

CORONERS AND JUSTICE ACT 2009

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 4 - Sentencing

Chapter 1: Sentencing Council for England and Wales

Section 118 and Schedule 15: Sentencing Council for England and Wales

558. This section establishes the Sentencing Council for England and Wales and introduces Schedule 15 which sets out details of the Council's organisation and membership. Section 135 abolishes the SAP and the SGC.
559. [Schedule 15](#) sets out the constitution of the Council, and makes provision about the appointment of the chair, deputy chair and members, the terms of appointment of members and the remuneration of members.
560. The Sentencing Council will consist of 14 members, of whom eight are judicial members and six are non-judicial members.
561. The judicial members will be appointed by the Lord Chief Justice with the agreement of the Lord Chancellor.
562. The non-judicial members will be appointed by the Lord Chancellor with the agreement of the Lord Chief Justice.
563. The Lord Chief Justice will appoint, with the agreement of the Lord Chancellor, one of the judicial members to chair the Council and one judicial member to chair the Council in the absence of the chairing member.
564. A person is eligible to be appointed as a judicial member if the person is a judge of the Court of Appeal, a puisne judge of the High Court, a circuit judge, a District Judge (Magistrates' Courts) or a lay justice. The eight judicial members must include at least one Circuit judge, one District Judge (Magistrates' Courts) and one lay justice.
565. The Lord Chancellor will appoint as non-judicial members individuals with experience in one or more of the following areas: criminal defence, criminal prosecution, policing, sentencing policy and the administration of justice, the promotion of the welfare of victims of crime, academic study or research in criminal law or criminology, statistics and the rehabilitation of offenders.
566. The Lord Chief Justice is to have the title of President of the Sentencing Council of England and Wales although the President is not a member of the Council.
567. The Lord Chancellor can nominate a representative with experience of sentencing policy to attend and speak at Council meetings.

- 568. The Lord Chancellor can make an order with the agreement of the Lord Chief Justice to cover terms of office, re-appointment and removal of members.
- 569. The Council's actions will remain valid even if there is a vacancy on the Council or there was a defect in the appointments procedure.
- 570. The Lord Chancellor may pay appropriate remuneration and expenses.

Section 119: Annual Report

- 571. At the end of each financial year the Council will report on the exercise of its functions to the Lord Chancellor who will lay that report before Parliament.

Section 120: Sentencing guidelines

- 572. The Sentencing Council is given the power to prepare sentencing guidelines. Guidelines may be general in nature or specific to an offence or category of offence. The Council must prepare guidelines on the reduction of sentence for a guilty plea, and on the application of the totality principle. The Council may prepare sentencing guidelines about any other sentencing matter.
- 573. When it draws up guidelines, the Council must have regard to current sentencing practice, the need to promote consistency in sentencing, the impact of sentencing decisions on victims of crime, the need to promote public confidence in the criminal justice system, the cost of different sentences and their effectiveness in reducing re-offending, and the Council's monitoring of the application of its guidelines.
- 574. Guidelines must be published first in draft. The Council must consult on the draft with the Lord Chancellor, with the Justice Select Committee of the House of Commons, with anyone whom the Lord Chancellor directs the Council to consult and with anyone else the Council considers appropriate. After this consultation, the Council may amend its draft and issue definitive guidelines.
- 575. The Council has the power to review and revise its guidelines as it considers necessary. If it does so, it must undertake the same consultation process.

Section 121: Sentencing ranges

- 576. In the case of offence specific guidelines, the Council is to have regard to the desirability of setting out the guidelines in the way described in section 121. The guidelines should, if reasonably practicable, divide the offence into levels of seriousness based on the offender's culpability and/or the harm caused and any other particularly relevant factors. The guidelines should state the range of sentences appropriate for a court to impose for the offence. If the guidelines divide the offence into levels of seriousness, they should also state the range of sentences appropriate for a court to impose for offences at each level. The guidelines should also specify a starting point in the range or, if the guidelines divide the offence into levels of seriousness, a starting point for each level in the range. The starting point is the sentence the Council considers to be appropriate in a case where the offender has pleaded not guilty and before aggravating or mitigating factors are taken into account.
- 577. The guidelines should list any relevant aggravating and mitigating factors that are likely to apply to the offence and the relevant mitigating factors personal to an offender. The guidelines should also include criteria and guidance on the weight to be given to an offender's previous convictions and other aggravating and mitigating circumstances where these are significant to the offence or the offender being sentenced.
- 578. The requirement to list mitigating circumstances personal to the offender does not apply to the requirements to take into account in sentencing an early guilty plea or the reduction in sentence for providing assistance (Queen's evidence) or any rule of law as

to reducing sentences under the totality principle. Section 120(3) already requires the Council to produce sentencing guidelines dealing with the first and last of these matters.

579. The provision made in accordance with this section may differ for different circumstances or cases involving the offence.

Section 122: Allocation guidelines

580. The Council may prepare guidelines for magistrates' courts on how to allocate cases either to a magistrates' court for summary trial or the Crown Court for trial on indictment. In framing or revising allocation guidelines the Council must have regard to the need to promote consistency in allocation decisions and the results of the Council's monitoring.

Section 123: Preparation or revision of guidelines in urgent cases

581. In a case of urgency, the Council will not be required to go through the normal procedures set out for issuing guidelines if it is impractical to do so. However, the Council must always consult with the Lord Chancellor before issuing definitive guidelines. If the Council does adopt this abbreviated process the Council must state that it is doing so and give its reasons.

Section 124: Proposals by Lord Chancellor or Court of Appeal

582. The Lord Chancellor can propose to the Council that it prepare or revise its guidelines. If the Court of Appeal is considering an appeal against sentence or an Attorney General's reference case, it may propose to the Council that it prepare or revise sentencing guidelines for an offence relevant to the case it is considering.
583. The Council must consider a proposal from either the Lord Chancellor or the Court of Appeal.

Section 125: Sentencing Guidelines: duty of court

584. Every court must, in sentencing an offender, follow any relevant guidelines, unless it is satisfied that it would be contrary to the interests of justice to do so. The interests of justice exception qualifies all the duties mentioned below. Where there are offence-specific guidelines relevant to the offender's case which are structured in the way set out in section 121(2) to (5) a court must sentence within the offence range set out in the guideline. Where those guidelines specify different levels of seriousness of the offence, the court must if possible decide which category most resembles the offender's case in order to identify the sentencing starting point. The court's duty is to sentence within the range of sentences for the offence as a whole (as opposed to the range specified for the particular level).
585. The duty to follow sentencing guidelines is subject to various statutory provisions, for example, those which place restrictions on imposing community sentences and imposing discretionary custodial sentences; the requirement that custodial sentences should be for the shortest term commensurate with the seriousness of an offence and the requirements for minimum sentences in certain cases. The duty to impose a sentence within the identified range is subject to the requirements to take into account an early guilty plea, the reduction in sentence for providing assistance (Queen's evidence) and any rule of law as to reducing sentences under the totality principle.

Section 126: Determination of tariffs etc

586. This section applies where a court is imposing an indeterminate sentence such as a mandatory life sentence, discretionary life sentence, imprisonment for public protection sentence or an extended sentence for certain violent and sexual offences. In these cases, the court is required to follow the guidelines specifying a sentence range when

determining the notional determinate term for the purpose of setting a tariff for the indeterminate sentence.

Section 127: Resource implications of guidelines

587. When the Council issues draft or definitive guidelines it must publish an accompanying resource assessment of the impact of the implementation of the guidelines, setting out the impact on the resources required for the provision of prison places, probation and youth justice services.
588. In the case of guidelines issued in the case of urgency, the resource assessment should be published as soon as possible after the guidelines have been issued.
589. The Council must keep its resource assessments under review, and revise them if they become materially inaccurate.

Section 128: Monitoring

590. The Council must monitor the operation and effect of its sentencing guidelines, and consider the conclusions which can be drawn from the information obtained by its monitoring. The Council must, in particular, discharge this duty with a view to drawing conclusions about the frequency with which, and extent to which, sentencers depart from guidelines, the factors which influence sentences imposed by courts, the effect of guidelines on consistency in sentencing and the effect of guidelines on the promotion of public confidence in the criminal justice system. The Council's annual report must include a summary of its monitoring information and a report of any conclusions it has drawn.

Section 129: Promoting awareness

591. The Council must publish, in relation to each local justice area, information on sentencing practice of the magistrates' courts in that area and, in relation to each location at which the Crown Court sits, information on the sentencing practice of the Crown Court sitting in that location.
592. The Council may promote awareness of matters relating to sentencing in England and Wales, including the manner of sentencing, its cost effectiveness and the operation and effect of the guidelines. In particular, it can promote this awareness by publishing data on sentencing.

Section 130: Resources: effect of sentencing practice

593. The Council's annual report must include a sentencing factors report. This report is an assessment by the Council of the effect which any changes to sentencing practice are having or are likely to have on the resources required for the provision of prison places, probation and youth justice services.

Section 131: Resources: effect of factors not related to sentencing

594. The Council's annual report must discuss any non-sentencing factors which are having, or are likely to have, a significant effect on the resources needed or available for giving effect to the sentences imposed by courts. These factors include recalls to prison, breaches of court orders, patterns of re-offending, actions by the Parole Board, early release and levels of remands in custody. The Council may also report to the Lord Chancellor at any time on the impact of such factors.

Section 132: Duty to assess impact of policy and legislative proposals

595. The Lord Chancellor may refer to the Council any government policy proposal or proposal for legislation which the Lord Chancellor considers may have a significant effect on the resources required for the provision of prison places, probation and youth

justice services. The Council must assess any likely effect of the policy or legislation and publish its assessment.

596. For this purpose a government policy proposal or proposal for legislation includes a proposal of the Welsh Ministers, and proposals for primary or subordinate legislation are relevant if, or to the extent that, the legislation extends to England and Wales.

Section 133: Assistance by Lord Chancellor

597. The Lord Chancellor may, if the Council request it, provide the Council with assistance in carrying out any of its functions, for example, by sharing data or other information with the Council.

Section 134: Entrenchment of Lord Chancellor's functions

598. This section amends Schedule 7 to the Constitutional Reform Act 2005 so as to provide that all of the functions of the Lord Chancellor in relation to the Council are protected functions of the office. Protected functions can only be transferred to another Minister by Act of Parliament.

Section 135: Abolition of existing sentencing bodies

599. This section abolishes the Sentencing Advisory Panel and the Sentencing Guidelines Council.

Section 136: Interpretation of this Chapter

600. This section sets out the definitions of terms used in this Chapter.

Chapter 2: Other provisions relating to sentencing

Section 137 and Schedule 16: Extension of driving disqualification

601. **Section 137** introduces Schedule 16. **Paragraph 2(2)** of Schedule 16 inserts a new section, section 35A, into the Road Traffic Offenders Act 1988. Section 35A provides for an extension in the length of the period of a driving disqualification imposed under sections 34 and 35 of that Act where a custodial sentence is also imposed for the same offence. The court must determine the appropriate discretionary period of disqualification and then add on the appropriate extension period. This section applies where the offender is convicted in England and Wales.
602. New section 35A(4) defines the appropriate extension period, which takes account of that part of the sentence which the offender will serve in prison. Where a life sentence or an indeterminate sentence for public protection sentence is imposed the extension period is the period of the minimum tariff set by the court. Where an extended sentence is imposed the extension period is half the custodial term, that is, the period of the sentence to be served in prison. Where a detention and training order is imposed, the extension period is half the term of the order. Once the provisions in section 181 of the 2003 Act are commenced, if custody plus is imposed the extension period is the custodial period specified by the court and if intermittent custody is imposed the extension period is equal to the number of custodial days specified by the court. In all other cases, the extension period is equal to one half of the custodial sentence (at which point the offender is subject to automatic release or, for sentences of 12 months or more, released on licence in the community until the end of sentence).
603. New section 35A(6) ensures that the appropriate extension period is reduced to reflect any reduction in the custodial sentence as a result of the court taking into account time already served on remand, or periods of remand on bail in a case where the offender was subject to a curfew condition which was electronically monitored.

604. Under new section 35A(7) the extension of disqualification does not apply where the court imposes a suspended sentence or where a life sentence to which no early release provisions apply (cases where the offender must spend the rest of his or her life in prison).
605. New sections 35A(8) and (9) provide for an order-making power to amend the extension period where an amending order is made under section 267 of the 2003 Act to change the proportion of time to be served in custody in relation to a standard determinate sentence, or the appropriate custodial term of an extended sentence.
606. New section 35B deals with offenders who are disqualified at the same time as they are imprisoned for another offence or at a time when they are already in prison for another offence. In respect of these offenders, the court is required to have regard to the diminished effect of disqualification as a distinct punishment where the person who is disqualified is also imprisoned. It is to have regard to that consideration if, and to the extent that, it is appropriate to do so. For example, the more that the beginning of a driving disqualification overlaps with the end of the period of detention under an earlier sentence, the more a court might extend the disqualification to compensate for the diminished effect during the overlap.
607. *Paragraph 2(3)* of Schedule 16 inserts a new section 35C and section 35D into the Road Traffic Offenders Act 1988, which makes provision equivalent to that made by paragraph 2(2) for cases where the person is convicted in Scotland.
608. *Paragraph 3* inserts a new sections 248D and 248E into the Criminal Procedure (Scotland) Act 1995 to the same effect as paragraph 2(3) but this time in relation to a person disqualified under section 248 (driving disqualification where vehicle used to commit an offence) or section 248A (general power to disqualify offenders) of that Act. Section 248D applies where the driving disqualification and the sentence of imprisonment are both imposed for the same offence. Section 248E applies where there is an overlap between the period of disqualification and of imprisonment but the overlapping punishments are not imposed for the same offence.
609. *Paragraphs 1, 4 and 6* of Schedule 16 insert new provisions in the Criminal Justice (Northern Ireland) Order 1980, the Road Traffic Offenders (Northern Ireland) Order 1996 and the Criminal Justice (Northern Ireland) Order 2008 to the same effect as paragraph 2(2) where the person is convicted in Northern Ireland.
610. *Paragraph 5* of Schedule 16 inserts new sections 147A and 147B into the Powers of Criminal Courts (Sentencing) Act 2000 (the 2000 Act). These sections make similar provision to the new sections inserted by paragraph 2(2), but this time for an extension of the period of the driving disqualification imposed by courts in England and Wales under section 146 (driving disqualification for any offence) or 147 (driving disqualification where vehicle used for the purposes of crime) of that Act. Section 147A applies where a custodial sentence is also imposed for the offence. Section 147B applies where there is an overlap between the period of disqualification and the period of imprisonment but the overlapping punishments are not imposed for the same offence.

Section 138: Dangerous offenders: terrorism offences (England and Wales)

611. Schedule 15 to the 2003 Act lists specified violent or sexual offences which may attract a sentence of imprisonment for public protection under section 225 of the 2003 Act or an extended sentence under section 227 of the 2003 Act. Section 138 amends Part 1 to Schedule 15 of the 2003 Act (specified violent offences) by inserting certain terrorist offences. All the offences inserted carry a maximum penalty of ten years or more. The changes take effect as provided in section 182 (commencement two months after Act is passed) and paragraph 29 to 36 of Schedule 22 (transitional, transitory and saving provisions).

Section 139: Dangerous offenders: terrorism offences (Northern Ireland)

612. This section makes amendments to Schedules 1 and 2 to the Criminal Justice (Northern Ireland) Order 2008 to similar effect.

Section 140: Appeals against certain confiscation orders (England and Wales)

613. **Section 140** inserts new subsections into section 11 of the Criminal Appeal Act 1968 (“the 1968 Act”) and a new section 11A in relation to defence appeals against the making of confiscation orders. If the Court of Appeal allows an appeal and quashes a confiscation order, the new subsections enable the Court to direct the Crown Court to consider whether a new order should be made, and if so what the order should be, instead of the Court of Appeal having to consider the matter itself.
614. The effect of section 140 is to give the Court of Appeal the power to remit cases to the Crown Court where a confiscation order made under certain enactments is quashed as a result of a successful appeal by the defence; the relevant enactments are listed in new subsection (3D) inserted into section 11 of the 1968 Act. The Crown Court must comply with any directions given by the Court of Appeal (subsection (3B)) and must ensure that any new order is not more severe than the one that it replaces (subsection (3C)). Section 140 also inserts new section 11A into the 1968 Act, which enables the Crown Court to set sums already confiscated (and paid over) under the terms of the original order against any sums required to be paid under any replacement order.

Section 141: Appeals against certain confiscation orders (Northern Ireland)

615. **Section 141** inserts new subsections into section 10 of the Criminal Appeal (Northern Ireland) Act 1980 and a new section 10A to the Act.
616. The effect of section 141 on section 10 of the Criminal Appeal (Northern Ireland) Act 1980 is similar to the effect of section 140 on section 11 of the 1968 Act. However, there is no provision stating that the Northern Ireland Court of Appeal must ensure that any new order is not more severe than the one that it replaces. This is because the existing Northern Ireland provision in section 10(3) allows the Court of Appeal to pass more or less severe sentences on appeal.