

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Sentencing

Sections 1 - 13 - The Scottish Sentencing Council

3. [Sections 1–13](#) and Schedule 1 set out the provisions for the establishment of a Scottish Sentencing Council (“the Council”), which will produce sentencing guidelines for Scotland.
4. [Section 1](#) establishes the name of the Council and its status as a body corporate.
5. [Section 2](#) sets out the objectives of the Council, which it must seek to achieve when carrying out its functions. These are to promote consistency in sentencing, assist the development of sentencing policy and support transparency in sentencing by promoting greater awareness and understanding of sentencing policy and practice.
6. [Section 3](#) relates to the sentencing guidelines to be produced by the Council for the approval of the High Court of Justiciary and what they may be about. Subsection (5) requires the Council, on preparing guidelines, also to prepare an assessment of the costs and benefits of the guideline and the projected impacts on the criminal justice system. Subsection (6) requires the Council to review any published sentencing guidelines from time to time, and after such a review, they may submit revised guidelines to the High Court for approval.
7. [Section 4](#) sets out the consultation procedure for the Council, ahead of submitting the guidelines to the High Court of Justiciary for approval. The Council must publish a draft of the proposed guidelines and the assessment of costs and benefits for comment before submitting them to the High Court. There is a requirement on the Council to consult the Scottish Ministers and the Lord Advocate, as well as such other persons as the Council considers appropriate before submitting the guidelines to the High Court for approval.
8. [Section 5](#) sets out the role of the High Court in the approval of sentencing guidelines. The High Court may approve or reject the guidelines in whole or in part and it may modify them. If it modifies or rejects them, it must state its reasons for doing so. It remains for the Council to publish the guidelines and the assessments referred to in section 3(5) once the High Court has approved them.
9. [Section 6](#) details the effect of the guidelines on the courts. A court must have regard to any guidelines which are applicable in a case and must state its reasons if it chooses to depart from the guidelines. The guidelines that are applicable are those in force and applicable to the case at the time the court is sentencing the offender.
10. When the High Court is dealing with an appeal and is passing a different sentence under relevant provisions in the Criminal Procedure (Scotland) Act 1995 (“the 1995

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Act”), then it must have regard to the guidelines that are applicable at the time that it is considering the appeal. The provisions in the 1995 Act are as follows:

- Section 118(3) relates to the power of the High Court to quash a sentence and pass another one of equal measure when dealing with an appeal against conviction;
 - Section 118(4)(b) relates to the power of the High Court to pass a greater or lesser sentence when dealing with an appeal against conviction;
 - Section 118(4A)(b) relates to cases where a court has imposed a sentence other than a mandatory sentence and the High Court opts to pass a different sentence, but one that is still not the mandatory sentence;
 - Section 118(4A)(c)(ii) relates to the High Court’s decision to set aside a decision and any sentence that departs from the mandatory sentence for drugs offences made under section 205B of the 1995 Act, and instead impose the mandatory minimum sentence or greater;
 - Section 189(1)(b) relates to the power of the High Court, in an appeal against sentence in summary proceedings to quash the sentence and substitute another, whether more or less severe.
11. [Section 6\(6\)](#) is intended to prevent the revision of sentencing guidelines from becoming a ground for appeal referral by the Scottish Criminal Cases Review Commission. The Commission often deals with cases in which a significant period of time has lapsed between the original conviction and the appeal.
 12. [Section 6\(7\)](#) requires the Lord Advocate to have regard to applicable sentencing guidelines when deciding whether to appeal a sentence.
 13. [Section 6\(8\)](#) requires the prosecutor to have regard to applicable sentencing guidelines when deciding whether to appeal a sentence.
 14. [Section 7](#) gives the Scottish Ministers the power to request that the Council prepares or reviews sentencing guidelines on any matter. While the Council must have regard to the request, it is not bound to comply with it. It must however, provide reasons for its decision not to comply.
 15. [Section 8\(1\)](#) provides the High Court of Justiciary with the power to request that the Council prepare, for the Courts approval, sentencing guidelines on any matter, or undertake a review of any sentencing guidelines published by the Council on any matter.
 16. [Section 8\(2\)](#) places a requirement for the High Court to state its reasons for making a requirement under subsection (1).
 17. [Section 8\(3\)](#) places a requirement on the Council to comply with a requirement made under subsection (1), and in doing so, must have regard to the High Courts reasons for making the requirement.
 18. [Section 9](#) places a requirement upon the Sentencing Council to publish opinions of the High Court pronounced under sections 118(7) or 189(7) of the 1995 Act, and a requirement upon the Scottish Court Service to provide the Council with a copy of any opinion as soon as possible after it has been pronounced. The section does not affect any powers or responsibilities of the Scottish Court Service to publish opinions of the High Court.
 19. [Section 10](#) provides that the Scottish Court Service must provide the Council with information it may reasonably require in the form in which it requires.
 20. [Section 11](#) provides the Council with the power to publish and provide information and guidance on sentencing and conduct research into sentencing.

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21. **Section 12** relates to the business plan of the Council and sets out the requirements for the plan. It requires the Council to submit a 3 year plan to the Scottish Ministers describing how it plans to carry out its functions. The Council must consult the persons specified in section 12(6) in preparing the business plan. Scottish Ministers must lay the plan before Parliament and the Council must publish it. It may also be revised at any time during its three years.
22. **Section 13** relates to the annual report which the Council must submit to the Scottish Ministers and sets out the requirements for the content of the report. Each report must be laid before the Scottish Parliament by the Scottish Ministers and published thereafter by the Council.