



New Park Court

Criminal Briefing

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Criminal Briefing



Samantha Brown, Caitlin Smith and Oliver Kilvington are all currently undertaking their second six after commencing Pupillage in September 2025 with New Park Court Chambers and are accepting instructions across Chambers' key practice areas.

The Sentencing Act 2026: What does it mean in practice?

The Sentencing Act 2026, which received Royal Assent on 22 January 2026, makes several important changes to the sentencing regime in England and Wales. Most of the provisions came into force on 22 March 2026, with the remaining measures scheduled to be implemented in the autumn of this year.

Section 1: Presumption of suspended sentence order for sentences of 12 months' custody or less

The first, key change introduced by the 2026 Act is that, where the court imposes a sentence of 12 months' custody or less, there is a presumption that the sentence will be suspended.

Section 1 of the Sentencing Act 2026 inserts sections 264A (concerning offenders aged 18 but under 21 on the date of conviction) and 277A (offenders 21 or over on the date of conviction) into the Sentencing Act 2020 to create this new presumption.

*“The court **must make a suspended sentence order** in relation to the sentence where this section applies unless the court is of the opinion that there are **exceptional circumstances** which—*

*(a) relate to the offence (or the combination of the offence and one or more offences associated with it) or the offender, **and***

(b) justify not making the order.” (emphasis added)

The key barrier, therefore, to the presumption applying is the presence of “exceptional circumstances”. However, in the absence of further guidance from the Sentencing Council, it is not yet known when such circumstances will be considered “exceptional”.

There are further exceptions whereby the presumption will not apply, contained in s.277A(3). These exceptions include where:



- a. the Defendant is in custody when the sentence is imposed, either due to serving a custodial sentence or being on remand for another offence;
- b. the Defendant is detained in hospital when the sentence is imposed;
- c. the sentence imposed is one of two or more sentences imposed on the same occasion and the term on any sentence is more than 12 months, or the sentences are to be served consecutively and amount to more than 12 months on aggregate;
- d. the offence, or an associated offence, is one in which the Defendant is, or has been, subject to a supervision order and for which the court is re-sentencing the Defendant;
- e. the Defendant is subject to a supervision order when the offence was committed;
- f. by committing the offence, the Defendant has breached, “or occurred in circumstances closely connected with, a breach” of a court order;
- g. the court is of the opinion that suspending the sentence would put a particular individual at significant risk of physical or psychological harm.

In respect of (d) and (e) above, a supervision order includes, inter alia, a community order, a detention and training order and a suspended sentence order.

Crucially, this new presumption applies only to those Defendants who are convicted on or after 22 March 2026, rather than those Defendants who are sentenced on or after that date. Of course, if the presumption does not apply to some Defendants, or if they receive a sentence longer than 12 months, the sentence can still be suspended if it is less than 3 years (see below) but the key distinction is that there is not a presumption that it will be.

Section 2: Changes to Suspended Sentence Orders

Extension from Two to Three Years

Section 2 of the Sentencing Act 2026 amends Section 264 and 277 of the 2020 Act. It applies to offences where the Defendant is convicted on or after 22 March 2026. The relevant date is the date of conviction, meaning the point at which guilt is established – either by entering a guilty plea or following a trial. The date of the offending or sentence is not the determinative date.

The key changes introduced by this section are:

1. Custodial sentences of up to three years can now be suspended (previously only up to two years).
2. The operational period can now be up to three years (previously only two years). This applies where the custodial sentence is under three years, or where two or more sentences are to be served consecutively, and the total term is not more than three years.

The sentencing guideline for offenders over 21 now reads: ‘a custodial sentence between 14 days and 2 years may be suspended for between 6 months and 2 years’, ‘a custodial sentence of over 2 years and up to 3 years may be suspended for between 6 months and up to 3 years.’



The extension of the operational period does not apply in practice in the Magistrates' Courts, due to the constraints on their sentencing powers.

Certain aspects of the Suspended Sentence Orders remain unchanged:

1. The supervision period continues to be a minimum of 6 months and a maximum of 2 years. This is the period during which the offender is supervised by the probation service and must not exceed the operational period of the sentence.
2. Extended Determinate Sentences and Sentences for Offenders of Particular Concern cannot be suspended in any circumstances.

New Community Order Requirements

The 2026 Act also introduces several new community order requirements. These are only available if the offence was committed on or after 22 March 2026.

1. Driving Prohibition Requirement

This requirement may be imposed as well as, or instead of, a driving disqualification. It can be imposed whether or not the offence to which the order relates involved driving a motor vehicle, or using it to commit the offence. Such a requirement may prohibit the offender from:

- i. driving at a particular time period,
- ii. driving a motor vehicle of a specific kind,
- iii. driving on a road or within in a particular area,
- iv. driving altogether

2. Public Event Attendance Prohibition Requirement

This requirement may prohibit the offender from attending:

- i. a specific event,
- ii. a public event of a particular kind, or
- iii. any public event at all.

A public event is any event to which the public or a section of the public has access, whether paid or otherwise. This is expected to include events such as concerts and sports matches.

3. Drinking Establishment Entry Prohibition Requirement

This requirement may prohibit the offender from:

- i. entering specific establishments; or
- ii. drinking establishments generally.

A drinking establishment is defined in s.16(5) of the Act, but in general terms this means an establishment used primarily for the sale of alcohol for consumption on the premises, where the sale is not subject to a condition that the person reside at or consume food on that premises.



4. Restriction Zone Requirement

A restriction zone requirement can restrict offenders to a certain place for up to two years. The court can specify different areas for different periods within that time. Electronic monitoring must be imposed to ensure compliance with the requirement, save for limited exceptions:

- i. the required consent cannot be obtained,
- ii. arrangements in relevant areas, or
- iii. the court considers monitoring inappropriate in the circumstances.

Section 3: Deferment of Sentence

Deferment orders delay the passing of sentence until a date specified by the court. The new Act has extended the length of deferment available to 12 months, from 6 months. These provisions apply to offences where the offender is convicted on or after 22 March 2026, and are available to both the Crown and Magistrates' Courts.

The deferment requirements remain the same: it is imperative that the consent of the offender is sought, and there must be requirements as to the residence of the offender during all or part of the period of deferment.

Section 4: Amendments to the Bail Act 1976

The 2026 Act introduces three significant changes to the bail and remand framework for adults under the Bail Act 1976. These reforms are aimed at reducing the prison remand population while maintaining effective risk management in the community.

These amendments came into force on 22 March 2026.

1. 'No real prospect test'

The introduction of a presumption against short immediate custodial sentences means that such sentences are now expected to be imposed less frequently. Where immediate custody is unlikely, there is far less justification for remanding a defendant into custody.

Previously, fewer exceptions to the right to bail applied where the court considered that there was no real prospect that the defendant would receive a custodial sentence.

The Act refines this test to "no real prospect of immediate custody." This revised test applies where the court considers that:

- a. there is no real prospect that the defendant will be sentenced to an immediate custodial sentence, and
- b. it applies both to unconvicted defendants and convicted but awaiting sentence.

The effect of this change is that, for defendants facing any outcome other than immediate custody, fewer exceptions to bail will apply, increasing the likelihood of bail being granted.



2. Electronic Monitoring

Under the previous framework, electronic monitoring could only be imposed where the court was satisfied that, without it, the defendant would be remanded in custody. It therefore operated as a last resort.

The Act removes this restriction. Courts are no longer required to demonstrate that tagging is necessary to avoid custody before imposing it. Instead, it may now be imposed as an independent bail condition, expanding judicial discretion and creating a broader statutory basis for its use.

If the statutory conditions are met, an electronic monitoring requirement may now also be imposed where the court concludes that:

- a. there is a real prospect of a suspended sentence, and
- b. there is no real prospect of an immediate custodial sentence.

If the defendant does not fall within this category, for example there is a real prospect that the Defendant will be sentenced to immediate custody, then the ordinary rules apply.

This marks a significant expansion on the use of electronic monitoring as a bail condition. Under the previous framework, many defendants who were unlikely to receive a custodial sentence could not be subjected to electronic monitoring at all. By loosening the restrictions on tagging, the Act ensures that courts retain meaningful supervisory options even as more defendants are granted bail.

3. Mandatory Statutory Welfare Factors

The Act also expands the statutory factors to be considered when deciding whether to grant bail or remand a defendant in custody under the Bail Act 1976.

Previously, courts were required to consider factors such as the defendant's character, antecedents, and the seriousness of the offence, alongside 'any others which appear to be relevant'.

The Bail Act is amended to expressly include additional welfare-related factors, namely whether the defendant:

- a. is pregnant,
- b. is a primary caregiver, or
- c. has been a victim of domestic abuse.

While these matters could already be considered, their inclusion in the legislation promotes greater consistency and ensures that courts more reliably consider the personal circumstances and vulnerabilities of defendants.