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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 229**

**HIGH COURT OF JUSTICIARY**

**Act of Adjournal (Criminal Procedure Rules 1996 Amendment)  
(Approval of Sentencing Guidelines) 2018**

*Made* - - - - - *12th July 2018*

*Laid before the Scottish Parliament* *16th July 2018*

*Coming into force* - - - *4th September 2018*

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305 of the Criminal Procedure (Scotland) Act 1995(a) and all other powers enabling it to do so.

**Citation and commencement, etc.**

**1.**—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Approval of Sentencing Guidelines) 2018.

(2) It comes into force on 4th September 2018.

(3) A certified copy is to be inserted in the Books of Adjournal.

**Amendment of the Criminal Procedure Rules 1996**

**2.**—(1) The Criminal Procedure Rules 1996(b) are amended in accordance with this paragraph.

(2) After Chapter 67 (European Investigation Orders)(c) insert—

**“CHAPTER 68**

**APPROVAL OF SENTENCING GUIDELINES**

**Interpretation of this Chapter**

**68.1.** In this Chapter “the Council” means the Scottish Sentencing Council within the meaning of section 1 of the Criminal Justice and Licensing (Scotland) Act 2010(d).

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(a) 1995 c.46. Section 305 was amended by section 111(1) of the Criminal Justice (Scotland) Act 2016 (asp 1) and by article 2 of S.S.I. 2015/338, and was extended by section 386(3)(a) of the Proceeds of Crime Act 2002 (c.29), section 36A(4) of the Serious Crime Act 2007 (c.27), and section 32(5) of the Psychoactive Substances Act 2016 (c.2).

(b) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2018/150).

(c) Chapter 67 was inserted by S.S.I. 2018/150.

(d) 2010 asp 13.

**Application for approval of sentencing guidelines**

**68.2.**—(1) An application by the Council for approval by the High Court of sentencing guidelines is to be made in Form 68.2.

(2) On receipt of an application made under paragraph (1), the High Court must appoint a diet for the consideration of the application to take place as soon as practicable.

**Consideration and determination of an application**

**68.3.**—(1) On receipt of an application made under rule 68.2(1), the High Court may request such further information from the Council as it considers necessary.

(2) If the High Court is considering either—

- (a) approving the proposed guidelines, in part or with modifications; or
- (b) rejecting the proposed guidelines, in whole or in part,

it must intimate to the Council that it is considering such a course of action.

(3) The Council may submit to the High Court a written response to the intimation made under paragraph (2) within a period of 8 weeks from the date of receipt of the intimation.

(4) Approval or rejection of the proposed guidelines by the High Court must take place in open court.

(5) The court must be chaired by the Lord Justice General, whom failing the senior judge of the High Court.

(6) The court cannot include a judge who is a member of the Council.”.

(3) In the appendix, after Form 67.9 (form of application for variation or revocation of customer information order or account monitoring order)(a) insert Form 68.2 set out in the schedule of this Act of Adjournal.

*CJM SUTHERLAND*  
Lord Justice General  
I.P.D.

Edinburgh  
12th July 2018

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(a) Form 67.9 was inserted by S.S.I. 2018/150.

SCHEDULE

Paragraph 2(3)

Form 68.2

Rule 68.2(1)

**Form of petition for approval of sentencing guidelines**

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL AND LORDS  
COMMISSIONERS OF JUSTICIARY

PETITION

of

SCOTTISH SENTENCING COUNCIL

for

APPROVAL OF SENTENCING GUIDELINES

under section 5 of the Criminal Justice and Licensing (Scotland) Act 2010

HUMBLY SHEWETH, that

1. On [*date*], the Petitioner published, on its website, a draft of the proposed sentencing guidelines entitled [*title of guidelines*] together with a draft assessment of the costs and benefits to which implementation of the guidelines would be likely to give rise and a draft assessment of the likely effect of the guidelines on the criminal justice system generally, all in accordance with section 4(1)(a) of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”).
2. On [*date*], in accordance with its duty under section 4(1)(b)(i) of the 2010 Act, the Petitioner consulted the Scottish Ministers about the draft of the proposed guidelines and assessments.
3. On [*date*], in accordance with its duty under section 4(1)(b)(ii) of the 2010 Act, the Petitioner consulted the Lord Advocate about the draft of the proposed guidelines and assessments.
- [4. On [*date*], in accordance with its duty under section 4(1)(b)(iii) of the 2010 Act, the Petitioner consulted with [*insert details of such person[s] whom the Petitioner considered appropriate to consult on the drafts*].]
5. The Petitioner, in accordance with its duty under section 4(2) of the 2010 Act, finalised the guidelines and assessments, having regard to the comments made as a result of the publications and consultations referred to in this petition.
6. On [*date*], the Petitioner agreed the terms of the guidelines and assessments, and agreed that they should be submitted to the High Court of Justiciary for its approval. The guidelines and assessments are submitted with this petition.

MAY IT THEREFORE PLEASE YOUR LORDSHIPS to appoint a hearing on this petition and approve the sentencing guidelines for (*title of guidelines*) or to do otherwise as seems proper.

ACCORDING TO JUSTICE, etc.

(*Signed*)

(*Chairing member of the Scottish Sentencing Council*)

## **EXPLANATORY NOTE**

*(This note is not part of the Act of Adjournal)*

This Act of Adjournal inserts a new Chapter 68 (Approval of Sentencing Guidelines) into the Criminal Procedure Rules 1996.

Paragraph 2(2) inserts the new Chapter.

New rule 68.2 prescribes the form in which an application by the Scottish Sentencing Council (“the Council”) for approval by the High Court of sentencing guidelines is to be made. On receipt of the application the High Court is to fix, as soon as practicable, a diet for consideration of the application.

New rule 68.3 provides that the High Court can request further information from the Council. If the High Court is considering either approving the proposed guidelines, in part or with modifications, or is considering rejecting the proposed guidelines, in whole or in part, it must intimate to the Council that it is considering such a course of action. On receipt of such intimation, the Council has a period of 8 weeks in which to respond to the High Court. Approval or rejection of the proposed guidelines must take place in open court. The diet is to be chaired by the Lord Justice General, whom failing the senior judge of the High Court. The court cannot include a judge who is a member of the Council.

Paragraph 2(3) prescribes the form of petition (Form 68.2) which the application to the High Court must take.

This Act of Adjournal comes into force on 4th September 2018.