



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 1

### SENTENCING

#### *The Scottish Sentencing Council*

#### **1 The Scottish Sentencing Council**

- (1) There is established a body corporate to be known as the “Scottish Sentencing Council” (referred to in this Part as the “Council”).
- (2) Schedule 1 makes further provision about the Council.

#### **2 The Council’s objectives**

The Council must, in carrying out its functions, seek to—

- (a) promote consistency in sentencing practice,
- (b) assist the development of policy in relation to sentencing,
- (c) promote greater awareness and understanding of sentencing policy and practice.

#### **3 Sentencing guidelines**

- (1) The Council is from time to time to prepare, for the approval of the High Court of Justiciary, guidelines relating to the sentencing of offenders.
- (2) Such guidelines are to be known as “sentencing guidelines”.
- (3) Sentencing guidelines may in particular relate to—
  - (a) the principles and purposes of sentencing,
  - (b) sentencing levels,

- (c) the particular types of sentence that are appropriate for particular types of offence or offender,
  - (d) the circumstances in which the guidelines may be departed from.
- (4) Sentencing guidelines may be general in nature or may relate to a particular category of offence or offender or a particular matter relating to sentencing.
- (5) The Council must, on preparing any sentencing guidelines, also prepare—
  - (a) an assessment of the costs and benefits to which the implementation of the guidelines would be likely to give rise,
  - (b) an assessment of the likely effect of the guidelines on the criminal justice system generally.
- (6) The Council—
  - (a) must from time to time review any sentencing guidelines published by it, and
  - (b) may prepare, for the approval of the High Court of Justiciary, revised guidelines.
- (7) In this section and sections 4 to 13, references to sentencing guidelines include references to revised sentencing guidelines.

#### **4 Consultation on proposed sentencing guidelines**

- (1) The Council must, before submitting any sentencing guidelines to the High Court of Justiciary for approval—
  - (a) publish a draft of the proposed guidelines together with a draft of the assessments referred to in section 3(5), and
  - (b) consult the following persons about the drafts—
    - (i) the Scottish Ministers,
    - (ii) the Lord Advocate,
    - (iii) such other persons as the Council considers appropriate.
- (2) The Council must, in finalising the guidelines and assessments for submission to the High Court of Justiciary, have regard to any comments made on the drafts following publication and consultation under subsection (1).

#### **5 Approval of sentencing guidelines by High Court**

- (1) Sentencing guidelines have no effect unless approved by the High Court of Justiciary.
- (2) On submitting sentencing guidelines to the High Court for approval, the Council must also provide the High Court with the assessments referred to in section 3(5).
- (3) Where the Council submits sentencing guidelines to the High Court for approval, the Court may—
  - (a) approve the proposed guidelines—
    - (i) in whole or in part,
    - (ii) with or without modifications, or
  - (b) reject the proposed guidelines, in whole or in part.
- (4) Where the High Court—
  - (a) rejects any of the proposed guidelines, or

- (b) modifies any of them,  
the Court must state its reasons for doing so.
- (5) Sentencing guidelines approved by the High Court take effect on such date as the Court may determine.
- (6) Different dates may be determined in relation to—
  - (a) different provisions of the guidelines, or
  - (b) different purposes.
- (7) As soon as possible after the approval of sentencing guidelines by the High Court, the Council must publish—
  - (a) the guidelines as approved (including the date on which they take effect), and
  - (b) the assessments referred to in section 3(5) (revised as necessary to take account of any modifications of the guidelines prior to their approval).
- (8) The guidelines and assessments are to be published in such manner as the Council considers appropriate.

## **6 Effect of sentencing guidelines**

- (1) A court (whether at first instance or on appeal) must—
  - (a) in sentencing an offender in respect of an offence, have regard to any sentencing guidelines which are applicable in relation to the case,
  - (b) in carrying out any other function relating to the sentencing of offenders, have regard to any sentencing guidelines applicable to the carrying out of the function.
- (2) If the court decides not to follow the guidelines, or to depart from them in accordance with provision contained in them under section 3(3)(d), it must state the reasons for its decision.
- (3) The sentencing guidelines to which the court must have regard under subsection (1) are those applicable to the case at the time the court is sentencing the offender or, as the case may be, carrying out the function.
- (4) Subsection (5) applies where, on appeal in any case, the High Court of Justiciary passes another sentence under one of the following provisions of the 1995 Act—
  - (a) section 118(3),
  - (b) section 118(4)(b),
  - (c) section 118(4A)(b),
  - (d) section 118(4A)(c)(ii),
  - (e) section 189(1)(b).
- (5) The sentencing guidelines which the High Court must have regard to under subsection (1) in passing that other sentence are those applicable to the case at the time it is passed.
- (6) A revision of the sentencing guidelines after an offender is sentenced in respect of an offence is not a ground for the referral of the case to the High Court of Justiciary under section 194B of the 1995 Act (references to the High Court of cases dealt with on indictment).

(7) In section 108 of the 1995 Act (Lord Advocate’s right of appeal against disposal where conviction on indictment), after subsection (2) insert—

“(2A) In deciding whether to appeal under subsection (1) in any case, the Lord Advocate must have regard to any sentencing guidelines which are applicable in relation to the case.”.

(8) In section 175 of the 1995 Act (prosecutor’s right of appeal against disposal in summary proceedings), after subsection (4B) insert—

“(4C) In deciding whether to appeal under subsection (4) in any case, the prosecutor must have regard to any sentencing guidelines which are applicable in relation to the case.”.

## **7 Ministers’ power to request that sentencing guidelines be prepared or reviewed**

(1) The Scottish Ministers may request that the Council consider—

- (a) preparing, for the approval of the High Court of Justiciary, sentencing guidelines on any matter, or
- (b) reviewing any sentencing guidelines published by the Council.

(2) The Council must have regard to any request made by the Scottish Ministers.

(3) If the Council decides not to comply with a request made by the Scottish Ministers, it must provide the Scottish Ministers with reasons for its decision.

## **8 High Court’s power to require preparation or review of sentencing guidelines**

(1) Where the High Court of Justiciary pronounces an opinion under section 118(7) or 189(7) of the 1995 Act, the Court may require the Council to—

- (a) prepare, for the Court’s approval, sentencing guidelines on any matter, or
- (b) review any sentencing guidelines published by the Council on any matter.

(2) On making a requirement under subsection (1), the High Court must state its reasons for doing so.

(3) The Council must comply with a requirement made under subsection (1) and, in doing so, must have regard to the High Court’s reasons for making the requirement.

## **9 Publication of High Court guideline judgments**

(1) The Council must publish the opinions of the High Court of Justiciary pronounced under section 118(7) or 189(7) of the 1995 Act.

(2) As soon as possible after the High Court pronounces such an opinion, the Scottish Court Service must provide the Council with a copy of the opinion.

(3) The copy opinion is to be provided in such form and by such means as the Council may require.

(4) The opinions are to be published in such manner, and at such times, as the Council considers appropriate.

(5) This section does not affect any power or responsibility of the Scottish Court Service in relation to the publication of opinions of the High Court.

## **10 Scottish Court Service to provide sentencing information to the Council**

- (1) The Scottish Court Service must provide the Council with such information relating to the sentences imposed by courts as the Council may reasonably require for the purposes of its functions.
- (2) The information must be provided in such form and by such means as the Council may require.
- (3) The Council must from time to time publish information about the sentences imposed by courts.

## **11 The Council’s power to provide information, advice etc.**

- (1) The Council may—
  - (a) publish or otherwise disseminate information about sentencing matters,
  - (b) provide advice or guidance of a general nature about such matters,
  - (c) conduct research into such matters.
- (2) In this section, “sentencing matters” means—
  - (a) sentencing guidelines,
  - (b) the practice of the courts in relation to sentencing, and
  - (c) any other matter relating to sentencing.

## **12 Business plan**

- (1) The Council must, before the submission day for each period of 3 years, prepare and submit to the Scottish Ministers a plan (a “business plan”) describing how the Council proposes to carry out its functions during the period.
- (2) The “submission day” is—
  - (a) for the period of 3 years beginning on the day on which this section comes into force, the day specified by order made by the Scottish Ministers,
  - (b) for each succeeding period of 3 years, the first day of the period.
- (3) A business plan must—
  - (a) be prepared in such form as the Scottish Ministers may direct,
  - (b) contain the information specified in subsection (4) and such other information as they may direct, and
  - (c) be submitted by such time as they may direct.
- (4) The information referred to in subsection (3)(b) is details of the matters in relation to which the Council proposes to prepare sentencing guidelines.
- (5) The Council may include in a business plan such other information as it considers appropriate.
- (6) In preparing a business plan, the Council must consult—
  - (a) the Scottish Ministers,
  - (b) the Lord Advocate,
  - (c) the Lord Justice General, and
  - (d) such other persons as it considers appropriate.

- (7) The Scottish Ministers must lay before the Scottish Parliament each business plan submitted to them.
- (8) The Council must, as soon as practicable after a business plan has been laid before the Parliament, publish it in such manner as it considers appropriate.
- (9) The Council may at any time during a period covered by a business plan review the plan for the period and submit to the Scottish Ministers a revised plan.
- (10) Subsections (3) to (8) apply to a revised plan as they apply to a business plan.

### **13 Annual report**

- (1) The Council must, as soon as practicable after the end of each financial year, prepare and submit to the Scottish Ministers a report on the carrying out of its functions during the year.
- (2) The report must—
  - (a) be prepared in such form as the Scottish Ministers may direct,
  - (b) contain the information specified in subsection (3) and such other information as they may direct, and
  - (c) be submitted by such time as they may direct.
- (3) The information referred to in subsection (2)(b) is details of—
  - (a) the sentencing guidelines published or revised during the year (if any),
  - (b) any sentencing guidelines submitted during the year to the High Court of Justiciary for approval and of the Court's response to them,
  - (c) any draft sentencing guidelines being consulted upon,
  - (d) requests made by the Scottish Ministers under section 7 and of the Council's response to them, and
  - (e) requirements made by the High Court of Justiciary under section 8 and of the Council's response to them.
- (4) The Council may include in the report such other information as it considers appropriate.
- (5) The Scottish Ministers must lay before the Scottish Parliament each report submitted to them.
- (6) The Council must, as soon as practicable after the report has been laid before the Parliament, publish it in such manner as it considers appropriate.