

SENTENCING EXPLAINED

SUSPENDED SENTENCE ORDERS

When can a sentence of imprisonment be suspended? What requirements might be attached to a Suspended Sentence Order and in what circumstances can the prison sentence be activated by a court?

This note explains the circumstances in which a court might decide to suspend a sentence of imprisonment and the effect of that decision. Suspended sentences were first introduced in England and Wales by the Criminal Justice Act 1967 but their availability to courts was greatly restricted by the Criminal Justice Act 1991 which required the court to exercise its power to suspend a sentence only where it could be justified by the ‘exceptional circumstances’ of the case. However, this ‘exceptional circumstances’ requirement was removed by the Criminal Justice Act 2003, which came into force in April 2005, and introduced a new ‘Suspended Sentence Order’ which could be imposed only for prison sentences of less than 12 months. More recently, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 increased the maximum length of the sentence that could be suspended to two years. Therefore, where a sentence of imprisonment of two years or less is being imposed, it is possible for the judge to suspend the sentence so that the offender does not need to go immediately to prison to start serving the sentence.

When should a sentence of imprisonment be suspended?

The Sentencing Council’s Imposition of Community and Custodial Sentences guideline, which came into force on 1 February 2017, offers some guidance to sentencers as to the factors relevant when considering whether a sentence of imprisonment should be suspended. The guidance states that: ‘A suspended sentence **MUST NOT** be imposed as a more severe form of community order. A suspended sentence is a custodial sentence. **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 should be imposed’ (original emphasis).¹

The guideline lists three factors indicating when it may be appropriate to suspend a custodial sentence. These are: a realistic prospect of rehabilitation; strong personal mitigation; and where immediate custody will result in a significant harmful impact upon others. The guideline also identifies three factors indicating when it would not be appropriate to suspend a custodial sentence

¹ Sentencing Council (2016) *Imposition of Community and Custodial Sentences Definitive Guideline*, p. 7.

and these are: where the offender presents a risk/danger to the public; where appropriate punishment can only be achieved by immediate custody; and where the offender has a history of poor compliance with court orders.² The guideline also cautions sentencers to ensure that the requirements imposed as part of the suspended sentence are not excessive, emphasising that '[a] court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.'³

What requirements can be attached to a Suspended Sentence Order?

Before the Legal Aid, Sentencing and Punishment of Offenders Act 2012, at least one requirement had to be attached to the Suspended Sentence Order but this obligation was removed where the court does not consider any are necessary.

The potential requirements that can be added to a Suspended Sentence Order are specified in section 287 of the Sentencing Code. These are:

- An unpaid work requirement (this requires the undertaking of between 40 and 300 hours of unpaid work to be completed within 12 months).
- A rehabilitation activity requirement (this requires an offender to participate in activity which reduces the prospect of reoffending. The court does not specify the nature of the activity to be undertaken but must specify the maximum number of days of activity. Introduced in 2015, this requirement superseded the supervision and the specified activity requirements).
- A programme requirement (the offender must attend an accredited programme designed to address the causes of their offending).
- A prohibited activity requirement (the offender is prohibited from certain activities related to their offending – for example, attending football matches – for a period of up to three years).
- A curfew requirement (the offender must stay within a specified place – usually their own home – for certain periods, up to 16 hours per day, for up to 12 months. The curfew is electronically monitored).
- An exclusion requirement (the offender is excluded from entering a specified place or area for a period of up to two years).
- A residence requirement (the offender must reside at a specified place for a period of up to three years).
- A foreign travel prohibition requirement (the offender is prohibited from travelling abroad for up to 12 months. The prohibition can apply to named countries, to specific days or dates, can allow travel to some destinations but not others or can ban foreign travel altogether).
- A mental health treatment requirement (the offender may be required to undergo treatment for a mental health problem but must consent to doing so. The maximum duration of this requirement is three years).

² Sentencing Council (2016) *Imposition of Community and Custodial Sentences Definitive Guideline*, p. 8.

³ Sentencing Council (2016) *Imposition of Community and Custodial Sentences Definitive Guideline*, p. 8.

- A drug rehabilitation requirement (the offender is required to have treatment to address their drug misuse and must provide samples for testing when requested. The offender must consent to the order and the duration of this requirement is between six months and three years).
- An alcohol abstinence and monitoring requirement (the offender must abstain from consuming alcohol for a specified period and submit to monitoring).
- An alcohol treatment requirement (the offender must attend treatment to reduce or eliminate dependency on alcohol. The offender must consent to the order).
- In a case where the offender is aged under 25, an attendance centre requirement (the offender must attend at an attendance centre for between 12 and 36 hours and they undertake a programme of activities designed to reduce re-offending).
- Electronic compliance monitoring requirement (this is mandatory, unless inappropriate, when imposing a curfew or exclusion requirement, and is discretionary when imposing an unpaid work, rehabilitation activity, programme, prohibited activity, residence, foreign travel prohibition, mental health treatment, drug rehabilitation, alcohol treatment or attendance centre requirement).
- Electronic whereabouts monitoring requirement (the offender is required to submit to the electronic monitoring of their whereabouts for a specified period).

In what circumstances might the suspended term of imprisonment be activated?

The sentence of imprisonment is suspended for a period of between six months and two years (the ‘operational period’) depending on the seriousness of the offence. The term of imprisonment might be activated for one of two reasons during the operational period: if the offender breaches the terms of the suspended sentence by failing to comply with any requirements attached to the Suspended Sentence Order or if the offender is convicted of a further offence during this period.⁴ When a suspended sentence is breached for either of these reasons, a court should activate the sentence (in whole or in part) unless it is of the opinion that it would be unjust to do so in view of all the circumstances.⁵

Where a court decides it would be unjust to activate the suspended sentence, a fine of up to £2,500 can be imposed, any requirements attached to the sentence can be made more onerous or the operational period of the suspended sentence can be extended. If a judge considers it unjust to activate the sentence in full or in part they must give reasons for not doing so. If the court concludes that it would not be unjust to activate the suspended sentence then, where there has been a substantial degree of compliance with the order before the breach (for example, the completion of an unpaid work requirement), the original term may be substituted for a shorter term.

⁴ On the first failure without reasonable excuse to comply with any of the requirements of a Suspended Sentence Order, the supervising officer must give a warning that another failure to comply within the next 12 months will mean they are liable to be brought before a court for breach of the suspended sentence.

⁵ See Schedule 16 to the Sentencing Code.

What type of requirements are most commonly used?

As is the case with Community Orders, two particular requirements are attached to Suspended Sentence Orders far more frequently than others. In 2018, 67.7% of Suspended Sentence Orders had a rehabilitation activity requirement attached and 48% of Orders contained an unpaid work requirement.⁶

How frequently are Suspended Sentence Orders imposed?

Since the introduction in 2005 of the Suspended Sentence Order by the Criminal Justice Act 2003, which removed the requirement of exceptional circumstances to justify the suspension of a custodial sentence, the use of suspended sentences has increased significantly. In 2004, the year prior to the reforms, only 2,855 suspended sentences were imposed but there were 42,699 Suspended Sentence Orders imposed in 2018 (which in itself represented a decline from the recent peak of 57,072 in 2015).⁷

Are Suspended Sentence Orders more or less effective than immediate imprisonment in reducing re-offending?

Research by the Ministry of Justice has found that the proven reoffending rate for people given Suspended Sentence Orders or Community Orders was lower compared to offenders who instead receive a short prison sentence (up to 12 months). The one year reoffending rate following short term custodial sentences of less than 12 months was four percentage points higher than if the court had instead imposed a Suspended Sentence Order or a Community Order.⁸

⁶ Ministry of Justice (2019) *Offender Management Statistics quarterly: October to December 2018*, Probation: 2018, Table A4.9.

⁷ Ministry of Justice (2019) *Criminal Justice System statistics quarterly: December 2018*, Overview Table Q5.1.

⁸ Ministry of Justice (2019) *The impact of short custodial sentences, community orders and suspended sentence orders on reoffending*, p. 10.