

PRINCIPLES AND PURPOSES OF SENTENCING

Sections 1 and 2 of the Criminal Justice and Licensing (Scotland) Bill as introduced to the Scottish Parliament on 06 August 2010

1 Purposes and principles of sentencing

(1) The purposes of sentencing are—

- (a) the punishment of offenders,
- (b) the reduction of crime (including its reduction by deterrence),
- (c) the reform and rehabilitation of offenders,
- (d) the protection of the public, and
- (e) the making of reparation by offenders to persons affected by their offences.

(2) A court, in sentencing an offender in respect of an offence, must have regard to the purposes of sentencing.

(3) Other matters to which a court must have regard in sentencing an offender in respect of an offence include—

- (a) the seriousness of the offence,
- (b) any information before the court about the effect of the offence on any person (other than the offender),
- (c) the range of sentences available to the court in dealing with the offence,
- (d) the desirability of ensuring consistency in sentencing in respect of the same type of offence,
- (e) any information before the court about the circumstances and attitude of the offender (including, for example, information about the matters specified in subsection (4)).

(4) Those matters are—

- (a) any other offences committed by the offender,
- (b) any change in the offender's behaviour or attitude as a result of previous sentences imposed in respect of any other offence,
- (c) the offender's family circumstances,
- (d) the level of risk which the offender poses to the public,
- (e) the offender's willingness to reform.

(5) Subsections (2) and (3) do not apply—

- (a) in relation to an offender aged under 18 at the time of the offence,
- (b) in relation to the imposition of a sentence in respect of an offence so far as the sentence for that offence is fixed by law,
- (c) in relation to the making of—
 - (i) a compulsion order under section 57A of the 1995 Act,
 - (ii) a guardianship order under section 58(1A) of that Act,
 - (iii) a restriction order under section 59 of that Act,
 - (iv) a hospital direction under section 59A of that Act, or
 - (v) an intervention order under section 60B of that Act.

(6) In this Part, “sentence” includes any order or disposal which a court may make in dealing with an offender in respect of an offence, but does not include an order for committal in default of payment of any sum of money or for contempt of court; and “sentencing” is to be construed accordingly.

2 Relationship between section 1 and other law

(1) Where, under a provision of any enactment, the matters to which a court must or must not have regard in sentencing an offender in respect of an offence are inconsistent with those to which the court must have regard under section 1, the court need not comply with section 1 to that extent.

(2) Where the matters to which a court must have regard under section 1 in sentencing an offender in respect of an offence are inconsistent with the sentencing guidelines, the court need not comply with section 1 to that extent.

(3) Where the matters to which a court must have regard under section 1 in sentencing an offender in respect of an offence are inconsistent with those to which the court must or must not have regard by virtue of any rule of law, the court need not comply with the rule of law to that extent.

(4) Otherwise, section 1 does not affect any other duty or power imposed or conferred on a court to take account of or have regard to (or not to take account of or have regard to) any matter in sentencing an offender in respect of an offence.

Extract from the [SPICe \(the Scottish Parliament Information Centre\) Briefing on the Parliamentary Consideration Of Criminal Justice And Licensing \(Scotland\) Bill Prior to Stage 3 \(4 June 2010\) \(pp. 6-7\)](#)

Purposes and Principles of Sentencing

Sections 1 and 2 of the Bill as introduced set out provisions on the purposes and principles of sentencing. The policy memorandum published along with the Bill stated that they were:

“intended to ensure that the public has a much clearer understanding of what sentencing is actually for and is clear on the key factors that every sentencer must have regard to when making decisions in individual cases”. (para 9)

However, the Justice Committee’s Stage 1 Report (2009) questioned the benefit of the provisions:

“The Committee believes that the purposes or principles of sentencing, as established by common law, are already well understood by the courts. The common law has the advantage that it can more easily evolve and develop in response to changes in social attitudes; fixing this common-law understanding in statute carries a risk of unintended consequences, and may also lose some of the nuances of case-law jurisprudence. What is more, it is generally understood to be a principle of legislative drafting to make provision only where it is necessary to do so – and, indeed, this has often been articulated by Ministers (both of the current and previous administrations) as a reason to resist backbench amendments

Considering section 1 in isolation, therefore, we are not convinced that a sufficiently good case has been made for its inclusion. However, we recognise the Scottish Government’s view that an opening section setting out in broad terms what sentencing is for may be a useful preliminary to the creation of a Scottish Sentencing Council. Accordingly, we invite the Scottish Government both to justify the necessity for setting out the purposes and principles of sentencing in the Bill and to provide assurance that the provisions in sections 1 and 2 do not inadvertently change the law. Without adequate justification and assurance, we are liable to conclude that retaining these sections in the Bill may be problematic.” (paras 34–35)

In its written response to the Stage 1 Report the Scottish Government (2010a) said that:

“Public perception of justice and the sentencing process remains poor and if we are to improve confidence in the criminal justice system and promote consistency and transparency, we consider it necessary to set out clearly in statute the function and rationale of sentencing.” (p 3)

Relevant stage 2 amendments included two lodged by Robert Brown MSP to remove both sections. He stated, in arguing for his amendments, that:

“The committee was prepared to consider some leeway on the issue because stating what sentencing is for is viewed as a preliminary to the creation of the proposed sentencing council. However, after reflection, I have come to the view that that is not a valid proposition, and that the sentencing council can stand on its own without sections 1 and 2”. (Scottish Parliament Justice Committee 2010c, col 2689)

Following debate, the Justice Committee (by majority) agreed both amendments, thus removing sections 1 and 2 from the Bill.

Scottish Sentencing Council Secretariat

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