



The law on sentencing

In many cases, the law sets out the maximum or minimum sentence that can be given for a particular crime or offender. For example, a person convicted of threatening or abusive behaviour on indictment (more serious offences) cannot be sentenced to more than five years imprisonment, or a fine, or both.

Scottish law is mainly set out in Acts of Parliament (either from the Scottish Parliament or the UK Parliament), and in previous cases that have come before the courts.



Aggravating Mitigating

Different factors can make a sentence more or less severe.

Aggravating factors, such as the offender having previous convictions, can make a sentence more severe. **Mitigating factors**, such as an offender showing willingness to address personal problems, can make a sentence less severe.

Judges can only impose a sentence for the crime or crimes an offender has been convicted of. They cannot take into account any charges not proceeded with or which resulted in a not guilty verdict.

How do judges decide a sentence?

CULPABILITY

Judges must consider the offender's level of responsibility or blame for committing a crime. For example, a person who plans a crime in advance will normally be regarded as being more culpable.

HARM

Judges must also think about the harm caused to the victim(s) or society, or the harm which might have been caused by the offence. For example, they will consider the physical or psychological impact the offence has had.

SENTENCING PROCESS

Judges must also consider a number of other factors when deciding a sentence. These include:

- Are there any sentencing guidelines which should be applied?
- Are there any aggravating or mitigating factors?
- Should a sentence reduction be considered due to the offender pleading guilty?
- Has the offender already served time in custody or on a restriction of liberty order (commonly known as a tag)?

Sentencing in different courts

	Justice of the Peace Court	Sheriff Court (summary, lower level)	Sheriff Court (solemn, more serious)	High Court
Who decides the verdict?	Justice of the Peace	Sheriff	Jury	Jury
Who decides the sentence?	Justice of the Peace	Sheriff	Sheriff	Judge
What is the maximum fine?	Up to £2,500	Up to £10,000	Unlimited	Unlimited
What is the maximum length of imprisonment?	Up to 60 days	Up to 1 year	Up to 5 years	Up to life
Can a community sentence be imposed?	Yes	Yes	Yes	Yes



Sentencing guidelines currently in force in Scotland

Principles & purposes of sentencing: Sets out both the principles underlying sentencing decisions and the overarching purposes of sentencing.

Sentencing process: Sets out the steps judges go through when deciding a sentence.

Sentencing young people: Sets out the factors for judges to consider when sentencing someone aged 24 or under.

Offence specific guidelines: A number of sentencing guidelines are in place for specific offences, such as the causing death by driving guideline.

Find out more about sentencing in Scotland on our website:



Sentencing fact file



Custodial sentences

A custodial sentence means time in either prison, detention or secure accommodation*. Custodial sentences are usually for a fixed period of time, but can also be for life.

Short term

Sentences of less than 4 years are considered short term sentences. This means the offender will **automatically** be released after serving a portion of their sentence. The portion to be served is set in law by the Scottish Parliament.

Long term

Sentences of 4 years or more are considered long term sentences. This means the offender can serve all except the last 6 months of their sentence in custody, but can be **considered** for parole after serving a portion of their sentence. This is set in law by the Scottish Parliament.



Community payback orders

A Community payback order (CPO) can be made-up of one or more parts, including:

- Unpaid work (from 20 hours to 300 hours)
- Supervision by social work
- Paying compensation to victims for the harm caused
- Programmes to deal with offending behaviour such as domestic abuse
- A residence order to stay at a particular address
- A conduct order to stop doing certain things
- Restrictions on movement at certain times of the day
- Treatments for
 1. mental health
 2. drug addiction
 3. alcohol addiction

Lifelong sentences

Lifelong, or indeterminate, sentences do not have a set end point.

The judge will set a punishment part for such sentences which is the minimum time an offender must spend in prison.

After that time, they can be considered for release on licence by the Parole Board for Scotland. If an offender is released, they will be supervised for the rest of their life and can be sent back to prison if they commit another crime.

Lifelong sentences can include:

- **An order for lifelong restriction** which can be imposed on people convicted at the High Court of a serious sexual or violent offence (other than murder), or an offence which indicates a tendency to serious violent, sexual or life-endangering offending.
- **A life sentence** which must be given for murder under the law, but can also be given for other extremely serious offences.

Deferred sentence

A judge can postpone a sentence, usually for good behaviour, to a later date. If offenders stay out of trouble during that time, the judge will normally give a less severe sentence than if they get into trouble.

Fine

A fine is a penalty where money must be paid to the court by an individual or an organisation. The amount is set by the judge and will vary depending on the seriousness of the offence.

Extended sentence

An extended sentence combines a period in custody with a further period of supervision in the community. The extension period can be up to five years for sheriff court cases and up to 10 years for High Court cases.

Orders

Orders can be imposed by the courts for various reasons. Examples of orders commonly handed out include:

A non-harassment order:

Offenders who have caused a victim alarm or distress can be ordered not to behave in certain ways. This can include, for example, staying away from the person, or not sending unwanted texts. An NHO may last for a set period of time, or for an indeterminate period of time (no end date set).

A restriction of liberty order: A Restriction of Liberty Order is a sentence which may be given as an alternative to imprisonment.

These orders are sometimes called 'tagging orders'. Offenders must be in a certain place, such as their home, for a set amount of time. This can be for up to 12 hours a day. They can also be restricted from going to certain places.

A supervised release order: This is 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. The offender must have been given a

custodial sentence of between 1 and 4 years for a more serious offence - other than a sexual offence.

A disqualification order:

Offenders convicted of road traffic offences can be disqualified from driving. Drivers can also be disqualified when they receive 12 or more penalty points on their licence within 3 years. Offenders convicted of treating animals badly can also be disqualified from keeping or dealing with

Detention

- **Offenders aged 18 to 20 who are sentenced to custody are sent to a young offenders institution.**
- ***Young people aged under 18 are placed in secure accommodation under the care of the local authority.**

Find out
more about
sentencing
in Scotland
on our
website:

