

Police, Crime, Sentencing and Courts Act 2022 – Electronic Monitoring changes

FAQs – Probation

Q: Can a change be made at any time over the period the PoP is under curfew?

A: Yes, a change can be made at any point during the life of the curfew requirement.

Q: Who do these Probation changes apply to?

A: These changes only apply to those **convicted** on or after 28 June 2022 when the legislative provision commenced.

Q: Where can learn more about the new powers for Probation to vary a curfew start/end time and the address?

A: The process for varying a curfew start/end time and address is available on EQuIP here: [CO / SSO Curfew Variation \(Master\) \(justice.gov.uk\)](#) and searchable in EQuIP by the keyword search “curfew variation”.

Q: How will the additional powers for Probation affect Probation Officers’ workload? Will it become an additional task?

A: These changes should make changing address or curfew times quicker as there is no need to return to Court in person and prepare for hearings etc.

Q: Are address change requests going to take longer than a straightforward hours request?

A: Most likely yes, due to the address checks and the mandatory Domestic Abuse and Safeguarding checks.

Q: Are the changes to Electronic Monitoring introduced by the PCSC Act 2022 the only changes that directly affect Probation staff?

A: The PCSC Act briefings delivered to Probation staff by the Electronic Monitoring (EM) Programme (between June 7 – 23) covered only the EM changes to adult cases brought about by the PCSC Act 2022. There are additional changes in EM for Youth Courts (covered via separate briefings to YOT representatives). Other changes to Probation, not related to EM, were not included within this briefing content. Please also note that the changes to curfew also relate to non-electronically monitored curfews (as was stated within the briefing content).

Q: Where can I find more information about the mandatory Domestic Abuse and Safeguarding requirements?

A: The FAQ document specific to the mandate for DA and Child Safeguarding Enquiries is here: [Mandatory Enquiries for Electronic Monitoring FAQ \(Master\) \(justice.gov.uk\)](#) Clear guidance on where to record enquiries and information received is here: [DA & Safeguarding Information Storage Guidance \(Master\) \(justice.gov.uk\)](#)

Q: Where is the new variation form and what is the new process for completion?

A: The Probation Practitioner locates the case and order in Delius and adds an NSI called 'Curfew variation for Community Sentences'. The forms to process the variation are in the NSI Documents. The EQUIP process map also has an nDelius Advice Note attached to it which contains step-by-step guidance on what to do in nDelius.

Q: Would this new power be for occasional changes? What if the PoP requests a more permanent change to curfew hours?

A: The power is not limited to a temporary change to the start/end time of the curfew, but Probation colleagues will need to consider the risks associated with the change. Should they consider that the court would not have made the change then the legislation prevents them from doing so. Both forms allow additional information to be captured (e.g., an end date if a temporary change).

Q: Are there any time requirements for this process (e.g., around how long the PDU Head has to make a decision and the revised Court Order)?

A: The legislation does not stipulate a timeframe in which to consider the request. Each case will need to be dealt with on its merits taking account of any urgency for the change.

Q: This seems a large task for Head of PDU to have to sign off on. What sort of numbers are we expecting?

A: Where the change is necessary this measure saves Probation time as there is no requirement to prepare for and attend court. Also, this measure should support compliance - again potentially reducing workload.

Q: Are there any changes to trail monitoring or location monitoring?

A: There are no changes related to adults (there are changes for Youth Rehabilitation Orders in Youth Courts, covered in Youth Justice briefings, however not covered in the Probation briefings).

Q: Can a Person on Probation (PoP) move to the new address once permission is given or would they have to wait until the court order is issued?

A: If Probation (specifically the PDU Head) authorises the change with the consent of the PoP, the PoP can move on the date agreed. Probation only needs to inform the court.

Q: If a PoP changes jobs and their new starting times and finishing times would mean that the number of hours curfewed were less, does that have to go back to Court?

A: Yes, this would still need to go back to Court. Probation cannot alter the number of hours.

Q: If a person was sentenced prior to 28 June 2022 when the new process for variation starts, and Probation need to amend a curfew address, can we use the new process, or do we have to take anything sentenced prior to 28 June 2022 back to court for an address change?

A: It is the **conviction date** that is relevant. The process only applies to those convicted on or after 28 June 2022.

Q: Does the increase in maximum curfew length from 12 months to 24 months also apply to GPS tagging when sentenced to a Prohibited Activity?

A: The change to the maximum duration that a curfew can be imposed for applies to all community sentence cases where the PoP was convicted on or after 28 June 2022, regardless of the technology used to monitor compliance.

Q: If a PoP works irregular shifts, do Probation have to undertake these variations every week?

A: The variation requested by the PoP should be clearly stated in the Internal Application Form and Variation Notice Form. The changes to vary curfew (and/or change address) can be described in the forms only once, even if the PoP works irregular shifts. There is a comments box in the Internal Application Form to allow for some flexibility and to detail circumstances, however, there does need to be some repeatable aspect to the requested changes (i.e., a pattern). Probation should look for a proportionate solution as the court would have looked for a proportionate and pragmatic approach.

Q: In addition to us doing this, will Probation still be in a position to direct people to their solicitor or court to request the changes themselves?

A: If Probation refuse the request it is open to the PoP to apply to the court. If Probation refer the PoP to the court without consideration of the request, the court may ask why.

Q: Will this be the case for errors (e.g., a mistake when taking down address at court)?

A: This power is for variation only. Current processes should be followed for a scenario where an error was made when noting down an address at court.

Q: Please can you confirm what Probation can vary under the new legislation?

A: With the consent of the PoP (and if convicted on or after June 28, 2022), Probation can vary the address or start /end time of the curfew. They cannot change the daily number of curfew hours, so any change to a start time would need a corresponding change to the end time, the period of curfew shifts, and the hours always remain the same.

Q: Do Probation need to go back to court to change the boundary of the curfew (e.g., to allow people to smoke)?

A: Yes, where the boundary is stipulated in the order, Probation will need to return to court to make any changes. If there is no boundary stipulated the existing processes and considerations can continue.

Q: Does the power to vary apply to Detention and Training Orders?

A: The power to vary only applies to adult community sentences (i.e., community orders and suspended sentence orders).

Q: Does the PCSC Act affect Home Detention Curfews (HDCs)?

A: No.

Q: Do the changes apply to Supervision Default Orders (SDOs) as well?

A: As a curfew requirement imposed under an SDO is a curfew requirement as defined by para 9 of Schedule 9 of the Sentencing Act 2020, the maximum daily length of an EM curfew in the PCSC Act 2022 will apply (i.e., 20 hours). However, the overall duration is not affected and the maximum that a curfew can be imposed for as part of a SDO remains at 12 months. The variation process does not apply to SDOs, only community sentences.

Q: What are the standard start and end times now if the maximum daily curfew has extended from 16-20hours?

A: Whatever times the court think is necessary and proportionate. Probation are able to recommend any start or end times that they consider to be necessary and proportionate for the case, provided it does not exceed the max daily / weekly amount permitted in legislation.

Q: Please can you advise on the max hours per week as this cannot be 20 hours per day over 7 days, as it would exceed the max hours. Would some days need to have a shortened curfew duration?

A: The curfew cannot exceed the maximum of 20 hours each day, and over a seven-day period the maximum number of curfew hours remains at 112 hours. Care will need to be taken to ensure the weekly maximum is not exceeded. Within this it is an option for Probation to recommend focusing longer curfews on leisure days.

Q: Is it still the case that the total weekly hours still can't exceed the original hours imposed by the court unless they've appeared before the breach court?

A: The maximum weekly number of hours that can be imposed as part of a community sentence remains at 112 hours.

Q: Is there anything that might impact those that come over from YOTs to Adult transition (e.g., YROs that are still on a youth sentence but are passed over to Probation Practitioners after turning 18)?

A: The variation process does not apply to Youth Rehabilitation Orders.

Q: Do the new changes apply to children - U18's? What if the youth is managed by Probation?

A: The variation process does not apply to Youth Rehabilitation Orders.

Q: Does the EQuIP process link you to the right forms to vary curfew time/address?

A: The EQuIP process links to the Advice Notice which will explain the step-by-step process (including where to locate the forms) but the forms themselves will be accessible via nDelius only. The EQuIP process can be found [here](#) or by using the keyword search "curfew variation" in EQuIP.

Q: Do these changes apply to both Crown Court and Magistrates Orders?

A: Yes. The changes to curfew max and duration apply to all community sentences. The variation process applies to all community sentences where Probation are the Responsible Officer.

Q: Regarding the new powers for Probation to vary curfew time and / or address, does it also apply to standalone requirement cases that EMS manage (but that enforcement hubs quality assure) or does it apply to multi-requirement Orders only?

A: The new powers will only extend to those cases that Probation manage (i.e., where Probation are the Responsible Officer). Any EMS-managed case (a standalone curfew) would need to be returned to Court by the tag wearer or their legal advisor, following current BAU process.

Q: Regarding the increase in the maximum length of curfew from 12 months to 2 years, what is the rationale behind this change? There are concerns on the Probation Practitioner's workload for monitoring someone for 2 years, the process itself, the length of the requirement for the PoP, and safeguarding and domestic violence.

A: This change brings the maximum length of a curfew in line with the maximum period for exclusion zone requirements. It will also increase the potential of a curfew to support rehabilitation by

providing a longer period during which some of the positive effects of curfew can be established, for example reducing interaction with criminal associates.

It is envisaged that courts will be able to use longer curfews in particularly serious cases, potentially where someone has reached the custody threshold (the availability of a two-year curfew may contribute to satisfying the court that there are sufficient measures available to them to make an order for a suspended sentence particularly where a sentence served in the community may be more effective in preventing future re-offending). It will remain a matter for the court to determine what requirements are necessary and proportionate to impose.

Q: Shouldn't the action of sending the Variation Notice and uploading the amended one sit with the Office Team Admin rather than the Probation Practitioner (due to reasons of leave/absence etc)?

A: There is some flexibility on who does what specifically within the PDU (Admin vs Probation Practitioner) therefore, whichever fits best with existing PDU operations processes is acceptable. However, the *responsibility* of ensuring that the Variation Notice is sent and uploaded sits with the Probation Practitioner.

The information required to consider the change to curfew should be obtained through the supervising Probation Practitioner, who will also need to formally get the PoP's consent and carry out the address checks, as necessary, and reflect this on the form.

Q: With Probation informing the court of the variation in curfew that Probation has approved, does the court then produce a new court order? (We need to make sure that court orders are amended so that any subsequent enforcement is not impacted e.g., ensure that the order is legal).

A: If approved by Probation, the variation would not need to formally appear before Court for approval. However, once the relevant court receives the variation notice from Probation, it must list the case using the appropriate offence codes available on Libra, Xhibit, and Common Platform, and administratively amend the order according to the variation notice. The Court only needs to update their records. It is up to Probation to inform the PoP of the outcome of their request.

Q: Which court will Probation need to send the Variation Notice to?

A:

If the original order is a...	...the variation notice needs to be sent to...
Magistrates' Court Community Order (where no drug rehabilitation requirement subject to review)	A magistrates' court acting in the offender's home local justice area
Magistrates' Court Community Order (where drug rehabilitation requirement subject to review)	The magistrates' court responsible for the order

Crown Court Community Order	The Crown Court
Magistrates' Court Suspended Sentence Order (where not subject to review)	A magistrates' court acting in the local justice area for the time being specified in the order.
Magistrates' Court Suspended Sentence Order (where subject to review)	The magistrates' court responsible for the order
Crown Court Suspended Sentence Order	The Crown Court

Q: Will there, as a consequence of this Act, be a 'dual system' to some extent for a period of time? As in, those sentenced before 28 June 2022 will be dealt with under the old legislation and those convicted on or after 28 June 2022 will be dealt with under the new legislation?

A: Yes, this is correct. These changes apply to those convicted on or after June 28, 2022.