is not present in a guideline, however the Council considered that it may be helpful to include it in a wider range of guidelines.

The Council proposes to add the domestic abuse aggravating factor to the following guidelines:

- Administering a substance with intent
  - Bladed articles and offensive weapons – possession
  - Bladed articles and offensive weapons – threats
  - Breach of a criminal behaviour order
  - Breach of a protective order (restraining and non-molestation orders)
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- Causing or inciting prostitution for gain/ Controlling prostitution for gain
  - Committing an offence with intent to commit a sexual offence
  - Engaging in sexual activity in the presence of a person with mental disorder impeding choice/ Causing a person, with mental disorder impeding choice, to watch a sexual act
  - Engaging in sexual activity in the presence procured by inducement, threat or deception, of a person with mental disorder/ Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception
  - Firearms – Carrying in a public place
  - Firearms – Possession by person prohibited
  - Firearms – Possession of prohibited weapon
  - Firearms – Possession with intent – other offences
  - Firearms – Possession with intent to cause fear of violence
  - Firearms – Possession with intent to cause fear of violence
  - Firearms – Possession without certificate
  - Aggravated burglary
  - Domestic burglary
  - Non-domestic burglary
  - Robbery – dwelling
  - Theft – general
  - Trespass with intent to commit a sexual offence
  - Voyeurism

### **The impact**

The changes are aimed at improving consistency and transparency and are unlikely to have a significant impact on sentencing practice as most sentencers are aware of the Domestic abuse guideline and apply it in relevant cases. Therefore no impact on prison or probation resources is anticipated.

**Question 20: Do you agree to add the domestic abuse aggravating factor to the listed guidelines? If not, please provide any alternative suggestions.**

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# Equalities and impact

## Equalities

Many of the proposals within this consultation are for relatively minor or technical changes which are unlikely to have any bearing on equality issues. We would welcome comments on any equality issues relating to the proposals that we have missed.

**Question 21: Are there any equalities issues relating to the proposals that should be addressed?**

## Impact

The Council anticipates that any impact on prison and probation resources from the majority of the changes proposed in this consultation will be minor. In view of the nature of the consultation, a separate resource assessment has not been produced but a brief discussion on impact has been included in relation to each proposal.

**Question 22: Do you have any comments on the likely impact of the proposals on sentencing practice?**

## General observations

We would also like to hear any other views you have on the proposals that you have not had the opportunity to raise in response to earlier questions.

**Question 23: Are there any other comments you wish to make on the proposals?**

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# Annex – changes that are not subject to consultation

In addition to the changes consulted on in this document, the Council has made minor changes to guidelines or the explanatory materials which, while not requiring consultation, it was felt should be drawn to the attention of those responding to this consultation.

All minor changes made to guidelines (and associated materials) are logged and that log is published on the Council's website at:

<https://www.sentencingcouncil.org.uk/updates/magistrates-court/item/revisions-and-corrections-to-sentencing-council-digital-guidelines/>

While the Council is not consulting on these changes (which have already been made) we do welcome feedback on these or any other aspects of the Council's output. This can be done at any time via the feedback section at the bottom of every guideline or by emailing [info@sentencingcouncil.gov.uk](mailto:info@sentencingcouncil.gov.uk)

## Revenue fraud

The header to the guideline has been updated to read:

**Fraudulent evasion of VAT; False statement for VAT purposes; Conduct amounting to an offence**, Value Added Tax Act 1994 (section 72)

**Fraudulent evasion of income tax**, Taxes Management Act 1970 (section 106A)

**Fraudulent evasion of excise duty; Improper importation of goods**, Customs and Excise Management Act 1979 (sections 50, 170 and 170B)

Triable either way

Maximum: 7 years' custody **Note: for offences committed on or after February 22, 2024 the statutory maximum has increased from 7 to 14 years' custody.**

**The guideline has not yet been updated to reflect this change**

In Step 2 of the guideline the information above Table 2 has been updated to read:

**Section 17 Theft Act 1968: False Accounting**

Maximum: 7 years' custody

**Section 72(1) Value Added Tax Act 1994: Fraudulent evasion of VAT**

**Section 72(3) Value Added Tax Act 1994: False statement for VAT purposes**

**Section 72(8) Value Added Tax Act 1994: Conduct amounting to an offence**

**Section 106(a) Taxes Management Act 1970: Fraudulent evasion of income tax**

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**Section 170(1)(a)(i), (ii), (b), 170(2)(a), 170B Customs and Excise Management Act 1979: Fraudulent evasion of excise duty****Section 50(1)(a), (2) Customs and Excise Management Act 1979: Improper importation of goods**

Maximum: 7 years' custody **Note: for offences committed on or after February 22, 2024 the statutory maximum has increased from 7 to 14 years' custody. The guideline has not yet been updated to reflect this change**

## Firearms importation

The header to the guideline has been updated to read:

Maximum: 14 years (7 years for offences committed before 22 February 2024) unless committed in Great Britain in connection with a prohibition or restriction on the importation or exportation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (ag), (ba) or (c) or (1A)(a) of the Firearms Act 1968 in which case the maximum is life imprisonment

The heading for table 2 has been updated to read:

**TABLE 2: Offences subject to the statutory maximum sentence of 14 years (7 years for offences committed before 22 February 2024).** The starting points and ranges apply to offences regardless of whether the 14 year or 7 year maximum applies.

## Sex offender treatment programme

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under [part 3 of Schedule 9 of the Sentencing Code](#) can be a proper alternative to a short or moderate length custodial sentence.

The above wording has been removed from the following guidelines as they are not classed as 'sexual offences' for the purposes of programme eligibility:

- Causing or inciting prostitution for gain/ Controlling prostitution for gain
  - Keeping a brothel used for prostitution
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## Domestic abuse

The name of the overarching guideline has been changed from 'Overarching principles: domestic abuse' to: 'Domestic abuse: overarching principles', to make it more obvious in a list of guidelines.

The aggravating factor in the following guidelines has been changed from 'Offence committed in a domestic context' to 'Offence committed in a domestic abuse context' to align the factor more closely with the overarching guideline

- Arson (criminal damage by fire)
- Arson/criminal damage with intent to endanger life or reckless as to whether life endangered
- Assault occasioning actual bodily harm / Racially or religiously aggravated ABH
- Attempted murder
- Causing grievous bodily harm with intent to do grievous bodily harm / Wounding with intent to do GBH
- Common assault / Racially or religiously aggravated common assault/ Common assault on emergency worker
- Disclosing or threatening to disclose private sexual images
- Harassment (fear of violence)/ Stalking (fear of violence)/ Racially or religiously aggravated harassment (fear of violence)/stalking (fear of violence)
- Harassment/ Stalking/ Racially or religiously aggravated harassment/stalking
- Inflicting grievous bodily harm/ Unlawful wounding/ Racially or religiously aggravated GBH/ Unlawful wounding
- Threats to destroy or damage property
- Threats to kill
- Witness intimidation



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