



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 1

SENTENCING

The Scottish Sentencing Council

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.”.