



The Lord Justice Clerk

Parliament House
Edinburgh, EH1 1RQ

13 May 2019

Humza Yousaf, MSP
Cabinet Secretary for Justice
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

Dear Cabinet Secretary,

**SCOTTISH SENTENCING COUNCIL
DEVELOPMENT OF GUIDELINES ON SEXUAL OFFENCES**

The Scottish Sentencing Council published its second business plan¹ in October 2018, following consultation with you, the Lord Advocate, and the Lord Justice General, as required by the Criminal Justice and Licensing (Scotland) Act 2010. In that plan, we announced our intention to prepare a guideline or guidelines on sexual offences, noting that consideration was ongoing as to the precise scope of work in this area.

At its most recent meeting on 2 May 2019, the Council discussed its approach to the development of guidelines on sexual offences and, as the decisions taken expand on the information set out in our business plan, we felt it would be appropriate to provide you with an update. I have written in similar terms to the Lord Advocate and Lord Justice General.

Given the wide-ranging nature of sexual offending, the Council has decided to develop multiple guidelines focusing on particular sexual offences, rather than a single guideline covering all offences. This will allow each topic to be given in-depth consideration, and for the first guidelines on sexual offending to be produced more quickly.

¹ <https://www.scottishsentencingcouncil.org.uk/media/1926/scottish-sentencing-council-business-plan-2018-21.pdf>

As you may be aware, we have already carried out some preparatory work on sexual offences to help us identify particular challenges in sentencing and priority areas for guidance. This includes hosting a stakeholder conference in 2018, seeking views from various organisations and individuals with an interest and experience in this area, including victim support organisations, and holding discussions with the judiciary.

Taking into account the information we have gathered to date, the Council has decided to begin its work on sexual offences by developing sentencing guidelines in relation to rape, sexual assault, and indecent images of children.

As with sexual offending as a whole, sentencing each of these offences often involves difficult decisions in complex circumstances. We believe that guidelines will bring significant benefits to the judiciary, those involved in such cases, and the wider public.

We have also considered how the Council's overall work programme should be prioritised in light of this decision. We recognise the considerable interest in sentencing sexual offences, and we have listened carefully to views expressed by the public, judiciary, victim support organisations, the Scottish Parliament and others in considering how best to proceed. Our priorities are always under review as new areas of work develop and, on balance, we consider that guidelines on sexual offences should take precedence over certain other areas of work at present.

Specifically, we intend to deprioritise the development of a guideline on environmental and wildlife offences during the current business plan period, in order to allow more resources to be allocated to work on sexual offences. While some preparatory research on environmental and wildlife offences has been carried out, work in this area is still at an early stage and can be deferred until such time as the Council has the capacity to focus more fully on it. In addition, as noted in our business plan, we are aware that the Scottish Government has previously indicated its intention to take forward recommendations in the report of the Wildlife Crime Penalties Review Group to increase penalties for wildlife crime, which may have required a delay in the development of this guideline in any case. As a result of the Council's decision, it is unlikely that we will achieve our aim of issuing a guideline on environmental and wildlife offences during the 2018-21 period.

The Right Honourable Lady Dorrian

Telephone 0131 240 6732

Fax 0131 240 6704

DX549306 Edinburgh 36

lscott@scotcourts.gov.uk

www.scotcourtsribunals.gov.uk

However, our plans for issuing guidelines on the sentencing process, the sentencing of young people, and causing death by driving remain unchanged. These guidelines are all at a more advanced stage of development and so delaying work would not, in our view, be justified.

At this stage, it is difficult to say with any certainty how long the first guidelines on sexual offences will take to develop. This will depend in large part on the complexities encountered as we begin detailed work on each topic, and on the feedback received during public consultation, which is a vital part of the guideline development process. While we recognise the desire to have sentencing guidelines on sexual offences in place as quickly as possible, as I have noted previously the potential impact of guidelines which have not been properly considered and tested would be considerable, both for individual cases and for the justice system as a whole. Taking the necessary time to get guidelines right is vital, especially when dealing with a wide ranging, sensitive, and complex area such as sexual offending.

I hope this update on our work programme is helpful, and I look forward to further discussion with you on this and other areas of mutual interest in due course.

yours sincerely
Leona Dornan

The Right Honourable Lady Dorrian

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