

Probation Circular



PC04/2008 – UNCOMPLETED REQUIREMENTS IN COMMUNITY ORDERS

IMPLEMENTATION DATE: 10 April 2008

EXPIRY DATE: April 2013

TO: Chairs of Probation Boards, Chief Officers of Probation, Secretaries of Probation Boards
CC: Board Treasurers, Improvement and Development Managers

AUTHORISED BY: Sharon Robins, NOMS Programme Director

ATTACHED: Annex A: Extract from CJA 2003 National Implementation Guidance
Annex B: Equality Impact Assessment Form

RELEVANT PREVIOUS PROBATION CIRCULARS

N/A

CONTACT FOR ENQUIRIES

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PURPOSE

To provide offender managers with guidance on how to proceed in cases where a requirement will not have been completed before the end of a community order.

ACTION

Chief Officers are asked to draw this circular to the attention of all relevant staff.

SUMMARY

This guidance expands upon that already provided within the National Implementation Guide for the Criminal Justice Act 2003 community sentence provisions: Edition 2 version 5F issued in May 2005. The relevant section of the Implementation Guide is attached to this document as an appendix.

Under the Criminal Justice Act 2003 an order can only last for the term specified. If a requirement remains outstanding at the end of that term it cannot then be legally completed. The offender manager is responsible for taking action when a requirement is unlikely to be completed before the end of the order. For unpaid work the offender manager should apply to the court to extend the order, unless there are grounds for revocation or amendment. The application should not seek to extend the order beyond the maximum three year length of a community order. For all other requirements the offender manager should apply for revocation or amendment according to the circumstances of the case. The appendix outlines the relevant procedures.

**Extract from: National Implementation Guide for the Criminal Justice Act 2003
community sentence provisions: Edition 2 version 5F**

5.3 Amendments, transfers and revocations for good progress

5.3.1 Amendments can be made at any time in response to circumstances which have arisen since the Order was made, on application to the court by the Responsible Officer or the offender (Sch 8 para 17 & Sch 12 para 15). This process could be used to remove a Programme Requirement or replace it with an alternative Programme, in the event that post sentence assessment indicates the Programme originally specified is unsuitable. Additional Requirements can only be added following a breach of the Order.

5.3.2 An amendment to a Community or Suspended Sentence Order can:

- cancel any of the Requirements
- change one Requirement to another Requirement of the same type
e.g. replace an offending behaviour programme with a different programme, or alter the details of an Exclusion or Prohibited Activity, but an amendment cannot replace a Requirement for another Requirement of a different type (e.g. replace Unpaid Work with a Programme) except under the circumstances outlined in paragraph 5.3.6 below

In the case of a Suspended Sentence Order, Requirements can be replaced with those of a different type with the offender's consent but only at a review hearing (see Section 5.6.7) or under the circumstances outlined in paragraph 5.3.6 below

- revoke the Order
- both revoke the Order and deal with the offender in any way which was possible at the time the Order was made

When re-sentencing the court must take into account the extent to which the offender has complied with the Requirements of the Order.

5.3.3 The offender's consent is necessary before amending a Drug Rehabilitation, or Alcohol or Mental Health Treatment Requirement, and if the offender refuses to consent then court may:

- revoke the Order and deal with the offender in any way which was possible at the time the Order was made
- and may impose a custodial sentence even if the seriousness of the original offending was below the custody threshold.

5.3.4 If an offender is subject to a Drug Rehabilitation, or Alcohol or Mental Health Treatment Requirement, and the medical practitioner or person responsible for the treatment:

- is for any reason unwilling to continue to direct the treatment,
- or forms the opinion that:
 - ◆ the treatment should continue beyond the period specified in the Order
 - ◆ a different treatment is needed
 - ◆ the offender is not susceptible to treatment
 - ◆ the offender does not require further treatment

he or she must make a report in writing to that effect to the Responsible Officer, who must then apply to the court for a cancellation or variation of the Requirement (Sch 8 para 18 & Sch 12 para 16).

5.3.5 The court can use the amendment process to extend the normal 12 month time limit for completion of an Unpaid Work Requirement if it considers it would be in the interests of justice to do so having regard to circumstances which have arisen since the Order was made (Sch 8 para 20 & Sch 12 para 18) (see Section 2.1).

5.3.6 The arrangements for the transfer of Orders where the offender intends to reside in a different petty sessions area are similar to the previous arrangements, and are the same for both Community and Suspended Sentence Orders (Sch 8 para 16 & Sch 12 para 14). However, if the court considers that one or more of the Requirements cannot be complied with if the offender moves to another area, then the Order cannot be transferred unless the court first cancels those Requirements or substitutes them with other Requirements which can be complied with in the new area. In particular, the court may not transfer an Order containing a programme Requirement unless it appears to the court that the accredited programme specified in the Requirement is available in the new petty sessions area. Under these circumstances the court can substitute a Requirement for one of a different type, but this is not possible in amendments for other reasons as set out in Section 5.3.2 above.

5.3.7 At anytime an application can be made by the Responsible Officer or the offender for a Community Order to be revoked on the grounds that the offender has made good progress or a satisfactory response to supervision or treatment (Sch 8 para 13(2)(3)). The same power exists in relation to a Suspended Sentence Order, except that while the community Requirements may be cancelled the suspended sentence will remain in force for the remainder of the operational period (Sch 12 para 13).

Annex B

Equality Impact Assessment

Preliminary Screening

Statistics & Research

Gathering Evidence through Community Engagement

Assessment & Analysis

Action Plan

The EIA Report

EQUALITY IMPACT ASSESSMENT
Group
Directorate
Unit

PRELIMINARY SCREENING

Date of Screening	12 March 2008
Name of Policy Writer	NOMS OMT
Director General	Sharon Robins: Head of OAMU

Name of Policy National Implementation Guide for the Criminal Justice Act 2003 community sentence provisions: Edition 2 version 5F	This is a new policy - N
	This is a change to an existing policy - N
	This is an existing policy – Y

Policy Aims, Objectives & Projected Outcomes

The purpose of this circular is to remind practitioners of the guidance for dealing with requirements that are not completed within the time of a community order

Will the policy have an impact on national or local people/staff?	NO
Are particular communities or groups likely to have different needs, experiences and/or attitudes in relation to the policy	NO
Are there any aspects of the policy that could contribute to equality or inequality?	NO
Could the aims of the policy be in conflict with equal opportunity, elimination of discrimination, promotion of good relations?	NO
If this is an amendment of an existing policy, was the original policy impact assessed?	NO

If your answer to any of these questions is **YES**, go on to the full EIA.

If you have answered **NO to any particular questions**, please provide explanatory evidence.

If you have answered **NO to all of these questions** then you must also attach the following statement to all future submissions that are related to this policy and ensure it is signed off by senior management. You must also include this statement within any regulatory impact assessment that is related to this policy.

“This policy was screened for impact on equalities on 12 March 2008. The following evidence has been considered. As a result of this screening, it has been decided that a full equality impact assessment is not required.”

Evidence to Support Preliminary Screening

The circular reminds practitioners about guidance that was issued in 2005.

FULL IMPACT ASSESSMENT

STATISTICS & RESEARCH

What relevant quantitative & qualitative data do you have in relation to this policy?

Please site any quantitative (e.g. statistical research) and qualitative evidence (monitoring data, complaints, satisfaction surveys, focus groups, questionnaires, meetings, research interviews etc) of communities or groups having different needs, experiences or attitudes in relation to this policy area.

Equality Target Areas	How does the data identify potential or known positive impacts? How does the data identify any potential or known adverse impacts?
Race (consider e.g. nationalities, Gypsies, Travellers, languages)	
Disability (consider social access and physical access)	
Gender	
Gender Identity	
Religion and Belief	
Sexual Orientation	
Age	

<p>What research have you considered commissioning to fill any data gaps?</p> <p>For example, you may need to ensure quantitative & qualitative data groups include stakeholders with respect to this policy. N.B Include any recommendations in your action plan</p>

<p>Who are the stakeholders, community groups, staff or customers for this policy area?</p>

<p>What are the overall trends and patterns in this qualitative & quantitative data?</p> <p>Disproportionality; regional variations; different levels of access, experiences or needs; combined impacts.</p>

<p>Please list the specific equality issues that may need to be addressed through consultation (and further research)?</p>
<ul style="list-style-type: none">•

GATHERING EVIDENCE THROUGH COMMUNITY ENGAGEMENT

INTERNAL STAKEHOLDER ENGAGEMENT: Consulting & involving Other Government Departments, Staff, Agencies & NDPBs

Does this policy affect the experiences of staff? How? What are their concerns?	
Staff	
Staff Networks & Associations	
Trade Unions	

How have you consulted, engaged and involved internal stakeholders in considering the impact of this proposal on other public policies and services?

For example your policy may affect access to housing, education, health, employment services.

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What positive and adverse impacts were identified by your internal consultees? Did they provide any examples?

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Feedback the results of this internal consultation and use it as a basis for work on external consultation

EXTERNAL CONSULTATION & INVOLVEMENT

How did your engagement exercise highlight positive and negative impacts on different communities?	
Voluntary Organisations	
Race	
Faith	
Disability Rights	
Gender	
Gender Identity	
Sexual Orientation	
Age	

Feedback the results of your community engagement (i.e. involvement and consultation) to all participants including internal and external stakeholders

ASSESSMENT & ANALYSIS

Does the EIA show a potential for differential impact on any group(s) if this proposal is introduced? If Yes, state briefly whether impact is adverse or positive and in what equality areas.

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What were the main findings of the engagement exercise and what weight should they carry?

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Does this policy have the potential to cause unlawful direct or indirect discrimination? Does this policy have the potential to exclude certain group of people from obtaining services, or limit their participation in any aspect of public life?

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How does the policy promote equality of opportunity?

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How does your policy promote good relations? How does this policy make it possible for different groups to work together, build bridges between parallel communities, or remove barriers that isolate groups and individuals from engaging in civic society more generally?

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How can the policy be revised, or additional measures taken, in order for the policy to achieve its aims without risking any adverse impact?

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Are there any concerns from data gathering, consultation and analysis that have not been taken on board?

Please justify and explain the reason for your decision.

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ENSURING ACCESS TO INFORMATION

How can you ensure that information used for this EIA is readily available in the future?

(N.B. You will need to include this in your action plan)

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How will you ensure your stakeholders continue to be involved/ engaged in shaping the development/ delivery of this policy?

(N.B. You will need to include this in your action plan)

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How will you monitor this policy to ensure that the policy delivers the equality commitments required?

(N.B. You will need to include this in your action plan)

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Now submit your EIA and related evidence for clearance.

ACTION PLAN

Recommendations	Responsibility	Actions required	Success Indicators	Target Date	What progress has been made?
Data Collection					
Publication Arrangements					
Monitoring & Review Arrangements					
List other recommendations that are required					

Please ensure that the action plan is agreed by your Director/ Minister

THE EQUALITY IMPACT ASSESSMENT REPORT

The EIA report is a concise summary of the results of your EIA work. You should ensure that you cover the topics described below.

Background:

- Context of policy/programme
- Link to strategic aims and objectives
- Scope of the EIA work (e.g. if linked to previous EIA or work delivered by another Government Department)

Methodology:

- Approach to data collection and analysis
- Results of consideration of existing evidence

Consultation & Involvement:

- Stakeholder/community involvement in developing proposals
- List of organisations engaged (optional)

Assessment & analysis

- Key Findings from the data collection and community engagement
 - Positive impacts: existing or potential
 - Adverse impacts: existing or potential

Recommendations

- Describe how you will respond to the key findings by:
 - strengthening the potential for positive impact,
 - removing areas that may exacerbate or engender adverse impact
 - including measures to mitigate any adverse impact that may occur
 - including measures that ensure ongoing compliance with statutory obligations
 - monitoring arrangements
 - ensuring continued public access to information about the policy/programme.
 - action plan (optional)

Date of EIA Report

Date of Publication of Results

Ensure that the EIA Report is published on the Home Office website before your policy/programme is implemented.