

Scottish Sentencing Council

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Sentencing in Scotland

Information pack

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About the Scottish Sentencing Council

The Scottish Sentencing Council is an independent advisory body with the following **objectives**:

- to promote consistency in sentencing practice
- to assist the development of policy in relation to sentencing
- to promote greater awareness and understanding of sentencing policy and practice

The Council's **functions** include:

- preparing sentencing guidelines for the Scottish courts
- publishing guideline judgments issued by the Scottish courts
- publishing information about sentences imposed by the courts

A key role of the Council is to prepare sentencing guidelines for the courts. When preparing a guideline, the Council will hold a public consultation. Each response received is carefully considered before a draft of the guideline is finalised. All guidelines must be submitted to the High Court of Justiciary, Scotland's highest criminal court. The Court can approve, reject, or make changes to the guidelines. Guidelines have no effect unless approved by the High Court.

The Council is made up of **12 members**, including:

- 6 judicial members
- a prosecutor
- an advocate
- a solicitor
- a police constable
- a victims expert
- a lay person who is not legally qualified

Sentencing guidelines

There are two general sentencing guidelines that cover all offences and offenders. These are on the principles and purposes that sentencers should take into account, and on the process that they should go through, when deciding a sentence. These help to ensure that sentences are consistent across Scotland.

Principles and purposes of sentencing guideline

The principles and purposes of sentencing guideline applies to all offenders sentenced on or after 26 November 2018.

The core principle of the guideline is that sentences in Scotland must be fair and proportionate. This means that:

- all relevant factors of a case must be considered including the seriousness of the offence, the impact on the victim and others affected by the case, and the circumstances of the offender
- sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case
- reasons for sentencing decisions must be stated as clearly and openly as circumstances permit
- sentencing decisions must be made lawfully and sentencers must have regard to any sentencing guidelines which are applicable
- people should be treated equally, without discrimination; and sentencing decisions should treat similar cases in a similar way, assisting consistency and predictability

The guideline also explains that the purposes of sentencing in Scotland can include:

- protection of the public
- punishment
- rehabilitation of offenders
- giving offenders the opportunity to make amends
- expressing disapproval of the offending behaviour

More information on the principles and purposes of sentencing guideline can be found here.

Sentencing process guideline

The sentencing process guideline applies to all offenders sentenced on or after 22 September 2021.

The guideline sets out the process that courts should follow to reach a sentencing decision. These include:

Step 1: Assess the seriousness of the offence

Step 2: Select the sentencing range

Step 3: Identify aggravating and mitigating factors

Step 4: Determine the headline sentence

Step 5: Take into account a plea of guilty

Step 6: Consider time spent in custody

Step 7: Consider ancillary orders (orders, such as a non-harrassment order, which are imposed in addition to a sentence or as an alternative to the sentence)

Step 8: Impose sentence and give reasons

The guideline outlines each step in more detail and provides examples of aggravating and mitigating factors, likely to make a sentence more or less severe, as well as ancillary orders.

More information on the sentencing process guideline can be found here.

Sentencing young people guideline

The sentencing young people guideline applies to offenders who are aged 24 or under when they are found, or plead, guilty. It applies to young people being sentenced from 26 January 2022.

The guideline explains that sentencing a young person is different from sentencing an older person, in particular because a young person will generally have a lower level of maturity, and a greater capacity for change and rehabilitation, compared to an older person.

It also takes account of existing Scottish law about the sentencing of young people, the treatment of young people generally, and the United Nations Convention on the Rights of the Child (UNCRC).

Here are some key facts about the guideline:

- all sentencing options, including imprisonment, remain open to the court under the guideline
- however, the nature and duration of a sentence imposed on a young person should be different to that which might be imposed on an older person. If a custodial sentence is imposed, it should be shorter
- prior to the guideline, the law already made clear that young people aged under 21 could only be sent to detention if no other option was suitable. This also applies to people aged 21 and over who have not served a sentence of imprisonment before, and all offenders if the sentence is likely to be 12 months or less. The guideline has not changed this
- the consideration of the harm caused to victims is not changed by the guideline and remains a central part of any sentencing decision
- the guideline states that the court should make sure it has enough information to assess the maturity of the young person to help it identify and impose the most appropriate sentence. Age alone should not determine maturity

More information on the sentencing young people guideline can be found here.

Death by driving guideline

As well as general sentencing guidelines, the Council also prepares guidelines for specific offences. Our first offence guideline is on causing death by driving offences.

The death by driving sentencing guideline applies to all offenders who are convicted of an offence of causing death by driving and are sentenced on or after 16 January 2024.

The guideline covers offences of:

- causing death by dangerous driving
- causing death by careless driving while under the influence of drink or drugs
- causing death by careless, or inconsiderate, driving
- causing death by driving while unlicensed, uninsured, or disqualified

The guideline sets out sentencing ranges for the different offences, taking into account the seriousness of the case.

For example, the most serious death by dangerous driving cases, which might feature racing or the driver being heavily under the influence of drink or drugs, may attract a sentencing range of seven to 12 years in prison or detention. The most serious death by careless driving cases attract a sentencing range of a community payback order to two years in prison or detention.

When deciding the sentence, the court must consider all of the guidelines which apply to the case, including the general guidelines on pages 4 to 6 of this information pack. This could change the final sentence and mean that it falls outwith the sentencing range first selected from the death by driving guideline (or any other offence guideline).

More information on the death by driving guideline can be found here.

Rape offences guidelines

The Council has two sentencing guidelines for rape offences. These are:

- Rape
- Rape of a young child

These guidelines apply to all offenders convicted of either of these offences and sentenced on or after 3 March 2026.

These are two seperate guidelines because these offences are dealt with seperately under legislation.

The guidelines list some of the features which may be taken into account in deciding how serious an offence is. They also set out sentencing ranges for the offences. Sentences for rape range from five years' up to 13 years' imprisonment, while sentences for the rape of a young child range from seven years' up to 14 years' imprisonment.

The guidelines also include options for extended sentences (a sentence where an offender is supervised in the community on release from custody) and orders for lifelong restriction (a form of life sentence), and address how non-harassment orders operate.

When deciding the sentence, the court must consider all of the guidelines which apply to the case, including the general guidelines on pages 4 to 6 of this information pack.

More information on the rape guidelines can be found here.

Guidelines in development

The Council is currently working on a number of other guidelines which will be submitted for approval in due course. All of our guidelines are publicly consulted on and anyone who would like information on upcoming consultations should contact sentencingcouncil@scotcourts.gov.uk.

The sentencing

Who attends the sentencing?

When convicted of a crime, offenders can be sentenced straight away or the case may be adjourned to a later date to allow certain reports to be prepared. At the sentencing hearing, a justice of the peace, sheriff or judge will be there to preside, also in attendance will be a representative from the Crown Office and Procurator Fiscal Service (the prosecutor), and usually a defence solicitor or advocate (unless the offender is self-representing). The offender will also be present, either in person or, sometimes, via a videolink if they are in custody. Victims can also attend the hearing, as well as other members of the public unless the judge directs that the court remain closed to the public (this is rarely done).

What happens at the sentencing?

The procedure during a sentencing hearing can vary depending on the court and the type of case. In some cases where the offender pleads guilty, the prosecutor may read out a narration of what happened during the offence(s). If the offender has been found guilty after trial, the presiding judge will already have heard the evidence during the trial. That evidence will have included what happened in the offence. A defence solicitor or advocate will also usually make a 'plea in mitigation'. This provides the court with information on the offender's background and other details which might affect the sentence. The presiding judge will then consider the unique facts and circumstances of the case, including any previous convictions held by the offender and the content of any criminal justice social work reports, psychological or medical reports, or victim statements which have been submitted. The offender will then be sentenced by the judge.

Victim statements

For certain types of offences set out by law, one of the ways that the impact on the victim can be taken into account is through a victim statement (sometimes called a victim impact statement). This is usually a written statement provided to the court that gives victims the chance to explain how a crime has affected them. However, even in cases where no victim statement is provided, the prosecutor can provide the court with details about the harm that has been caused.

More information on victim statements is available here.

Sentencing statements

In some cases, the judge or sheriff may produce a written sentencing statement which details what they have said in court, including their reasons for the sentence handed down. If one is produced, these are usually published on the Judiciary of Scotland website, however it is up to the individual judge to decide whether or not a sentencing statement is produced.

Sentencing in Scotland

How do judges decide sentences?

Judges are independent. They make their decisions based on what the law says and the unique circumstances of each case. No two cases will ever be exactly the same. Judges can only impose a sentence for the crime or crimes of which the person has been convicted. They must also take into account all relevant sentencing guidelines.

Watch this video to learn more about how judges decide a sentence.

The law

In terms of the sentencing process guideline, a judge must first see whether the law sets out minimum or maximum sentences for the specific offence. Maximum sentences can also vary depending on which type of court the case is being heard in.

See our website for more information on maximum and minimum sentences.

The next step in sentencing is for the judge to decide which factors are relevant and should be taken into account in the case, and consider how much weight to give to each one.

Some of the main factors include:

- type of crime/seriousness of crime
- how the crime affected a victim and the harm caused or which might have been caused
- whether the person has admitted guilt
- other convictions for crimes the person has committed in the past
- the offender's age and circumstances (including health issues)
- relevant sentencing guidelines

Factors that are likely to make a sentence more severe are called 'aggravating' and factors that are likely to make a sentence less severe are called 'mitigating'.

Different types of sentences

Community-based sentences can include:

- Fines: A sum of money paid to the court within a certain amount of time.
- Orders: Orders can be imposed as a stand-alone sentence or as part of another sentence. For example, a non-harassment order or a restriction of liberty order (commonly known as a tag).
- Deferred sentence: A judge can postpone a sentence to a later date, usually for the offender to be of good behaviour.
- Compensation Order: Offenders convicted of an offence involving a victim can be ordered to pay money to that victim. The victim can be a person who has been injured, had property damaged or been distressed as a result of the crime. The offender pays the money to the court which gives it to the victim.
- Community Payback Order: This is sometimes given as an alternative to prison or detention and can include up to 300 hours unpaid work, working with a social worker to change offending behaviour, paying compensation to the victim, attending programmes such as those dealing with domestic abuse, a curfew, or treatment for mental health, drug or alcohol addiction.

Depending on the type of court, custodial sentences can include:

- Short-term sentences: Sentences of less than four years.
- Long-term sentences: Sentences of four years or more.
- Extended sentences: A combination of time in prison or detention and a period of time under supervision in the community.
- Order for Lifelong Restriction: A lifelong sentence which has a minimum amount of time an offender must spend in prison or detention (called the punishment part) before they can be considered for release into the community under certain conditions. If the offender is considered safe to release, they will remain under intense supervision for the rest of their life.
- Life sentence: This sentence lasts for the rest of a person's life. Offenders given a life sentence will serve a period in prison or detention set by the judge. They will then only be released into the community on licence (under certain conditions) if the Parole Board thinks they are not a risk to the public. However, offenders can be recalled to prison at any time if they break, or are at risk of breaking, the terms of their licence.
- Supervised release orders: An order given by a judge as a sentence, or part of a sentence, saying that an offender must be supervised by a social worker on release from custody.

Sexual offences notification requirements (sex offenders register)

A person is subject to the notification requirements if they are convicted of certain offences – these include offences against both adults and children. They are listed in the Sexual Offences Act 2003 and include offences such as rape, sexual assault, or sexual assault of children. When someone is convicted of one of the listed offences, the notification requirement automatically applies.

Other offences can also lead to the offender being subject to the notification requirements if the court determines that there is "a significant sexual aspect to the offender's behaviour in committing the offence".

For how long does someone remain subject to the requirements?

Once an offender falls within the notification requirements, the period of time for which the requirements apply is prescribed in law and depends entirely on the sentence imposed by the court. Beyond that, the court has no discretion over how long the requirements apply for.

More information on the length of time someone will be subject to the notification requirements is available here.

What does someone subject to the requirements have to do?

Within three days of being made subject to the requirements (or release from serving a custodial sentence), which will normally be on the date of conviction, the offender must make an initial notification to the police, providing a range of information including their national insurance number, passport details and information on any residence they share with a child.

They must reconfirm the details on a regular basis, generally within 12 months of the last time they notified. If the offender intends to leave the United Kingdom for any period of time, details must be given to the police.

Failure to comply

Failure to comply with any of the notification provisions is an offence. If it is prosecuted under summary procedure the maximum penalty is imprisonment for 12 months, or a fine not exceeding £10,000, or both. If it is prosecuted under solemn procedure the maximum penalty is imprisonment for five years.

Parole and release provisions in Scotland

Automatic early release

The point at which an offender will be released from prison is set in law passed by the Scottish Parliament.

Offenders given a short term sentence normally will be automatically released from prison into the community after serving a fixed portion of their sentence in prison. This is presently 30%, except for those serving sentences for sexual offences or domestic abuse, for whom it is 50%.[1] Automatic early release does not apply to those serving extended sentences. The person is not normally supervised by a social worker unless they are sentenced to a sexual offence of six months or more in prison, or are placed on a Supervised Release Order.

Offenders given a long term sentence (four years or more) will usually serve all but the final six months of the sentence in prison unless the Parole Board for Scotland recommends that they should be released earlier into the community. The Parole Board will only start to consider whether or not to release the person as they approach the halfway point of their sentence. If an offender is not released at that point, the Board will re-consider parole within 12 months.

What does it mean when someone is released on licence?

When people serving a long term sentence (and sexual offenders sentenced to a period of six months or more) are released into the community, they will be 'on licence' until their sentence finishes. They can be recalled to prison if they commit an offence or otherwise breach the terms of this licence. For more information on what factors are taken into account by the Parole Board for Scotland when considering release on licence see their FAQ webpage.

Further information

For further information on victims' rights, please visit the Council's victim information page.

The Council's jargon buster contains explanations of the different legal terms used in Scottish courts.

The Victims' Code for Scotland provides a comprehensive list of relevant authorities and how to complain, and a list of national support organisations.

1 The Prisoners (Early Release) (Miscellaneous Amendment and Transitional Provisions) (Scotland) Regulations 2026 changed the point of automatic early release for some prisoners serving short-term sentences from 40% to 30% from 12 May 2026. This change was made by the Scottish Government to sustainably manage the prison population.



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Please note that all information in this document was correct at time of publication and this will be reviewed annually by the Scottish Sentencing Council. If you have any queries on the content then please contact us via the email above.