Annex – changes that are not subject to consultation

In addition to the changes being consulted on, 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 case law 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	**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.

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 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.))	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 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.	**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

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 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.	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; this is currently **£120**.