

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

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SC(21)APR03 – Trade mark
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1 ISSUE

1.1 From 7 July to 30 September 2020 the Council consulted on guidelines for the offence of unauthorised use of a trade mark; one for individuals and one for organisations.

1.2 At the January meeting the Council considered the responses to the consultation and the results of research carried out with sentencers, in relation to the guideline for individuals. The Council felt that further detailed consideration should be given to the guideline, particularly to the assessment of culpability and harm to ensure that proportionate sentences would result where the goods were unsafe.

1.3 A working group met on 12 February to consider these issues and two Trading Standards experts attended to provide Council members with an insight into how investigations and prosecutions operate in practice.

1.4 The aim is to sign off both guidelines at the May Council meeting with a view to publication in early July and to come into force on 1 October.

2 RECOMMENDATION

2.1 That the Council agrees whether the trade mark guidelines should increase sentence levels in cases where there are safety risks and, if so, how this should be achieved.

2.2 That the Council agrees any further changes to the guideline for individuals.

3 CONSIDERATION

3.1 This paper concentrates on the guideline for individuals though many of the same points apply to the guideline for organisations. The draft guideline for individuals can be found here: <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/individuals-unauthorised-use-of-a-trade-mark-draft-for-consultation-only/>. A revised version incorporating the changes agreed at the January meeting is at **Annex A**.

Culpability and harm

3.2 In January the Council agreed with suggestions that the wording of culpability factors in the consultation version was too general and so provided limited assistance to sentencers

who are usually unfamiliar with sentencing this offence. The Council also agreed that the guideline should be clear that high culpability could apply to offenders acting alone.

3.3 It was agreed in the first instance that the high culpability factors should be reordered so that the factor 'Sophisticated nature of offence/significant planning' comes first (medium and lesser factors have also been reordered). The Council considered (but no conclusion was reached) amending this factor to give some non-exhaustive examples of what might indicate sophisticated offence/significant planning in the context of this offence. Following suggestions from the experts, further suggested examples have been added see 3.15 below.

3.4 The Council had also considered whether the assessment of culpability and harm adequately captured cases where there are significant safety risks from the counterfeit goods. The 'significant additional harm' relating to risk of injury raises such cases one harm level, but where the equivalent retail value is low but the potential harm is great, the concern was whether the guideline would produce a proportionate sentence.

3.5 What was unclear was what other charges might be brought in such cases. The Trading Standards representative on the working group explained that most offences under safety regulations are summary only and that in his experience 'where cases involve breaches of both the Trade Mark Act (TMA) and safety regulations prosecuting lawyers will generally recommend proceeding with the TMA offences alone. Evidence of breach of safety regulations is then included as an aggravating factor in respect to any charges brought under TMA'.

3.6 He explained the type of evidence likely to be before the court in such cases. 'Either:

- Trading Standards will have submitted items for independent expert testing against specific safety regulations, such evidence may or may not be used to support additional charges in respect to breaches of those regulations or
- Rights owners will submit evidence relating to independent or in-house expert testing on the products in question. Such evidence will generally reference the potential risks for consumers arising from use of such products and may or may not reference specific safety regulations'

3.7 He agreed that it may be easier to provide evidence of wilful blindness to risks rather than evidence that the goods fail to comply with regulations. It was pointed out in consultation responses that counterfeit goods seized are often a mix of different brands and different types of items and it will often only be possible to test a sample.

3.8 A related issue is the extent to which purchasers are aware that they are buying counterfeit goods or are deceived into thinking that the goods are genuine, which may in some cases have a bearing on safety issues. The experts explained that it is not uncommon for purchasers to be aware that they are buying counterfeit goods but there are instances of

purchasers being misled particularly with online sales (an example of such a case was that of [Gary Bellchambers](#)). The images shown online may be of a genuine product, and purchasers often think they are getting a genuine bargain. In some cases, the counterfeiters use a clone of the genuine website to deceive purchasers.

3.9 There are various ways that the issue of unsafe goods could be approached. The guideline as consulted on already provides an uplift to the harm level in cases where there is significant additional harm and one example of such harm is 'Purchasers put at risk of significant physical harm from counterfeit items'. The evidence we have of current sentencing practice from transcripts is incomplete as we only have a sample of cases and the transcripts often contain very limited information, but it appears that the version consulted on would already result in an increase in sentences for some cases (particularly those relating to the sale of counterfeit tobacco on a relatively small scale). There were no examples in the transcripts of cases with a safety element that would receive a lower sentence using the consultation version of the guideline.

3.10 If the Council wishes to set effectively a minimum level of sentence for any case involving counterfeit goods with the potential to cause physical harm, this could be achieved by adding a high culpability factor such as 'Offender was reckless as to whether the counterfeit goods complied with safety regulations'. The combined effect of culpability and harm factors would be that any offender involved in the supply of potentially dangerous goods of low equivalent retail value (less than £5,000) would be in category A4 (range of 26 weeks' – 2 years' custody) unless there were low culpability factors which balanced out the high, in which case it would be category B4 (range of community order – 26 weeks' custody).

3.11 If a culpability factor relating to recklessness as to safety were introduced, this (combined with the harm uplift) is likely to lead to increases in almost all cases where safety is an issue (compared to current sentencing practice). Cases that would be unaffected by the change to culpability would be those that were already in high culpability. One potential difficulty with this suggestion is that it risks double counting.

3.12 An alternative suggestion would be to say that any case involving unsafe goods should be in at least harm category 3. This would have the effect of putting many low value cases into B3 (range 26 weeks' – 2 years' custody). Sentence levels would be increased only for low value cases (equivalent retail value less than £5000) involving unsafe goods compared to the consultation version.

3.13 A third alternative would be to add an aggravating factor along the lines of 'offender was reckless as to whether the counterfeit goods complied with safety regulations'. This

would have less of an impact on sentence outcomes in some situations but would have the advantage of applying to all levels of harm and culpability.

3.14 The nearest equivalent that we have to a guideline for selling unsafe goods relates to [breach of food safety regulations](#) which carry a maximum sentence of two years. In that guideline only the very highest category has a starting point of custody.

3.15 An attempt has been made to incorporate the features discussed at paragraphs 3.3 to 3.8 into culpability factors (changes from the consultation version are highlighted in yellow):

Culpability

The level of culpability is determined by weighing up all the factors of the case to determine the offender's **role** and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

A – High culpability

- Sophisticated nature of offence/significant planning (examples may include but are not limited to: the use of multiple outlets or trading identities for the sale of counterfeit goods, the use of multiple accounts for receiving payment, the use of professional equipment to produce goods, deceiving purchasers that the goods are genuine, offending over a sustained period of time)
- Offender was reckless as to whether the counterfeit goods complied with safety regulations
- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation

B – Medium culpability

- Some degree of organisation/planning involved
- A significant role where offending is part of a group activity
- Other cases that fall between categories A or C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender's culpability falls between the factors as described in A and C

C – Lesser culpability

- Little or no organisation/planning
- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of the offence

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

3.16 The wording of any high culpability factor relating to unsafe goods could be tightened. For example: 'Offender falsely asserted or implied that the counterfeit goods complied with safety regulations' and potentially 'Offender failed to take steps to ensure the counterfeit goods complied with safety regulations' at medium culpability.

3.17 The harm factors proposed below are as discussed at the January meeting with alternative wording as discussed at paragraph 3.12 highlighted in yellow:

Harm

The assessment of harm for this offence involves putting a monetary figure on the offending with reference to the **retail value of equivalent genuine goods** and assessing **any significant additional harm** suffered by the trade mark owner or purchasers/ end users of the counterfeit goods:

1. Where there is evidence of the volume of counterfeit goods sold or possessed, the monetary value should be assessed by taking the **equivalent retail value of legitimate versions** of the counterfeit goods involved in the offending (where this cannot be accurately assessed an estimated equivalent retail value should be assigned);
2. Where there is no evidence of the volume of counterfeit goods sold or possessed:
 - a. In the case of labels or packaging, harm should be assessed by taking the **equivalent retail value of legitimate goods** to which the labels or packaging could reasonably be applied, taking an average price of the relevant products.
 - b. In the case of equipment or articles for the making of copies of trade marks, the court will have to make an assessment of the scale of the operation and assign an equivalent value from the table below.

Note: the equivalent retail value is likely to be considerably higher than the actual value of the counterfeit items and this is accounted for in the sentence levels, however, in **exceptional** cases where the equivalent retail value is grossly disproportionate to the actual value, an adjustment **may** be made.

The general harm caused to purchasers/ end users (by being provided with counterfeit goods), to legitimate businesses (through loss of business) and to the owners of the trade mark (through loss of revenue and reputational damage) is reflected in the sentence levels at step 2.

Examples of **significant additional harm** may include but are not limited to:

- Substantial damage to the legitimate business of the trade mark owner (taking into account the size of the business)
- Purchasers/ end users put at risk of **significant** physical harm from counterfeit items.

Where purchasers/ end users are put at risk of significant physical harm from counterfeit items harm category 3 or higher should normally be used.

	Equivalent retail value of legitimate goods	Starting point based on
Category 1	£1million or more or category 2 value with significant additional harm	£2 million
Category 2	£300,000 – £1million or category 3 value with significant additional harm	£600,000
Category 3	£50,000 – £300,000 or category 4 value with significant additional harm	£125,000
Category 4	£5,000 – £50,000 or category 5 value with significant additional harm	£30,000
Category 5	Less than £5,000 and little or no significant additional harm	£2,500

3.18 The highlighted section could be reworded, for example: 'Where purchasers/ end users are put at risk of **serious** physical harm from counterfeit items harm category 3 or higher should normally be used'.

3.19 Another issue considered by the working group was whether the guideline should take account of the level of profit from the offending. As harm levels are largely based on equivalent retail value, no distinction is made, for example, between two offenders selling handbags that if genuine would retail at £500, one who sells them for £200 and one who sells them for £20. The issue of profitability is more complicated than that, as it will also depend on how much the offender has paid for the goods.

3.20 A possible way of capturing profitability could be to include 'high level of profit' in a list of examples indicating the sophistication of the offence (see 3.15 above). Alternatively, it could be added as an aggravating factor (see below).

Question 1: Should the guideline include additional factors relating to unsafe goods? If so, how should this be achieved?

Question 2: Should any other changes be made to culpability or harm factors (such as the suggested examples of sophisticated offending)?

Aggravating and mitigating factors

3.21 High level of profit is a factor that is mentioned in at least two of the transcripts. A significant level of profit is likely to be present in many if not most cases in high culpability and there is a risk double counting to include it as an aggravating factor. An aggravating factor of 'high level of profit from the offending' or 'expectation of substantial financial gain' could be added. There is some scope for misunderstanding factors relating to profit or actual gain as it is often the case that those prosecuted for this offence will have their stock forfeited and be subject to confiscation proceedings and so at the point of sentence any prospect of profit or gain will have been removed. Therefore 'expectation of substantial financial gain' could be preferable as an aggravating factor.

3.22 This could be balanced with a mitigating factor of 'little or no actual gain from the offending' or 'no expectation of significant financial gain'. There is some overlap with the additional wording already agreed in the harm assessment to cater for situations where the equivalent retail price is very high compared to the price at which the offender was selling the goods:

Note: the equivalent retail value is likely to be considerably higher than the actual value of the counterfeit items and this is accounted for in the sentence levels, however, in **exceptional** cases where the equivalent retail value is grossly disproportionate to the actual value, an adjustment **may** be made.

Depending on the decisions made relating to increasing harm for low value cases with safety concerns and the inclusion of an aggravating factor, it may be necessary to include a mitigating factor that recognises that the offender may have expected and/or in fact received very little gain from the offending.

Question 3: Does the Council wish to make any changes to aggravating and mitigating factors?

Sentence levels

3.23 The consultation document stated:

The Council's intention is broadly to maintain current sentencing practice while promoting greater consistency.

In 2018 44 per cent of adult offenders sentenced received a community sentence, 33 per cent received a fine, 11 per cent received a suspended sentence, 5 per cent were sentenced to immediate custody and 3 per cent were given a discharge. In 2018 the average (mean) immediate custodial sentence length (after any reduction for a guilty plea) was ten months and no sentences exceeded 36 months.

3.24 Consultation responses were generally supportive of the proposed sentence levels but with suggestions from some that sentences were too low and from other that they were too high. In road testing several judges felt that sentence levels seemed high compared to other 'serious' criminal offences. The sentence levels were set with reference to the fraud sentence levels (they are pitched slightly lower than the sentences for false accounting which has a statutory maximum of 7 years).

3.25 The changes to harm and culpability discussed above are intended to increase sentence levels for some cases involving unsafe goods. Once decisions are made about those factors an estimate of the impact on overall sentence levels can be made. There will inevitably be a high degree of uncertainty because of the lack of information we have about the detail of most cases, but the likelihood is that sentence levels may increase.

3.26 These offences are prosecuted by local authority trading standards departments and it is possible that if sentencing guidelines increase sentence levels it will encourage more prosecutions particularly of the types of offending that will attract higher sentences under the guideline than previously.

3.27 If sentences are to rise for some cases, it might make sense to increase the top of the offence range from 6 years to 7 years. This would cater for the most serious cases (such as Bellchambers mentioned at 3.8 above). There are no proposals to change any of the other starting points or ranges, as any changes to sentence levels will be the result of changes to factors in the guideline.

Question 4: Does the Council agree to increase the top of the range in A1 to 7 years?

Steps 3 to 8

3.28 There was evidence from consultation responses and from road testing that magistrates often did not understand the difference between confiscation and forfeiture orders at step 6. Respondents variously suggested that the guideline should make it clear that if confiscation is being considered the case must be committed to the Crown Court; that there should be more information about disqualification as a company director and deprivation orders; and that the information on s97 forfeiture order could be re-worded to make it more understandable. The Trading Standards representative at the working group noted:

In my experience another common area of confusion exists around the valuation assigned to the goods and the purposes for which this is being done i.e. for sentencing purposes the valuation of the goods (as discussed in this document) will be a comparison with the genuine retail price. However, for POCA confiscation purposes the valuation will be the 'street value' of the goods. Perhaps this could also be dealt with in the guidance?

3.29 A suggested amended version is provided below (additions highlighted)

The court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. An offender convicted of an offence in a magistrates' court must be committed to the Crown Court where this is requested by the prosecution with a view to a confiscation order being considered (Proceeds of Crime Act 2002, s.70).

(Note: the valuation of counterfeit goods for the purposes of confiscation proceedings will not be the same as the valuation used for the purposes of assessing harm in this sentencing guideline.)

Where the offence has resulted in loss or damage the court must consider whether to make a **compensation order**.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

Forfeiture – s.97 Trade Marks Act 1994

~~On the application for forfeiture by a person who has come into possession of goods, materials or articles in connection with the investigation or prosecution of the offence,~~

The prosecution may apply for forfeiture of goods or materials bearing a sign likely to be mistaken for a registered trademark or articles designed for making copies of such a sign. The court shall make an order for the forfeiture of any goods, material or articles only if it is satisfied that a relevant offence has been committed in relation to the goods, material or articles. A court may infer that such an offence has been committed in relation to any goods, material or articles if it is satisfied that such an offence has been committed in relation to goods, material or articles which are representative of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

The court may also consider whether to make other ancillary orders. These may include a [deprivation order](#) and [disqualification from acting as a company director](#).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium, Part II Sentencing](#)

3.30 In the proposed version above links have been added for 'deprivation order' and 'disqualification from acting as a company director', to the relevant pages of the MCSG explanatory materials. Whilst this information is aimed at magistrates, it would also be applicable in the Crown Court. The information on forfeiture is designed to reflect the [legislation](#) in a comprehensible form.

Question 5: Does the Council agree with the proposed amendments to step 6?

4 IMPACT AND RISKS

4.1 As outlined above, the impact of the definitive guidelines will depend on the decisions made at this meeting. Any changes to the Council's stated intention to maintain current sentencing practice will need to be explained in the response to consultation document.

4.2 A revised resource assessment for the definitive guidelines will be provided at the May meeting.

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Individuals: Trade mark, unauthorised use of etc.

Trade Marks Act 1994, s.92

Triable either way

Maximum: 10 years' custody

Offence range: Discharge - 6 years' custody

Use this guideline when the offender is an individual. If the offender is an organisation, please refer to the **Organisations: Trade mark, unauthorised use of etc.** guideline.

Step 1- Determining the offence category

The court should determine the offence category with reference to culpability and harm.

Culpability

The level of culpability is determined by weighing up all the factors of the case to determine the offender's **role** and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

A – High culpability

- Sophisticated nature of offence/significant planning
- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation

B – Medium culpability

- Some degree of organisation/planning involved
- A significant role where offending is part of a group activity
- Other cases that fall between categories A or C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender's culpability falls between the factors as described in A and C

C – Lesser culpability

- Little or no organisation/planning
- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of the offence

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Harm

The assessment of harm for this offence involves putting a monetary figure on the offending with reference to the **retail value of equivalent genuine goods** and assessing **any significant additional harm** suffered by the trade mark owner or purchasers/ end users of the counterfeit goods:

1. Where there is evidence of the volume of counterfeit goods sold or possessed, the monetary value should be assessed by taking the **equivalent retail value of legitimate versions** of the counterfeit goods involved in the offending (where this cannot be accurately assessed an estimated equivalent retail value should be assigned);

2. Where there is no evidence of the volume of counterfeit goods sold or possessed:
- In the case of labels or packaging, harm should be assessed by taking the **equivalent retail value of legitimate goods** to which the labels or packaging could reasonably be applied, taking an average price of the relevant products.
 - In the case of equipment or articles for the making of copies of trade marks, the court will have to make an assessment of the scale of the operation and assign an equivalent value from the table below.

Note: the equivalent retail value is likely to be considerably higher than the actual value of the counterfeit items and this is accounted for in the sentence levels, however, in **exceptional** cases where the equivalent retail value is grossly disproportionate to the actual value, an adjustment **may** be made.

The general harm caused to purchasers/ end users (by being provided with counterfeit goods), to legitimate businesses (through loss of business) and to the owners of the trade mark (through loss of revenue and reputational damage) is reflected in the sentence levels at step 2.

Examples of **significant additional harm** may include but are not limited to:

- Substantial damage to the legitimate business of the trade mark owner (taking into account the size of the business)
- Purchasers/ end users put at risk of significant physical harm from counterfeit goods

	Equivalent retail value of legitimate goods	Starting point based on
Category 1	£1million or more or category 2 value with significant additional harm	£2 million
Category 2	£300,000 – £1million or category 3 value with significant additional harm	£600,000
Category 3	£50,000 – £300,000 or category 4 value with significant additional harm	£125,000
Category 4	£5,000 – £50,000 or category 5 value with significant additional harm	£30,000
Category 5	Less than £5,000 and little or no significant additional harm	£2,500

Step 2 – Starting point and category range

Having determined the category at step 1, the court should use the appropriate 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.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

Harm	Culpability		
	A	B	C
Category 1 £1 million or more	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 2 years' custody
Starting point based on £2 million	Category range 3 – 6 years' custody	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody

Category 2 £300,000 – £1million Starting point based on £600,000	Starting point 4 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody
Category 3 £50,000 - £300,000 Starting point based on £125,000	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 4 £5,000- £50,000 Starting point based on £30,000	Starting point 1 year's custody Category range 26 weeks' – 2 years custody	Starting point High level community order Category range Low level community order – 26 weeks' custody	Starting point Band C fine Category range Band B fine – Medium level community order
Category 5 Less than £5,000 Starting point based on £2,500	Starting point High level community order Category range Low level community order – 26 weeks' custody	Starting point Band C fine Category range Band B fine – Medium level community order	Starting point Band B fine Category range Discharge – Band C fine

This is an offence where it may be appropriate to combine a community order with a fine

The court should then consider further adjustment for any aggravating or mitigating factors. The following list is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors

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

Other aggravating factors

1. Purchasers or others put at risk of some harm from counterfeit items (where not taken into account at step 1)
2. Attempts to conceal/dispose of evidence
3. Attempts to conceal identity
4. Failure to respond to warnings about behaviour
5. Offences taken into consideration
6. Blame wrongly placed on others
7. Failure to comply with current court orders
8. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions **or** no relevant/recent convictions
2. Remorse
3. Good character and/or exemplary conduct
4. Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
5. Lapse of time since apprehension where this does not arise from the conduct of the offender
6. Serious medical condition requiring urgent, intensive or long-term treatment
7. Age and/or lack of maturity
8. Mental disorder or learning disability
9. Sole or primary carer for dependent relatives

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.

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 – Confiscation, compensation and ancillary orders

The court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a **compensation order**.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

Forfeiture – s.97 Trade Marks Act 1994

On the application for forfeiture by a person who has come into possession of goods, materials or articles in connection with the investigation or prosecution of the offence, the court shall make an order for the forfeiture of any goods, material or articles only if it is satisfied that a relevant offence has been committed in relation to the goods, material or articles. A court may infer that such an offence has been committed in relation to any goods, material or articles if it is satisfied that such an offence has been committed in relation to goods, material or articles which are representative of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

The court may also consider whether to make other ancillary orders. These may include a **deprivation order** and **disqualification from acting as a company director**.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium, Part II Sentencing](#)

Step 7 – Reasons

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

Step 8 – Consideration for time spent on bail (tagged curfew)

The court must 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](#).

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