Sentencing Council

Miscellaneous amendments to sentencing guidelines

Consultation

September 2022

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Published on 7 September 2022

The consultation will end on 30 November 2022

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 7 September 2022 to 30 November 2022
Enquiries (including requests for the paper in an alternative format) to:	Office of the Sentencing Council Room EB20 Royal Courts of Justice Strand London WC2A 2LL Tel: 020 7071 5793 Email: info@sentencingcouncil.gov.uk
How to respond:	Please send your response by 30 November 2022: by email to Ruth Pope: 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 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 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 explanatory materials that accompany them. This is the second of these annual consultations in which the Council seeks the views of guideline users to proposals to make amendments to existing guidelines.

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

Summary of the proposed changes

1. Matters relevant primarily to magistrates' courts:

- Clarifying the wording relating to disqualification from driving in the following:
  - Drug driving guidance
  - Excess alcohol guideline
  - Unfit through drink or drugs (drive/ attempt to drive) guideline
  - Fail to provide specimen for analysis (drive/attempt to drive) guideline

- Amending the wording in the explanatory materials on:
  - Discretionary disqualification
  - 'Totting up' disqualification
  - Obligatory disqualification
  - Football banning orders

2. Matters relevant to magistrates' courts and the Crown Court

- Amending the guidelines for criminal damage to take account of the legislative change relating to memorials.

- Amending the wording regarding minimum sentences in the following guidelines:
  - Bladed articles and offensive weapons – possession
  - Bladed articles and offensive weapons – threats
  - Bladed articles and offensive weapons (possession and threats) – children and young people
  - Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another
  - Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug

- Domestic burglary
- Aggravated burglary (Crown Court only)

3. Matters relevant solely to the Crown Court

- Adding wording to the Unlawful act manslaughter guideline relating to the required life sentence for an offence committed against an emergency worker

Other changes

In addition to the changes consulted on in this document, the Council has made a number of changes to guidelines that it considered did not need to be consulted on as they merely gave effect to changes to legislation in a manner that is uncontroversial.

The Council has also made other 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.

A list of these changes is annexed to this document (at page 30).

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. As this is a relatively limited consultation in terms of its scope, 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.

- ***Question 1: What is your name?***
- ***Question 2: What is your email address?***
- ***Question 3: What is your organisation?***

Disqualification from driving

The wording on obligatory disqualification in guidelines

The issue

The Council received feedback from guideline users that the wording relating to disqualification in the drug driving guidance and the excess alcohol guideline could be improved by clarifying the relevant dates (i.e. the date of the commission of the offence, date of conviction or date if the imposition of a disqualification) for each provision. The Council agreed that this would be useful and that the same changes should also apply to the unfit through drink or drugs (drive/ attempt to drive) and the fail to provide specimen for analysis (drive/attempt to drive) guidelines.

The proposed wording aims to avoid confusion between the different requirements of the various statutory provisions. The requirement in the Road Traffic Offenders Act 1988 s.34(4)(b) to disqualify for at least two years depends on more than one previous disqualification having been **imposed** in the three years preceding the commission of the current offence. However, the requirement under s.34(3) of that Act to disqualify for at least three years depends on the offender having been **convicted** of a relevant offence in the ten years preceding the commission of the current offence.

The Council therefore proposes the following changes.

The current wording

- Must endorse and disqualify for at least 12 months
- Must disqualify for at least 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – refer to disqualification guidance and consult your legal adviser for further guidance
- Must disqualify for at least 3 years if offender has been convicted of a relevant offence in preceding the 10 years – consult your legal adviser for further guidance
- Extend disqualification if imposing immediate custody

The proposed wording (additions shown in red)

- Must endorse and disqualify for at least 12 months
- Must disqualify for at least 2 years if offender has had two or more disqualifications for periods of 56 days or more **imposed** in the 3 years preceding the **commission** of the current offence – refer to disqualification guidance and consult your legal adviser for further guidance
- Must disqualify for at least 3 years if offender has been **convicted** of a relevant offence in the 10 years preceding the **commission** of the current offence – consult your legal adviser for further guidance
- Extend disqualification if imposing immediate custody

The detailed guidance hyperlinked from the wording above is discussed below.

The changes that are proposed will not affect sentence levels. The only impact they may have is to prevent courts falling into error in the imposition of disqualification from driving.

We are seeking views as to whether the proposed revisions are clear and helpful.

Question 4: Do you agree with the proposed changes to the wording on obligatory disqualification in guidelines? If not, please provide any alternative suggestions.

Obligatory disqualification in the explanatory materials

The issue

The explanatory materials to the magistrates' courts sentencing guidelines (MCSG) contain more detailed information on obligatory disqualification (and is hyperlinked from the various offence guidelines referred to above). The Council considered that this guidance should be amended for two reasons. Firstly, to provide more clarity on the relevant dates for each provision (as referred to above) and secondly, to reflect legislative changes brought in by the Police, Crime, Sentencing and Courts Act 2022 (PCSC Act).

The changes brought in by the PCSC Act mean that the position regarding obligatory disqualification is slightly more complicated than before and that different considerations now apply to causing death by careless driving when under the influence of drink or drugs. The guidance below therefore applies only to those offences which carry a 12 month minimum obligatory disqualification. (The Council is consulting separately on guidelines for a range of motoring offences which includes guidance on disqualification for those offences.)

The Council therefore proposes the following changes.

The current wording

1. Obligatory disqualification

Some offences carry obligatory disqualification for a minimum of 12 months (Road Traffic Offenders Act ("RTOA") 1988, s.34). The minimum period is automatically increased where there have been certain previous convictions and disqualifications.

An offender must be disqualified for at least two years if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence (RTOA 1988, s.34(4)). The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

An offender must be disqualified for at least three years if he or she is convicted of one of the following offences **and** has within the 10 years preceding the commission of the offence been convicted of any of these offences (RTOA 1988, s.34(3)):

- causing death by careless driving when under the influence of drink or drugs;
- driving or attempting to drive while unfit;
- driving or attempting to drive with excess alcohol;
- driving or attempting to drive with concentration of specified controlled drug above specified limit;
- failing to provide a specimen (drive/attempting to drive).

The individual offence guidelines indicate whether disqualification is mandatory for the offence and the applicable minimum period. **Consult your legal adviser for further guidance.**

The proposed wording (changes shown in red)

1. Obligatory disqualification

Note: The following guidance applies to offences with a 12 month minimum disqualification.

Some offences carry obligatory disqualification for a minimum of 12 months (Road Traffic Offenders Act ("RTOA") 1988, s.34). The minimum period is automatically increased where there have been certain previous convictions and disqualifications.

An offender must be disqualified for at least two years if a disqualification of at least 56 days has been imposed on them in the three years preceding the commission of the offence (RTOA 1988, s.34(4)(b)). The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

An offender must be disqualified for at least three years if he or she is convicted of one of the following offences:

- driving or attempting to drive while unfit;
- driving or attempting to drive with excess alcohol;
- driving or attempting to drive with concentration of specified controlled drug above specified limit;
- failing to provide a specimen (drive/attempting to drive).

and has within the 10 years preceding the commission of the offence been convicted of any of those offences or causing death by careless driving when under the influence of drink or drugs (RTOA 1988, s.34(3)):

The individual offence guidelines indicate whether disqualification is mandatory for the offence and the applicable minimum period. **Consult your legal adviser for further guidance.**

As above the changes that are proposed will not affect sentence levels. The only impact they may have is to prevent courts falling into error in the imposition of disqualification from driving. We are interested to hear your views on whether the guidance is clear and helpful.

Question 5: Do you agree with the proposed changes to the wording on obligatory disqualification in the explanatory materials? If not, please provide any alternative suggestions.

Discretionary and 'totting up' disqualification in the explanatory materials

The issue

In 2020 the Council consulted on changes to the guidance on 'totting up' disqualifications with the intention of reducing the occurrences of offenders who have accumulated 12 or more points avoiding disqualification. However, since those changes, it has been suggested by some magistrates and legal advisers that courts are too often imposing short discretionary disqualifications (of less than 56 days) where 12 or more points have been imposed. This avoids a longer period of disqualification that would result from totting-up (at least 6 months).

The suggestion was that the wording in the totting up guidance should be the same as that in the discretionary disqualification guidance.

It was also pointed out that there is sometimes confusion as to which points count towards a totting up disqualification and that it would be helpful for the guidance to set that out more clearly.

The current wording

Extract from 'Totting up' disqualification:

> Incurring 12 or more penalty points within a three-year period means a minimum period of disqualification must be imposed (a 'totting up disqualification') – s.35 Road Traffic Offenders Act (RTOA) 1988.
>
> […]
>
> The court should first consider the circumstances of the offence, and determine whether the offence should attract a discretionary period of disqualification. But the court must note the statutory obligation to disqualify those repeat offenders who would, were penalty points imposed, be liable to the mandatory "totting" disqualification, and should ordinarily prioritise the "totting" disqualification ahead of a discretionary disqualification.

Extract from Discretionary disqualification:

> In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a 'totting up' disqualification if further points were imposed. In these circumstances, the court should impose penalty points rather than discretionary

disqualification so that the minimum totting up disqualification period applies (see 'totting up').

The Council agreed that the wording in the 'totting up' guidance should be consistent with that used in the disqualification guidance but considered that it would be preferable to amend both pieces of guidance.

The proposed wording (changes shown in red)

'Totting-up' guidance:

Incurring 12 or more penalty points means a minimum period of disqualification must be imposed (a 'totting up disqualification') – s.35 Road Traffic Offenders Act (RTOA) 1988. Points are **not** to be taken into account for offences **committed** more than three years before the **commission** of the current offence – s.29 RTOA 1988.

[…]

The court should first consider the circumstances of the offence, and determine whether the offence should attract a discretionary period of disqualification. But the court must note the statutory obligation to disqualify those repeat offenders who would, were penalty points imposed, be liable to the mandatory "totting" disqualification and, unless the court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, **the court should impose penalty points rather than discretionary disqualification** so that the minimum totting up disqualification period applies.

Discretionary disqualification guidance:

In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a 'totting up' disqualification if further points were imposed. In these circumstances, unless the court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies *(see 'totting up').*

As above the changes that are proposed will not affect sentence levels. The only impact they may have is on the imposition of disqualification from driving.
The Council is interested in views on the content and clarity of the proposed changes.

Question 6: Do you agree with the proposed changes to the wording on discretionary and 'totting up' disqualification in the explanatory materials? If not, please provide any alternative suggestions.

Football banning orders

The issue

There is some guidance on football banning orders in the ancillary orders section of the explanatory materials to the magistrates' courts sentencing guidelines. The guidance states:

> The court must make a football banning order where an offender has been convicted of a relevant offence and it is satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder (Football Spectators Act 1989, s.14A). If the court is not so satisfied, it must state that fact and give its reasons.

Schedule 1 to the Football Spectators Act 1989 lists the offences and circumstances that require a football banning order. This schedule has been amended by Section 190 of the PCSC Act. These changes are already in force**.**

The guidance provides a list of the more commonly encountered 'relevant offences' (but does not replicate Schedule 1 in full) and this now requires updating. The proposal is to update the entry on public order offences and add further entries.

The current wording

- disorderly behaviour – Public Order Act 1986, s.5 – committed: (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises; (b) on a journey to or from a football match and the court makes a declaration that the offence related to football matches; or (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;

The proposed wording (changes shown in red)

- public order offences – Public Order Act 1986, Parts 3 and 3A, and s.4, 4A or 5 – committed: (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises; (b) on a journey to or from a football match and the court makes a declaration that the offence related to football matches; or (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;

- any offence under section 31 of the Crime and Disorder Act 1998 (racially or religiously aggravated public order offences) where the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,

- any offence under section 1 of the Malicious Communications Act 1988 (offence of sending any letter, electronic communication or article with intent to cause distress or anxiety) where the court has stated that the offence is aggravated by hostility of any of the types mentioned in section 66(1) of the Sentencing Code (racial hostility etc), and

where the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,

- any offence under section 127(1) of the Communications Act 2003 (improper use of public telecommunications network) where the court has stated that the offence is aggravated by hostility of any of the types mentioned in section 66(1) of the Sentencing Code (racial hostility etc), and where the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation.

The proposed changes are merely designed to reflect legislative changes and are not expected to affect sentence levels. As such the Council considered making them without consultation, but concluded that it would be helpful to consult to ensure that the information is set out in a way that is helpful to guideline users.

Question 7: Do you agree with the proposed changes to the wording on football banning orders in the explanatory materials? If not, please provide any alternative suggestions.

Criminal damage

The issue

Section 50 of the PCSC Act inserts subsections (11A) to (11D) of section 22, and amends Schedule 2 to, the Magistrates' Courts Act 1980. This has the effect of excluding criminal damage to memorials from offences which are to be tried summarily even though the value involved is not more than £5,000 (for offences committed on or after 28 June 2022). The definition of a memorial in the legislation is very wide and can include a bunch of flowers. Criminal damage which is to be tried summarily has a maximum sentence of 3 months' custody and/or a £2,500 fine whereas the either way offence has a maximum of 10 years.

There are two sentencing guidelines for criminal damage:

- Criminal damage (other than by fire) value not exceeding £5,000/ Racially or religiously aggravated criminal damage
  This guideline states that the maximum for the basic offence is 3 months' custody
- Criminal damage (other than by fire) value exceeding £5,000/ Racially or religiously aggravated criminal damage

The issue is how best to direct courts to the appropriate guideline when sentencing cases where the value does not exceed £5,000 but the case may be tried in the Crown Court and/or the maximum penalty for the offence is not limited to three months' imprisonment because it relates to a memorial.

The current wording

The header for the over £5,000 guideline is:

Criminal damage (other than by fire) value exceeding £5,000/ Racially or religiously aggravated criminal damage

Crime and Disorder Act 1998, s.30, Criminal Damage Act 1971, s.1(1)

Effective from: 01 October 2019

Criminal damage (other than by fire) value exceeding £5,000, Criminal Damage Act 1971, s.1(1)

Triable either way
Maximum: 10 years' custody
Offence range: Discharge – 4 years' custody

Note: Where an offence of criminal damage is **added** to the indictment at the Crown Court **(having not been charged before)** the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value does not exceed £5,000 regard should also be had to the not exceeding £5,000 guideline.

Racially or religiously aggravated criminal damage, Crime and Disorder Act 1998, s.30

Triable either way
Maximum: 14 years' custody

The header for the up to £5,000 guideline is:

Criminal damage (other than by fire) value not exceeding £5,000/ Racially or religiously aggravated criminal damage

Crime and Disorder Act 1998, s.30, Criminal Damage Act 1971, s.1(1)

Effective from: 01 October 2019

Criminal damage (other than by fire) value not exceeding £5,000, Criminal Damage Act 1971, s.1 (1)

Triable only summarily (except as noted below*)

Maximum: Level 4 fine and/or 3 months' custody
Offence range: Discharge – 3 months' custody

Note: Where an offence of criminal damage is **added** to the indictment at the Crown Court **(having not been charged before)** the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value does not exceed £5,000, the exceeding £5,000 guideline should be used but regard should also be had to this guideline.

*Triable either way if it is an offence committed by destroying or damaging a memorial as defined by s22(11A) – (11D) of the Magistrates' Courts Act 1980 committed on or after 28 June 2022. In which case maximum 10 years' custody

Racially or religiously aggravated criminal damage, Crime and Disorder Act 1998, s.30

Triable either way
Maximum: 14 years' custody

The highlighted wording above was added to the guideline on 27 June 2022 to inform guideline users of the legislative change.

The proposed wording (changes shown in red)

Criminal damage (other than by fire) value exceeding £5,000/ Racially or religiously aggravated criminal damage

Crime and Disorder Act 1998, s.30, Criminal Damage Act 1971, s.1(1)

Effective from: 01 October 2019

Criminal damage (other than by fire) value exceeding £5,000, Criminal Damage Act 1971, s.1(1)

Triable either way
Maximum: 10 years' custody
Offence range: Discharge – 4 years' custody

Note: Where an offence of criminal damage:

a) is **added** to the indictment at the Crown Court **(having not been charged before)**

or

b) it is an offence committed by destroying or damaging a memorial as defined by s22(11A) - (11D) of the Magistrates' Courts Act 1980 committed on or after 28 June 2022

the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value does not exceed £5,000 regard should also be had to the not exceeding £5,000 guideline.

Racially or religiously aggravated criminal damage, Crime and Disorder Act 1998, s.30

Triable either way
Maximum: 14 years' custody

Criminal damage (other than by fire) value not exceeding £5,000/ Racially or religiously aggravated criminal damage

Crime and Disorder Act 1998, s.30, Criminal Damage Act 1971, s.1(1)

Effective from: 01 October 2019

Criminal damage (other than by fire) value not exceeding £5,000, Criminal Damage Act 1971, s.1 (1)

Triable only summarily (except as noted below)

Maximum: Level 4 fine and/or 3 months' custody
Offence range: Discharge – 3 months' custody

Note: Where an offence of criminal damage:

a) is **added** to the indictment at the Crown Court **(having not been charged before)**

or

b) it is an offence committed by destroying or damaging a memorial as defined by s22(11A) - (11D) of the Magistrates' Courts Act 1980 committed on or after 28 June 2022

the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value does not exceed £5,000, the exceeding £5,000 guideline should be used but regard should also be had to this guideline.

Racially or religiously aggravated criminal damage, Crime and Disorder Act 1998, s.30

Triable either way
Maximum: 14 years' custody

The Council considered that the proposed changes have the advantage of being fairly straightforward and will give sentencers the maximum flexibility to sentence according to the seriousness of the offending in individual cases. As such, the changes are not designed or expected to affect sentence levels. However, we are keen to hear the views of sentencers and other guideline users as to whether this approach is correct.

Question 8: Do you agree with the proposed changes to the criminal damage guidelines? If not, please provide any alternative suggestions.

Minimum sentences

The issue

Section 124 of the PCSC Act changes the threshold for passing a sentence below the minimum term for repeat offenders for certain offences from 'unjust in all the circumstances' to 'exceptional circumstances' for offences committed on or after 28 June 2022. The guidelines affected are:

- Bladed articles and offensive weapons – possession
- Bladed articles and offensive weapons – threats
- Bladed articles and offensive weapons (possession and threats) – children and young people
- Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another
- Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug
- Domestic burglary
- Aggravated burglary (Crown Court only)

With the exception of the Domestic burglary and Aggravated burglary guidelines, the relevant guidelines have an existing step 3 (step 5 in the Bladed articles and offensive weapons – children and young people guideline) that sets out the requirements for the minimum term and the test for 'unjust in all the circumstances'. Any changes to step 3 will need to accommodate both tests (at least in the short term).

Bladed articles/ offensive weapons – guidelines for sentencing adults

The current wording

To ensure courts are aware of the change in legislation, the Council has added a note to the existing step 3. As an example, step 3 of the possession of a bladed article/offensive weapon guideline reads:

Step 3 – Minimum Terms – second or further relevant offence

When sentencing the offences of:

- possession of an offensive weapon in a public place;
- possession of an article with a blade/point in a public place;
- possession of an offensive weapon on school premises; and
- possession of an article with blade/point on school premises

a court must impose a sentence of at least 6 months' imprisonment where this is a second or further relevant offence **unless the court is of the opinion that there are particular circumstances relating to the offence, the previous offence or the offender which make it unjust to do so in all the circumstances**.

Note: For offences committed on or after 28 June 2022 the minimum sentence must be imposed unless the court is of the opinion that there are **exceptional circumstances** which relate to the offence or to the offender, and justify not doing so.

A 'relevant offence' includes those offences listed above and the following offences:

- threatening with an offensive weapon in a public place;
- threatening with an article with a blade/point in a public place;
- threatening with an article with a blade/point on school premises; and
- threatening with an offensive weapon on school premises.

Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offence or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence**.

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offence(s) and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls far below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

The proposed wording (changes shown in red)

In order to accommodate both tests the proposal is to have the two different tests as dropdowns within step 3. This is illustrated below in a revised version of the possession of a bladed article/offensive weapon guideline or it can be viewed on-line here.

Step 3 – Minimum Terms – second or further relevant offence

When sentencing the offences of:

- possession of an offensive weapon in a public place;
- possession of an article with a blade/point in a public place;
- possession of an offensive weapon on school premises; and
- possession of an article with blade/point on school premises

a court must impose a sentence of at least 6 months' imprisonment where this is a second or further relevant offence **unless:**

- (If the offence was committed on or after 28 June 2022) **the court is of the opinion that there are exceptional circumstances which relate to any of the offences or to the offender, and justify not doing so; or.**
- (If the offence was committed before 28 June 2022) **the court is of the opinion that there are particular circumstances relating to the offence, the previous offence or the offender which make it unjust to do so in all the circumstances.**

A 'relevant offence' includes those offences listed above and the following offences:

- threatening with an offensive weapon in a public place;
- threatening with an article with a blade/point in a public place;
- threatening with an article with a blade/point on school premises; and
- threatening with an offensive weapon on school premises.

Exceptional circumstances (offence committed on or after 28 June 2022) v

In considering whether there are exceptional circumstances that would justify not imposing the minimum term the court must have regard to:

- the particular circumstances which relate to any of the offences **and**
- the particular circumstances of the offender.

either of which may give rise to exceptional circumstances.

Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

The circumstances must truly be exceptional. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.

It is important that courts adhere to the statutory requirement and do not too readily accept exceptional circumstances.

The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances. The seriousness of the previous offence(s) and the period of time that has elapsed between offences will be a relevant consideration.

The mere presence of one or more of the following should not *in itself* be regarded as exceptional:

- One or more lower culpability factors
- One or more mitigating factors
- A plea of guilty

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.

Unjust in all of the circumstances (offence committed before 28 June 2022) v

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offence or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence**.

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offence(s) and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls far below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

For the threats guideline the changes could be largely the same. The only differences being that the references to the previous offence would not be included. The first part of step 3 would read:

When sentencing these offences a court must impose a sentence of at least 6 months imprisonment **unless**

- (If the offence was committed on or after 28 June 2022) **the court is of the opinion that there are exceptional circumstances which relate to the offence or to the offender, and justify not doing so**; or
- (If the offence was committed before 28 June 2022) **the court is of the opinion that there are particular circumstances relating to the offence, the previous offence or the offender which make it unjust to do so in all the circumstances.**

The proposals are necessitated by changes to legislation and any effect on sentence levels would therefore be attributable to the legislation.

Question 9: Do you agree with the proposed changes to step 3 in the adult bladed articles/ offensive weapons guidelines? If not, please provide any alternative suggestions.

Bladed articles/ offensive weapons – guideline for sentencing children

The proposed wording

For the children and young people possession/threats guideline step 5 would read (changes in red):

Step 5 – Statutory minimum sentencing provisions

The following provisions apply to those young people who were aged 16 or over **on the date of the offence.**

Threatening with Bladed Articles or Offensive Weapons

When sentencing these offences a court must impose a sentence of at least 4 months Detention and Training Order **unless:**

- (If the offence was committed on or after 28 June 2022) **the court is of the opinion that there are exceptional circumstances which relate to the offence or to the young person, and justify not doing so;** or
- (If the offence was committed before 28 June 2022) **the court is of the opinion that there are particular circumstances relating to the offence or the young person which make it unjust to do so in all the circumstances.**

Possession of Bladed Articles or Offensive Weapons

When sentencing the offences of:

- possession of an offensive weapon in a public place;
- possession of an article with a blade/point in a public place;
- possession of an offensive weapon on school premises; and
- possession of an article with blade/point on school premises

a court must impose a sentence of at least 4 months' Detention and Training Order where this is a second or further relevant offence unless

- (If the offence was committed on or after 28 June 2022) **the court is of the opinion that there are exceptional circumstances which relate to any of the offences or to the young person, and justify not doing so; or**
- (If the offence was committed before 28 June 2022) **the court is of the opinion that there are particular circumstances relating to the offence, the previous offence or the young person which make it unjust to do so in all the circumstances.**

A 'relevant offence' includes those offences listed above and the following offences:

- threatening with an offensive weapon in a public place;
- threatening with an article with a blade/point in a public place;
- threatening with an article with a blade/point on school premises; and
- threatening with an offensive weapon on school premises.

Exceptional circumstances (offence committed on or after 28 June 2022) v

In considering whether there are exceptional circumstances that would justify not imposing the minimum term the court must have regard to:

- the particular circumstances which relate to any of the offences **and**
- the particular circumstances of the offender.

either of which may give rise to exceptional circumstances.

Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence for that young person.

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the offence. Where the court has determined that the offence seriousness falls far below the custody threshold the court may consider that this gives rise to exceptional circumstances that justify not imposing the statutory minimum sentence. Where the court is considering a statutory minimum sentence as a result of a second or further relevant offence, consideration should be given to the seriousness of the previous offence(s) and the period of time that has elapsed between offending. Where the seriousness of the combined offences is such that it falls far below the custody threshold, or where there has been a significant period of time between the offences, the court may consider that this gives rise to exceptional circumstances that justify not imposing the statutory minimum sentence.

The young person

The statutory obligation to have regard to the welfare of a young person includes the obligation to secure proper provision for education and training, to remove the young person from undesirable surroundings where appropriate, and the need to choose the best option for the young person taking account of the circumstances of the offence. **In having regard to the welfare of the young person, a court should ensure that it considers**:

- any mental health problems or learning difficulties/disabilities;
- any experiences of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had;
- any speech and language difficulties and the effect this may have on the ability of the young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;
- the vulnerability of young people to self harm, particularly within a custodial environment; and
- the effect on young people of experiences of loss and neglect and/or abuse.

In certain cases the concerns about the welfare of the young person may be so significant that the court considers that this gives rise to exceptional circumstances that justify not imposing the statutory minimum sentence.

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court must impose an alternative sentence.

Unjust in all of the circumstances **(offence committed before 28 June 2022)** V

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence, any relevant previous offence and the young person. If the circumstances make it unjust to impose the statutory minimum sentence then the court **must impose an alternative sentence**.

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the offence. Where the court has determined that the offence seriousness falls far below the custody threshold the court may consider it unjust to impose the statutory minimum sentence. Where the court is considering a statutory minimum sentence as a result of a second or further relevant offence, consideration should be given to the seriousness of the previous offence(s) and the period of time that has elapsed between offending. Where the seriousness of the combined offences is such that it falls far below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The young person

The statutory obligation to have regard to the welfare of a young person includes the obligation to secure proper provision for education and training, to remove the young person from undesirable surroundings where appropriate, and the need to choose the best option for the young person taking account of the circumstances of the offence. **In having regard to the welfare of the young person, a court should ensure that it considers**:

- any mental health problems or learning difficulties/disabilities;
- any experiences of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had;
- any speech and language difficulties and the effect this may have on the ability of the young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;
- the vulnerability of young people to self harm, particularly within a custodial environment; and
- the effect on young people of experiences of loss and neglect and/or abuse.

In certain cases the concerns about the welfare of the young person may be so significant that the court considers it unjust to impose the statutory minimum sentence.

The proposed wording for the new test is closely aligned with the existing wording, the rationale being that these factors reflect the statutory requirement to have regard to the prevention of offending by children and young people) and the welfare of the child or young person.

The proposals are necessitated by changes to legislation and any effect on sentence levels would therefore be attributable to the legislation.

Question 10: Do you agree with the proposed changes to step 5 in the Bladed articles and offensive weapons (possession and threats) - children and young people guideline? If not, please provide any alternative suggestions.

Minimum sentence of 7 years for third class A drug trafficking offence

The same approach as outlined above for the Bladed articles/ offensive weapons – guidelines for sentencing adults could be applied to the supply of prohibited drugs and drugs importation guidelines.

The proposed wording

For the Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another guideline step 3 would read (changes in red):

Step 3 – Minimum Terms

For class A cases, section 313 of the Sentencing Code provides that a court should impose an appropriate custodial sentence of at least seven years for a third class A trafficking offence except:

- (If the offence was committed on or after 28 June 2022) **where the court is of the opinion that there are exceptional circumstances which (a) relate to any of the offences or to the offender; and (b) justify not doing so;** or
- (If the offence was committed before 28 June 2022) **where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.**

Exceptional circumstances (offence committed on or after 28 June 2022) V

In considering whether there are exceptional circumstances that would justify not imposing the minimum term the court must have regard to:

- the particular circumstances which relate to any of the offences **and**
- the particular circumstances of the offender.

either of which may give rise to exceptional circumstances.

Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

The circumstances must truly be exceptional. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.

It is important that courts adhere to the statutory requirement and do not too readily accept exceptional circumstances.

The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact

of all of the relevant circumstances. The seriousness of the previous offences and the period of time that has elapsed between offences will be a relevant consideration.

The mere presence of one or more of the following should not *in itself* be regarded as exceptional:

- One or more lower culpability factors
- One or more mitigating factors
- A plea of guilty

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.

Unjust in all of the circumstances **(offence committed before 28 June 2022)** v

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offences or the offender make it unjust to impose the statutory minimum sentence then the court must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offences and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

The proposals are necessitated by changes to legislation and any effect on sentence levels would therefore be attributable to the legislation.

Question 11: Do you agree with the proposed changes to step 3 in the class A drug trafficking offences guidelines? If not, please provide any alternative suggestions.

Minimum sentence of 3 years for third domestic burglary

As mentioned above, the domestic burglary and aggravated burglary guidelines do not currently have a separate step to consider the minimum term. The Council considered that it would be preferable to introduce a new step 3 setting out the approach in these guidelines consistent with that in other guidelines.

The later steps in the guidelines would then be re-numbered. The wording proposed below is for the Domestic burglary guideline, similar wording would be included in the Aggravated burglary guideline (where the offence takes place in domestic premises).

The proposed wording

Step 3 – Minimum Terms

Section 314 of the Sentencing Code provides that a court should impose an appropriate custodial sentence of at least three years for a third domestic burglary offence unless:

- (If the offence was committed on or after 28 June 2022**) the court is of the opinion that there are exceptional circumstances which relate to any of the offences or to the offender; and justify not doing so**; or
- (If the offence was committed before 28 June 2022) **the court is of the opinion that there are particular circumstances which relate to any of the offences or to the offender; and would make it unjust to do so in all the circumstances.**

Exceptional circumstances (offence committed on or after 28 June 2022) V

In considering whether there are exceptional circumstances that would justify not imposing the minimum term the court must have regard to:

- the particular circumstances which relate to any of the offences **and**
- the particular circumstances of the offender.

either of which may give rise to exceptional circumstances.

Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

The circumstances must truly be exceptional. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.

It is important that courts adhere to the statutory requirement and do not too readily accept exceptional circumstances.

The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances. The seriousness of the previous offences and the period of time that has elapsed between offences will be a relevant consideration.

The mere presence of one or more of the following should not *in itself* be regarded as exceptional:

- One or more lower culpability factors
- One or more mitigating factors
- A plea of guilty

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.

Unjust in all of the circumstances (offence committed before 28 June 2022) V

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offences or the offender make it unjust to impose the statutory minimum sentence then the court must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offences and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

The proposals are necessitated by changes to legislation and any effect on sentence levels would therefore be attributable to the legislation.

Question 12: Do you agree with the proposed new step 3 in the Domestic burglary and Aggravated burglary guidelines? If not, please provide any alternative suggestions.

Required life sentence for manslaughter of an emergency worker

The issue

Section 3 of the PCSC Act inserts a new section 258A (re 16 and 17 year old offenders), section 274A (re 18-20 year old offenders) and section 285A (re offenders aged 21 and older) in the Sentencing Code. The effect of this is that for unlawful act manslaughter where the victim is an emergency worker acting in that capacity, the court must impose a life sentence unless there are exceptional circumstances.

While this provision will only apply very rarely, the Council considered that it would be helpful to sentencers to add a step to the Unlawful act manslaughter guideline.

The proposed wording

Firstly, the Council proposes to add the following to the header of the guideline (immediately before the text on the type of manslaughter):

For offences committed on or after 28 June 2022, if the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court must impose a life sentence unless the court is of the opinion that there are exceptional circumstances which (a) relate to the offence or the offender, and (b) justify not doing so (sections 274A and 285A of the Sentencing Code). See step 3

Secondly, in statutory aggravating factors at step 2, change:

Offence was committed against an emergency worker acting in the exercise of functions as such a worker

To:

Offence was committed against an emergency worker acting in the exercise of functions as such a worker. NOTE: For offences committed on or after 28 June 2022, if the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court must impose a life sentence unless the court is of the opinion that there are exceptional circumstances which (a) relate to the offence or the offender, and (b) justify not doing so (sections 274A and 285A of the Sentencing Code). See step 3

Then, it is proposed to add a new step 3 to the guideline (and to renumber the subsequent steps):

Step 3 – Required sentence and exceptional circumstances

The following paragraphs apply to adult offenders – there is a separate dropdown section for those aged under 18 at the date of conviction below

Required sentence

1. Where the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court **must** impose a life sentence **unless** the court is of the opinion that there are exceptional circumstances which (a) relate to the offence or the offender, and (b) justify not doing so (sections 274A and 285A of the Sentencing Code)**.**

Applicability

2. The required sentence provisions apply when a person is convicted of unlawful act manslaughter committed on or after 28 June 2022, the offender was aged 16 or over at the offence date and the offence was committed against an emergency worker acting in the exercise of functions as such a worker.

3. The circumstances in which an offence is to be taken as committed against a person acting in the exercise of their functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of their functions as an emergency worker.

4. An emergency worker has the meaning given by section 68 of the Sentencing Code.

5. Where the required sentence provisions apply a guilty plea reduction applies in the normal way (see step 5 – Reduction for guilty pleas).

6. Where the required sentence provisions apply and a life sentence is imposed, the notional determinate sentence should be used as the basis for the setting of a minimum term to be served.

7. Where the required sentence provisions apply, this should be stated expressly.

Exceptional circumstances

8. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:

- the particular circumstances of the offence **and**

- the particular circumstances of the offender

either of which may give rise to exceptional circumstances.

9. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see Criminal Practice Directions VII: Sentencing B.

10. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

11. Circumstances are exceptional if the imposition of the required sentence would result in an arbitrary and disproportionate sentence.

12. The court should look at all of the circumstances of the case taken together, including circumstances personal to the offender. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.

Where exceptional circumstances are found

13. If there are exceptional circumstances that justify not imposing the required sentence then the court should impose the sentence arrived at by normal application of this guideline**.**

Sentencing offenders aged under 18 at the date of conviction v

1. Where the offender is aged 16 or 17 **at the date of conviction**, the required sentence provisions apply only if the offender is aged 16 or over **when the offence was committed** and the offence was committed against an emergency worker acting in the exercise of functions as such a worker (section 258A of the Sentencing Code).

2. Subject to the required sentence provisions, where the offender is aged under 18 **at the date of conviction** the court should determine the sentence in accordance with the Sentencing Children and Young People guideline, particularly paragraphs 6.42-6.49 on custodial sentences.

3. This guidance states at paragraph 6.46: "When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age."

4. The considerations above on exceptional circumstances relating to the offence or offender apply equally when sentencing offenders aged 16 or 17 at the date of the conviction.

The proposals are necessitated by changes to legislation and any effect on sentence levels would therefore be attributable to the legislation.

Question 13: Do you agree with the proposed changes to the Unlawful act manslaughter guideline? If not, please provide any alternative suggestions.

Equalities and impact

Equalities

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

Question 14: 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. Where changes may be more substantial, these impacts would be attributable to the legislative changes and not to the guidelines. 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 15: 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 16: Are there any other comments you wish to make on the proposals?

Annex – changes that are not subject to consultation

In addition to the changes consulted on in this document, the Council has made a number of changes to guidelines that it considered did not need to be consulted on as they merely gave effect to changes to legislation in a manner that is uncontroversial.

The Council has also 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

Changes resulting from the PCSC Act

The recent changes include:

1. **Amending the Reduction in sentence for a guilty plea guideline to take account of serious terrorism sentences**:

F5. Minimum sentences under sections 268C, 282C, 312, 313, 314 and 315 of the Sentencing Code for persons aged 18 or over

In circumstances where:

- an appropriate custodial sentence of at least 14 years falls to be imposed (under section 268C or 282C of the Sentencing Code) on a person aged 18 or over who has been convicted of a serious terrorism offence (as defined in section 306(2) of the Sentencing Code)
- an appropriate custodial sentence of at least six months falls to be imposed (under section 312 or 315 of the Sentencing Code) on a person aged 18 or over who has been convicted under sections 1 or 1A of the Prevention of Crime Act 1953; or sections 139, 139AA or 139A of the Criminal Justice Act 1988 (certain possession of knives or offensive weapon offences) **or**
- an appropriate custodial sentence falls to be imposed under section 313 (third class A drug trafficking offence) or section 314 (third domestic burglary) of the Sentencing Code

the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.[5]

[5] In accordance with s.73(2A), (3) and (4) of the Sentencing Code

2. **Updating the maximum sentence for assaults on emergency workers** in the Common assault / Racially or religiously aggravated common assault/ Common assault on emergency worker guideline. This increase (from 1 year to 2 years) had been anticipated when the revised guideline was published in 2021 and the Response to consultation document (at page 27) explained that the Council had decided to treat common assault on an emergency worker in the same way in the guideline as racially or religiously aggravated common assault which also has a statutory maximum of 2 years. Therefore the only changes made were to the header and at step 3 which now reads:

   Maximum: 2 years' custody (1 year's custody for offences committed before 28 June 2022)

   Any impact on prison or probation resources from this change would be due to the change in legislation.

3. **A new statutory aggravating factor where the victim is a person providing a public service** was created by section 156 PCSC Act which inserts section 68A into the Sentencing Code. It applies to five offences: common assault, ABH, s20 GBH, s18 GBH and threats to kill. This duplicates a factor that was already in all of the guidelines that cover these offences.

   A similar existing factor with the same expanded explanation also appears in the following guidelines: affray; attempted murder; threatening with bladed article/ offensive weapon; disorderly behaviour with intent (s4A Public Order Act); disorderly behaviour (s5 Public Order Act); Drunk and disorderly; Harassment/stalking (fear of violence); Harassment/stalking; Manslaughter (diminished responsibility); Manslaughter (loss of control); Manslaughter (unlawful act); Owner or person in charge of a dog dangerously out of control; Owner or person in charge of a dog dangerously out of control- person injured; Owner or person in charge of a dog dangerously out of control assistance dog injured; Owner or person in charge of a dog dangerously out of control death caused; threatening behaviour (s4 Public Order Act).

   The common assault, ABH and s20 guidelines also cover the racially or religiously aggravated version of these offences, so for these guidelines the (non-statutory) aggravating factor is still relevant. The threats to kill and s18 guidelines apply only to offences covered by the new statutory aggravating factor, so the existing factor could be redundant (though not immediately as the new factor applies to convictions on or after 28 June 2022).

   The Council has therefore added following statutory aggravating factor and expanded explanation to the relevant guidelines:

   - Offence was committed against person providing a public service, performing a public duty or providing services to the public

Effective in relation to convictions on or after 28 June 2022

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

See below for the statutory provisions.

- **Note the requirement for the court to state that the offence has been so aggravated.**
- **Note this statutory factor only applies to certain violent offences as listed below.**
- **For other offences the aggravating factor relating to offences committed against those working in the public sector or providing a service to the public can be applied where relevant.**

The Sentencing Code states:

68A Assaults on those providing a public service etc
(1) This section applies where—
(a) a court is considering the seriousness of an offence listed in subsection (3), and
(b) the offence is not aggravated under section 67(2).

(2) If the offence was committed against a person providing a public service, performing a public duty or providing services to the public, the court—
(a) must treat that fact as an aggravating factor, and
(b) must state in open court that the offence is so aggravated.

(3) The offences referred to in subsection (1) are—
(a) an offence of common assault or battery, except where section 1 of the Assaults on Emergency Workers (Offences) Act 2018 applies;
(b) an offence under any of the following provisions of the Offences against the Person Act 1861—
(i) section 16 (threats to kill);
(ii) section 18 (wounding with intent to cause grievous bodily harm);
(iii) section 20 (malicious wounding);
(iv) section 47 (assault occasioning actual bodily harm);
(c) an inchoate offence in relation to any of the preceding offences.

(4) In this section—
(a) a reference to providing services to the public includes a reference to providing goods or facilities to the public;
(b) a reference to the public includes a reference to a section of the public.

(5) Nothing in this section prevents a court from treating the fact that an offence was committed against a person providing a public service, performing a public duty or providing services to the public as an aggravating factor in relation to offences not listed in subsection (3).

(6) This section has effect in relation to a person who is convicted of the offence on or after the date on which section 156 of the Police, Crime, Sentencing and Courts Act 2022 comes into force.

In addition the expanded explanation for the existing (non-statutory) aggravating factor has been amended (additions in red):

This reflects: • the fact that people in public facing roles are more exposed to the possibility of harm and consequently more vulnerable and/or • the fact that someone is working in the public interest merits the additional protection of the courts. This applies whether the victim is a public or private employee or acting in a voluntary capacity. Care should be taken to avoid double counting where the statutory aggravating factor relating to emergency workers or to those providing a public service, performing a public duty or providing services to the public applies.

4. Changes to the Sentencing Children and young people guideline:

The PCSC Act has made changes to detention and training orders (DTOs), youth rehabilitation orders (YROs) and reparation orders.

For offences ***sentenced*** on or after 28 June 2022, section 158 PCSC Act removes the fixed lengths of DTOs so that any length of DTO from 4 months up to 24 months can be given. Section 160 and Schedule 16 makes time spent on remand or on qualifying bail credited as time served rather than being taken into account when setting the length of the DTO (as it was previously).

The table at the opening of the 'Custodial sentences' part in section six of the guideline, has been changed **from**:

Youth Court	**Crown Court**
Detention and training order for the following periods: • 4 months; • 6 months; • 8 months; • 10 months; • 12 months; • 18 months; or • 24 months.	• Detention and training order (the same periods are available as in the youth court) • Long-term detention (under section 250 Sentencing Code) • Extended sentence of detention or detention for life (if dangerousness criteria are met) • Detention at Her Majesty's pleasure (for offences of murder)

To:

Youth Court	**Crown Court**
Detention and training order for at least 4 months but not more than 24 months	• Detention and training order (the same periods are available as in the youth court) • Long-term detention (under section 250 Sentencing Code)

	• Extended sentence of detention or detention for life (if dangerousness criteria are met) • Detention at Her Majesty's pleasure (for offences of murder) • Required special sentence of detention for terrorist offenders of particular concern (under section 252A of the Sentencing Code)

In the section headed **Detention and training order (DTO)** paragraph 6.53 has been changed to take account of the changes to the length of DTOs and also changes to how time on remand is counted. The effect of these changes is that is that time spent on remand in custody (but not to local authority accommodation) prior to the imposition of a DTO is automatically deducted and the sentencing court no longer needs to make an adjustment. The court will be required to consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code (as is the case with adult offenders).

The change made was **from:**

6.53 A DTO can be made only for the periods prescribed – 4, 6, 8, 10, 12, 18 or 24 months. Any time spent on remand in custody or on bail subject to a qualifying curfew condition should be taken into account when calculating the length of the order. The accepted approach is to double the time spent on remand before deciding the appropriate period of detention, in order to ensure that the regime is in line with that applied to adult offenders.[35] After doubling the time spent on remand the court should then adopt the nearest prescribed period available for a DTO.

To:

6.53 For cases **sentenced on or after 28 June 2022**, any time spent on remand in custody to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will automatically be taken into account under section 240ZA of the Criminal Justice Act 2003 and does not need to be deducted from the length of the order. The court must consider whether to give credit for time spent on bail subject to a qualifying curfew in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

A remand to local authority accommodation under section 91(3) of the 2012 Act is neither a remand in custody for the purposes of section 240ZA of the 2003 Act nor a remand on bail for the purposes of section 240A of the 2003 Act and section 325 of the Sentencing Code. Therefore, if the offender was subject to a qualifying curfew while remanded to local authority accommodation the relevant credit should be given by the court by reducing the sentence as if a direction under section 240 or 325 had been given.

Further changes were required to the Guilty pleas section of the guideline.

Paragraph 5.9 was changed **from**:

5.9 A detention and training order (DTO) can only be imposed for the periods prescribed – 4, 6, 8, 10, 12, 18 or 24 months. If the reduction in sentence for a guilty plea results in a sentence that falls between two prescribed periods the court must

impose the lesser of those two periods. This may result in a reduction greater than a third, in order that the full reduction is given and a lawful sentence imposed.

To:

5.9 A detention and training order (DTO) must be for a term of at least 4 months but must not exceed 24 months. If the reduction in sentence for a guilty plea results in a sentence that falls below 4 months a non-custodial sentence should be imposed.

In respect of YROs, at paragraph 6.27 the guideline lists the available requirements. S161 and Sch 17(4) PCSC amends para 18 of Sch 6 to the Sentencing Code to increase the maximum number of curfew hours to 20 for convictions on or after 28 June 2022. Accordingly the Council has changed the entry relating to a curfew requirement **from**:

• curfew requirement (maximum 12 months and between 2 and 16 hours a day);

To:

• curfew requirement (maximum 12 months);
o for an offence of which the offender was **convicted on or after 28 June 2022**: 2–20 hours in any 24 hours; maximum 112 hours in any period of 7 days beginning with the day of the week on which the requirement first takes effect; or
o for an offence of which the offender was **convicted before 28 June 2022**: 2-16 hours in any 24 hours

Section 162 of the PCSC Act abolishes **reparation orders** in respect of an offence for which an offender is convicted on or after 28 June 2022. Consequently Paragraph 6.15 has been changed **from:**

A reparation order can require a child or young person to make reparation to the victim of the offence, where a victim wishes it, or to the community as a whole. Before making an order the court must consider a written report from a relevant authority, e.g. a youth offending team (YOT), and the order must be commensurate with the seriousness of the offence.

To:

A reparation order is available only if the offender was **convicted of the offence before 28 June 2022**. It can require a child or young person to make reparation to the victim of the offence, where a victim wishes it, or to the community as a whole. Before making an order the court must consider a written report from a relevant authority, e.g. a youth offending team (YOT), and the order must be commensurate with the seriousness of the offence.

Further changes will be made in due course to remove other references to reparation orders.

Changes resulting from caselaw or feedback

1. **Changes to the Sentencing Children and young people guideline**:

   In R v B [2020] EWCA Crim 643 the court held that it will sometimes be appropriate to treat a young person as needing further information, assistance or advice before indicating their plea, and thereby to allow the maximum level of reduction for a guilty

plea that was not entered at the first stage of the proceedings, even though it would not do so in the case of an adult.

For clarity the Council has added the text in red to paragraph 5.16 of the guideline:

Exceptions

Further information, assistance or advice necessary before indicating plea

5.16 Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the child or young person's ability to understand what was alleged, or otherwise made it unreasonable to expect the child or young person to indicate a guilty plea **sooner than was done**, a reduction of one-third should still be made. It may sometimes be appropriate to treat a child or young person as needing such information, assistance or advice, where it would not be needed in the case of an adult.

The same case also made it clear that the correct sequence when using an adult guideline to arrive at a sentence for a child or young person is to apply the appropriate reduction for age and/or immaturity, and then apply the guilty plea reduction. Again for clarity, the Council decided to add the words in red to paragraph 6.46:

6.46 When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence **the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age**. This reduction should be applied before any reduction for a plea of guilty.

2. **Changes to the bladed articles/ offensive weapons guidelines**.

The Council has stopped using the word 'gang' in factors in guidelines because of the potential for this to disadvantage certain demographic groups. However, it was brought to the Council's attention that in the Possession of a bladed article/offensive weapon, the Bladed articles and offensive weapons - threats and the Bladed articles and offensive weapons (possession and threats) - children and young people guidelines the word 'gang' was still in the aggravating factor:

- Offence was committed as part of a group or gang

This has now been amended to:

- Offence was committed as part of a group

3. **Changes to the Sentencing offenders with mental disorders, developmental disorders, or neurological impairments guideline**

Feedback (via the website) from a magistrate questioned the use of the term BAME in this guideline. Central Government guidance is now not to use that term. The government's preferred style is to write about ethnic or ethnic minority 'groups' and people from ethnic minority 'backgrounds' but not to use the term ethnic minority 'communities'. In addition the Council felt that 'gender and race' would be better

expressed as 'gender and ethnicity'. Paragraph 5 of the guideline has therefore been reworded:

It is important that courts are aware of relevant cultural, ethnicity and gender considerations of offenders within a mental health context. This is because a range of evidence suggests that people from ethnic minority backgrounds may be more likely to experience stigma attached to being labelled as having a mental health concern, may be more likely to have experienced difficulty in accessing mental health services and in acknowledging a disorder and seeking help, may be more likely to enter the mental health services via the courts or the police rather than primary care and are more likely to be treated under a section of the MHA. In addition, female offenders are more likely to have underlying mental health needs and the impact therefore on females from ethnic minority backgrounds in particular is likely to be higher, given the intersection between gender and ethnicity. Moreover, refugees and asylum seekers may be more likely to experience mental health problems than the general population. Further information can be found at Chapters six and eight of the Equal Treatment Bench Book.

Other changes

In the explanatory materials to the magistrates' court sentencing guidelines there is information on the default relevant weekly income (RWI) figures used to calculate fines. The Council had considered amending these figures and concluded that in the current financial climate it would not be appropriate to do so. However, it was recognised that the information in the explanatory materials setting out how the figures were arrived at was out of date and potentially misleading. The Council therefore decided to remove the detailed explanation of how the amounts were calculated and to simplify the explanation in relation to those on low income/ benefits. The change to the wording will not affect sentences.

Previous wording	Revised wording
3. Definition of relevant weekly income Where there is no information on which a determination can be made, the court should proceed on the basis of an **assumed relevant weekly income of £440**. This is derived from national median pre-tax earnings*; a gross figure is used as, in the absence of financial information from the offender, it is not possible to calculate appropriate deductions. Where there is some information that tends to suggest a significantly lower or higher income than the recommended £440 default sum, the court should make a determination based on that information. A court is empowered to remit a fine in whole or part if the offender subsequently provides information as to means (Sentencing Code, s.127). The	**3. Definition of relevant weekly income** Where there is no information on which a determination can be made, the court should proceed on the basis of an **assumed relevant weekly income of £440**. Where there is some information that tends to suggest a significantly lower or higher income than the recommended £440 default sum, the court should make a determination based on that information. A court is empowered to remit a fine in whole or part if the offender subsequently provides information as to means (Sentencing Code, s.127). The assessment of offence seriousness and, therefore, the

assessment of offence seriousness and, therefore, the appropriate fine band and the position of the offence within that band are not affected by the provision of this information. *(This figure is a projected estimate based upon the 2012-13 Survey of Personal Incomes using economic assumptions consistent with the Office for Budget Responsibility's March 2015 economic and fiscal outlook. The latest actual figure available is for 2012-13, when median pre-tax income was £404 per week details can be found in an HMRC report. (This link goes to an external website. It will not work if you are offline.))	appropriate fine band and the position of the offence within that band are not affected by the provision of this information.
5. Approach to offenders on low income An offender whose primary source of income is state benefit will generally receive a base level of benefit (for example, jobseeker's allowance, a relevant disability benefit or income support) and may also be eligible for supplementary benefits depending on his or her individual circumstances (such as child tax credits, housing benefit, council tax benefit and similar). In some cases these benefits may have been replaced by Universal Credit. If relevant weekly income were defined as the amount of benefit received, this would usually result in higher fines being imposed on offenders with a higher level of need; in most circumstances that would not properly balance the seriousness of the offence with the financial circumstances of the offender. While it might be possible to exclude from the calculation any allowance above the basic entitlement of a single person, that could be complicated and time consuming. Similar issues can arise where an offender is in receipt of a low earned income since this may trigger eligibility for means related benefits such as working tax credits and housing benefit depending on the particular circumstances. It will not always be possible to determine with any confidence whether such a person's	**5. Approach to offenders on low income** The income of an offender whose primary source of income is state benefit (for example, Universal Credit) will have an income related to their level of need. If relevant weekly income were defined as the amount of benefit received, this would usually result in higher fines being imposed on offenders with a higher level of need; in most circumstances that would not properly balance the seriousness of the offence with the financial circumstances of the offender. Similar issues can arise where an offender is in receipt of a low earned income since this may trigger eligibility for means related benefits such as Universal Credit. It will not always be possible to determine with any confidence whether such a person's financial circumstances are significantly different from those of a person whose primary source of income is state benefit. For these reasons, a simpler and fairer approach to cases involving offenders in receipt of low income (whether primarily earned or as a

financial circumstances are significantly different from those of a person whose primary source of income is state benefit. For these reasons, a simpler and fairer approach to cases involving offenders in receipt of low income (whether primarily earned or as a result of benefit) is to identify an amount that is deemed to represent the offender's relevant weekly income. While a precise calculation is neither possible nor desirable, it is considered that an amount that is approximately half-way between the base rate for jobseeker's allowance and the net weekly income of an adult earning the minimum wage for 30 hours per week represents a starting point that is both realistic and appropriate; this is currently **£120**. The calculation is based on a 30 hour working week in recognition of the fact that many of those on minimum wage do not work a full 37 hour week and that lower minimum wage rates apply to younger people. With effect from 1 October 2014, the minimum wage is £6.50 per hour for an adult aged 21 or over. Based on a 30 hour week, this equates to approximately £189 after deductions for tax and national insurance. To ensure equivalence of approach, the level of jobseeker's allowance for a single person aged 18 to 24 has been used for the purpose of calculating the mid point; this is currently £57.90. The figure will be updated in due course in accordance with any changes to benefit and minimum wage levels.	result of benefit) is to identify an amount that is deemed to represent the offender's relevant weekly income; this is currently **£120**.