

Principles and purposes of sentencing

Impact assessment

Introduction

1. This document fulfils the Scottish Sentencing Council's statutory duty¹ to provide an assessment of the costs and benefits to which the implementation of the guideline is likely to give rise and an assessment of the likely impact of the guideline on the criminal justice system in general.

Rationale and aims of the new guideline

2. The Criminal Justice and Licensing (Scotland) Act 2010 contains specific provision enabling the Council to prepare a guideline on the general principles and purposes of sentencing.
3. The Council considers such a guideline will bring significant benefits to the public by increasing awareness and understanding of the principles and purposes which are taken into account when sentencing. Currently, the fundamental principles and purposes of sentencing are not expressly defined in any single piece of legislation or court judgment.
4. The guideline is intended to provide both sentencers and the public with a clear statement regarding the aims of current sentencing practice in Scottish courts, to increase transparency by providing the public with an understanding of the approach to sentencing taken by the court, and to promote consistency in approaches to sentencing.
5. The guideline will also act as a formal, principled foundation for sentencing in Scotland, and will underpin the future work of the Council.
6. As this guideline relates to general sentencing matters, it will necessarily be quite different in nature from an offence or offender specific guideline. As a result, some sections of this impact assessment are less relevant than they will be for future guidelines.

¹ Under section 3 of the Criminal Justice and Licensing (Scotland) Act 2010.

Current sentencing practice

7. A brief review of the background to current sentencing principles and purposes has been published by the Scottish Sentencing Council².
8. The Principles and Purposes of Sentencing guideline will, by its very nature, be applicable to all sentencing decisions in Scotland. As such, all current sentencing practice falls within scope of this impact assessment.
9. Analysis of current sentencing practice and trends in Scotland is published by the Scottish Government as part of the Criminal Proceedings statistical bulletin, available at <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubCriminalProceedings>. Given the scale of this topic and the focus of this guideline on approaches to sentencing rather than sentencing outcomes, further analysis of current disposals has not been undertaken.

Key assumptions

10. In assessing the impact of the new guideline, the Council intends to consider how, if at all, it will affect sentencing, the business of the courts, the operation of the wider criminal justice system and society in general. This assessment is based upon research and analysis conducted during the creation of the guideline, consultation with external stakeholders, including judges, and, where available, relevant experiences in other jurisdictions.
11. This assessment also requires strong assumptions to be made regarding sentencers' behaviour in response to the new guideline as it is not possible to predict how it will impact sentencing across all possible scenarios. Where possible, these assumptions will be based upon previous evidence and experiences but this evidence base is limited. As a result,

² <https://www.scottishsentencingcouncil.org.uk/media/1510/principles-and-purposes-of-sentencing-in-scotland-and-other-jurisdictions-a-brief-overview.pdf>

assumptions regarding the impact of the guideline must have a large degree of uncertainty about them.

12. This impact assessment does not attempt to include any future changes to sentencing behaviours that are not a result of the implementation of this guideline (e.g. historic trends in sentencing).
13. **It is assumed that the Principles and Purposes of Sentencing guideline will influence judicial approaches to sentencing and increase consistency in approach, but that any changes to sentencing outcomes will be neutral on average.**

Impacts on the criminal justice system as a result of implementing the new guideline

Changes to sentencing

14. The Principles and Purposes of Sentencing guideline will promote consistency in approaches to sentencing.
15. The guideline presents a single core principle of “fairness and proportionality”, a series of supporting principles, and multiple purposes which may be engaged in sentencing but always with respect to the core principle. It is assumed that this will lead to a change in approach to sentencing by some judges. Although it is not possible to estimate the degree to which this will be the case, consultation with the judiciary suggests changes to current practice will be relatively limited as the guideline captures many of the principles and purposes which already underpin sentencing decisions.
16. It is possible that any change in approaches to sentencing may result in a change to sentencing outcomes in individual cases but it is assumed that the overall effect on sentencing outcomes in general will be neutral.

17. It may be the case that sentencers interpret the guideline in a different fashion than that intended by the Council, which could result in the guideline having unexpected consequences for sentencing practice which cannot be predicted. The Council has taken steps to mitigate this risk by consulting with members of the judiciary and the public.

Changes to court business

18. No significant changes to court business are expected. It is possible that, by codifying a core principle and set of purposes to underpin sentencing to which the court must have regard, the introduction of the guideline *may* increase the number of appeals against sentence, with appeals being lodged due to a court's perceived failure to take the guideline into account. It is not possible to estimate the magnitude, if any, of this change. Conversely, it is also possible that the number of appeals may decrease as a result of increased consistency in approaches to sentencing.

19. As the guideline contains a supporting principle that "reasons for sentencing decisions must be stated as clearly and openly as circumstances permit", it may lead to an increase in sentencing statements given by judges, an increase in the length of sentencing statements, or both. This could have an impact on the amount of business a court was able to conduct in any given day. However, it is impossible at this stage to estimate the scale, if any, of change this guideline may cause and so the overall impact cannot be predicted.

Changes to the provision of disposals

20. As the guideline is assumed to be neutral regarding sentencing outcomes, there are presumed to be no impacts on the provision of disposals.

Impacts on equality in the criminal justice system

21. It is not anticipated that any specific groups will be disproportionately affected by this guideline. As a result, we do not foresee any impacts on equality in the criminal justice system.

Costs and benefits

Costs

22. As the guideline is assumed to be neutral regarding sentencing outcomes, there are presumed to be minimal costs associated with the implementation of this guideline for the criminal justice system.
23. As mentioned previously, a possibility exists of an increase in appeals, with an attendant increase in resources required to sift and hear these appeals, as well as in legal fees for such actions (both privately and publicly funded) and the resources required by the Scottish Prison Service to service prisoners' needs during their appeals. However, such an increase is not certain to occur and the magnitude is impossible to estimate. Similarly, any decrease would have a commensurate cost saving associated with it but is equally difficult to estimate.
24. Although it is not possible to provide a cost estimate at this stage, we anticipate that any additional costs would be minimal.

Benefits

25. The Principles and Purposes of Sentencing guideline is intended to provide a clear, transparent foundation for sentencing in Scotland.
26. This increased transparency is expected to provide the wider public, and victims of crime in particular, with a greater understanding of the context, principles and aims in sentencing decisions, increasing trust in the criminal justice process. This may go some way to addressing the disconnect between public perception of sentencing and the actual sentences given.³

³ For a Scottish perspective see Anderson, S., Ingram, D. and Hutton, N (2002) *Public Attitudes Towards Sentencing And Alternatives To Imprisonment* Scottish Parliament Paper 488 session 1 2002 Edinburgh: HMSO.

For a more recent, but England and Wales focussed, perspective see Hough, M., Bradford, B., Jackson, J. and Roberts, J. R. (2013) *Attitudes to sentencing and trust in justice: exploring trends from the crime survey for England and Wales*. Ministry of Justice analytical series, London: Ministry of Justice.

Improved public understanding of sentencing may also begin to address the perceived inconsistency in sentencing identified by the Sentencing Commission for Scotland.⁴

27. The guideline will promote consistency in the approach to sentencing, contributing to one of the Council's statutory objectives. It may also lead to sentencers providing sentencing statements which refer to the purposes of any punishment and how the sentence has been constructed to be fair and proportionate, further increasing transparency.
28. The guideline will also provide a principled foundation which will inform the development of future guidelines and the work of the Council in general.

⁴ Sentencing Commission for Scotland (2006) *The Scope to Improve Consistency in Sentencing*, <http://www.gov.scot/resource/doc/925/0116783.pdf>, retrieved 12/02/2017.

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