

ANNEX B: Proposed Amended Version of Imposition of Custodial Sentences

Section of the Imposition Guideline (Amendments not highlighted)

Imposition of custodial sentences

A custodial sentence should only be considered where the court is satisfied that the seriousness of an offence and all circumstances of the offence mean that no other sentence is suitable. A custodial sentence can be immediate or suspended. If the custodial threshold has been passed according to the sentencer's determination using the offence specific guideline (or general guideline where no offence specific guideline exists), the court should ask the following questions before committing an offender to an immediate custodial sentence:

Is it unavoidable that a sentence of imprisonment be imposed?

Passing the custody threshold does not mean that a custodial sentence is inevitable. Custody should not be imposed where the purposes of sentencing could be achieved by a community order (for example, a community order may provide sufficient restriction on an offender's liberty, by way of punishment, while allowing rehabilitation to take place to prevent future crime.) Community orders can be punitive; they last longer than a short custodial sentence and can restrict an offender's day to day liberties, as well as provide a strong rehabilitative effect, especially imposed on an offender who may find regular attendance at a specific place or time a challenge to manage around their personal life.

Imprisonment should not be imposed where there would be an impact on dependants, including on unborn children where the offender is pregnant, which would make a custodial sentence disproportionate to achieving the purposes of sentencing. In particular, courts should avoid the possibility of an offender giving birth in prison unless the imposition of a custodial sentence is absolutely necessary due to public protection concerns.

If the purposes of sentencing can be achieved by a community order, or any personal mitigation means that a community order may be a more suitable sentence, please see the Imposition of Community orders section.

What is the shortest term commensurate with the seriousness of the offence?

If the court is considering an immediate custodial sentence of 12 months or fewer after all calculations have been completed (e.g. reduction for a guilty plea), it should take into account that research suggests that short custodial sentences of less than 12 months are less effective than other disposals at reducing reoffending, that there is little evidence demonstrating any significant benefits to short custodial sentences, and that there is a reasonable body of evidence to suggest that short custodial sentences can lead to negative outcomes. Short custodial sentences can disrupt potential employment or accommodation and interfere with relationships with friends and family. Courts must be confident if they are imposing a custodial sentence of less than 12 months that it is absolutely necessary to do so.

This also applies in relation to an offender with previous convictions. If an immediate custodial sentence is considered due to the prior imposition of community sentences for previous convictions, the court should consider whether alternative requirements can be imposed instead of escalating to a custodial sentence. Advice from Probation may be helpful to the court in considering suitable alternative requirements that may be more successful in

engaging the offender than requirements imposed previously, and whether Probation considers the offender safe to be managed in the community.

In considering this the court must NOT consider any licence or post sentence supervision requirements which may subsequently be imposed upon the offender's release.

Suspended Sentence Orders

A custodial sentence between 14 days and 2 years may be suspended for between 6 months and 2 years (this is also applicable for the aggregate of the terms where the court imposes two more sentences to be served consecutively.) The time for which a sentence is suspended should reflect the length of the sentence; up to 12 months might normally be appropriate for a suspended sentence of up to 6 months. A custodial sentence that is suspended should be for the same term that would have applied if the sentence was to be served immediately.

Can the sentence be suspended?

If the custodial threshold has been passed, the court may consider whether it is appropriate to suspend that sentence, so that the offender serves their sentence in the community under the supervision of the Probation Service. If the offender reoffends while under supervision, immediate custody will be activated, unless in certain circumstances set out in the [Breach of Suspended Sentence Orders guideline](#) (*link*).

A suspended sentence is a custodial sentence. A suspended sentence **MUST NOT** be imposed as a more severe form of community order. Sentencers should be clear that they would impose an immediate custodial sentence if the power to suspend were not available. If not, a non-custodial sentence, such as a community order, should be imposed.

The court will benefit from Probation's assessment of any relevant circumstances (such as dependents), whether the offender can be safely managed in the community, and in weighing the following, non-exhaustive factors in considering whether it is appropriate to suspend the sentence.

Where a statutory minimum term for an offence is 24 months or lower, the court may lawfully impose a suspended sentence order, but in practice this will only be appropriate in rare cases.

Factors indicating that it would not be appropriate to suspend a custodial sentence

Factors indicating that it may be appropriate to suspend a custodial sentence

Offender presents a risk/danger to the public

Realistic prospect of rehabilitation

Probation assess that the offender cannot be safely managed in the community

Offender does not present high risk of reoffending or harm

The seriousness of the offence means that appropriate punishment can only be achieved by immediate custody

Strong personal mitigation that may reduce the seriousness of the offence, such as age, mental disorders, remorse, etc

Immediate custody will result in significant harmful impact upon others

Requirements on a Suspended Sentence Order

When the court suspends a sentence, it may impose one or more requirements for the offender to undertake in the community. The requirements that may be considered are identical to those available for community orders. The court must follow the guidance in the requirements section of this guideline (*link up*), including ensuring that any requirements imposed are the most suitable for the offender, and where multiple requirements are imposed, they are compatible with each other.

Requirements imposed as part of a suspended sentence order are more likely to be predominantly rehabilitative in purpose, as the imposition of a custodial sentence, whether immediate or suspended, is itself both a punishment and a deterrent. To ensure that the overall terms of the suspended sentence are commensurate with offence seriousness, care must be taken to ensure requirements imposed are not excessive. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

