

A New Suspended Reality – Significant Reform to Suspended Sentence Orders

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The *Sentencing Act 2026* (the Act) received Royal Assent on 22 January 2026. As such, various provisions making changes to sentencing law will be introduced. This article summarises the changes that will be most important for criminal practitioners.

The reforms are designed to address the crowded prison system across the UK, both by reducing the number of people sent to prison on short sentences, and in a later phase, by reducing the time offenders will spend in custody.

Significantly, the Act will bring reform to Suspended Sentence Orders.

Section 1 – Presumption in favour of suspending short custodial sentences

Where an offender aged 18 or over is convicted on or after 22 March 2026, there will now be a presumption in favour of suspending any sentence of 12 months or less.

The Court *must* make a suspended sentence order unless there are exceptional circumstances relating to the offence or the offender which justify not making the order.

The Act itself does not define ‘exceptional circumstances’, but it is likely to include cases where the offender presents a high and immediate risk of serious harm, or those that persistently and deliberately breach court orders.

There are, of course, exceptions to the presumption, for example where the offender is already serving a custodial sentence, is remanded in custody in connection with another offence, or is detained under a hospital order.

In practice, this should mean that many more short sentences are suspended; [sentences of 12 months or less accounted for around 62% of immediate custodial sentences in the year ending December 2024](#). The provision also imposes a requirement on the sentencer to clearly articulate reasons for not suspending a sentence which falls under this provision.

Section 2 – Suspension of sentences up to 3 years

This change expands the availability of suspended sentences, but unlike section 1, does not create a presumption. Under section 2, courts will still have to consider whether suspension is appropriate.

Section 2 will not override other statutory provisions which mandate minimum custodial sentences, restrict suspension for certain serious offences, or require extended or special sentencing regimes.

Importantly, section 2(4) makes changes to operational periods of suspended sentences (ie. the length of suspension); the operational period can **only** be up to 3 years if the term of the suspended sentence is over 2 years. For terms up to 2 years, the operational period is also limited to 2 years.

As an example, a sentence of 18 months can be suspended for a maximum of 2 years, as per the current regime, and it would be unlawful to impose a sentence of 18 months suspended for 3 years.

New Prohibitive/Punitive Conditions

The new requirements are:

Driving prohibition requirement

- More flexible and targeted than a standard driving disqualification, enabling sentencers to prohibit driving at particular times or in particular places, as well as enabling restrictions on certain kinds of vehicles. This can be imposed whether or not the offence involved a motor vehicle.

Public event attendance prohibition requirement

- This requirement can prohibit attendance at public events in general, specific public events, or public events of a particular kind.

Drinking establishment entry prohibition requirement

- Similarly, this requirement can be imposed to prohibit entry to all drinking establishments, specific establishments, or establishments of a particular kind.

Restriction zone requirement

- This will require an offender to remain in the area or areas specified in the order. It can be imposed for up to 2 years, and will generally include electronic monitoring.

Income reduction order

- This order will require an offender to pay a percentage, not exceeding 20%, of their excess monthly income. In practice, these orders will only apply to those with significant incomes, but may prove useful in persuading sentencers that suspension would be appropriately punitive.

Analysis

Only time will tell if these reforms meet their stated aim in reducing the problem of overflowing and crowded prisons. In the meantime, the reforms will at least widen the appropriate cases for which a community-based sentence can be granted.

Criminal practitioners should be alive to these reforms, and be ready to argue for a client to avoid custody, in cases which were previously thought to be conclusive.

Whilst the reforms on the duration are significant, practitioners must appreciate the introduction of the new prohibitive/punitive conditions may also be key in swaying a sentencing judge in favour of suspending a custodial sentence.

These reforms will also be relevant to practitioners giving advice in First Appearances in the Magistrates' Court, as with a full 1/3 credit, these reforms open suspended sentences to a wider range of offences.

These reforms may also have some weight on an application for bail, when asking a court to consider the likely sentence, if convicted.

Stay tuned for further changes in the coming months.

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