

Breach of a Suspended Sentence Order

Criminal Justice Act 2003 (Schedule 12)

Breach of a Suspended Sentence Order

1) Failure to comply with a community requirement during the supervision period of the order

The court must take into account the extent to which the offender has complied with the suspended sentence order when imposing a sentence.

In assessing the level of compliance with the order the court should consider:

- i) the overall attitude and engagement with the order as well as the proportion of elements completed;
- ii) the impact of any completed or partially completed requirements on the offender's behaviour; and
- iii) the proximity of breach to imposition of order.

Breach involves	Penalty
Low level of compliance	Full activation of original custodial term
Medium level of compliance	Activate custodial sentence but apply reduction to original custodial term proportionate to unpaid work or curfew requirements completed OR Impose more onerous requirements and/or extend supervision period and/or extend operational period and/or impose fine
High level of compliance	Impose more onerous requirements and/or extend supervision period and/or extend operational period and/or impose fine

See page 67.

2) Conviction for further offence committed during operational period of order

The nature of the new offence is the primary consideration in assessing the action to be taken on the breach.

Where the breach is in the second category below, the prior level of compliance is also relevant. In assessing the level of compliance with the order the court should consider:

- i) the overall attitude and engagement with the order as well as the proportion of elements completed;
- ii) the impact of any completed requirements on the offender's behaviour;
- iii) the proximity of breach to imposition of order.

Breach involves	Penalty
Multiple and/or serious new offences committed OR New offence similar in type and gravity to offence for which Suspended Sentence Order imposed	Full activation of original custodial term
New offence less serious than original offence but requires a custodial sentence and: Low level of compliance with Suspended Sentence Order High level of compliance with Suspended Sentence Order	Full activation of original custodial term Activate sentence but apply reduction to original custodial term proportionate to any unpaid work and/or curfew requirements completed
New offence does not require custodial sentence	Activate sentence but apply reduction to original custodial term proportionate to any unpaid work and/or curfew requirements completed OR Impose more onerous requirements and/or extend supervision period and/or extend operational period and/or impose fine

Unjust in all the circumstances

The court **must activate the custodial sentence** unless it would be unjust in all the circumstances to do so. The predominant factors in determining whether activation is unjust relate to the level of compliance with the suspended sentence order and the nature of any new offence. These factors are already provided for by the guideline.

In determining if there are other factors which would cause activation to be unjust, the court may consider all factors including:

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

The court dealing with the breach should remember that the court imposing the original sentence determined that a custodial sentence was appropriate in the original case.

In cases where the court considers that it would be unjust to order the custodial sentence to take effect, it must state its reasons and it **must** deal with the offender in one of the following ways:

- (a) impose a fine not exceeding £2,500; **OR**
- (b) extend the operational period (to a maximum of two years from date of original sentence); **OR**
- (c) if the SSO imposes community requirements, do one or more of:
 - (i) impose more onerous community requirements;
 - (ii) extend the supervision period (to a maximum of two years from date of original sentence);
 - (iii) extend the operational period (to a maximum of two years from date of original sentence).