

Scottish Sentencing Council  
**Business Plan**  
**2015-18**

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## Chair's Foreword

### Rt Hon Lady Dorrian, Lord Justice Clerk, Chair of the Scottish Sentencing Council

It is my great pleasure to introduce the Scottish Sentencing Council's first Business Plan. The Council was established on 19 October 2015 and was officially launched on 24 November at an event addressed by the then Lord Advocate Frank Mulholland QC; the Cabinet Secretary for Justice, Michael Matheson MSP; and the Council's first Chair, Lord Carloway (the then Lord Justice Clerk).



This plan sets out our priorities for the period from October 2015 – September 2018, what guidelines we intend to prepare, what work is already underway and how we will carry out our statutory functions.

For the first time, we will have a systematic method of producing sentencing guidelines in Scotland and it is important that they are designed to suit the characteristics of our unique jurisdiction. We have given careful thought as to what the first areas for sentencing guidelines should be.

Preparing guidelines on the general principles and purposes of sentencing and on sentencing young people will help set the direction for further guidelines dealing with particular types of offence or offender. Our initial focus will be on developing guidance on matters which we believe are serious, of public importance and which pose particular difficulties to sentencers in Scotland.

Work will begin on guidelines on environment and wildlife offences during this period and on causing death by driving. These are areas of concern to the Scottish public and which pose very real difficulties when sentencing.

While guidelines will necessarily take time to produce, we wish to address as swiftly as possible offences which affect the public on a large scale and crimes of violence. For that reason we have noted our desire to prepare guidelines on theft and property offences and on domestic violence at a later stage. Sentence discounting is a consideration in the vast majority of sentences and is a part of the sentencing



process to which we believe, among other things, a guideline would bring clarity, for the purposes of assisting public understanding in particular.

Priority will be given to preparing sentencing guidelines and to putting in place the necessary mechanisms for their development and delivery. A range of other work, however, is also planned. During this planning period, we will:

- begin research into the sentencing of sexual offences;
- consider sentencing policy issues as they arise, for example, responding to consultations or calls for evidence on proposals for legislation;
- provide information on sentencing and develop our website as a resource for the public, practitioners, judiciary and others, alongside explanatory materials; and
- contribute to the improvement of the knowledge base on sentencing by promoting and disseminating research, collaborating with academics and researchers where appropriate.

The Scottish Government is considering extending the current presumption against short-term sentences. The Council will take a keen and direct interest in developments relating to the presumption: resultant changes in sentencing practice will not only have significant implications for the Council's work but for the administration of justice in Scotland more widely.

The Lord Justice General, Scottish Ministers and the Lord Advocate have been consulted in the development of this Plan (as required by the Criminal Justice and Licensing (Scotland) Act 2010). We have also held discussions with a number of individuals and organisations with an interest in our work. We will continue to engage as widely and as openly as possible in delivering all of the work described in this Plan.

*Leeona J Dorrian*

**Rt Hon Lady Dorrian  
Lord Justice Clerk and Chair of the Scottish Sentencing Council**

# About Us



# Introduction

## History

### Sentencing Commission

Introducing a mechanism to promote consistency in sentencing in Scotland was a recommendation of the Sentencing Commission, chaired by the late Lord Macfadyen, in its 2006 report *The Scope to Improve Sentencing in Scotland*. The Commission found that a perceived lack of consistency was damaging to public confidence, and concluded that “it would lead to a material improvement in the criminal justice system if there were a framework to promote, that could be seen by the public to promote, greater consistency in sentencing”. The Scottish Prisons Commission, reporting in 2008, also supported the creation of a sentencing council for Scotland, to “drive forward consistency and improve the effectiveness of sentencing”.

### Legislation

In 2009, after consultation, the Scottish Government brought forward legislative proposals for the establishment of a Scottish Sentencing Council to the Scottish Parliament. The Government’s stated policy aims were to “help ensure

greater consistency, fairness and transparency in sentencing and thereby increase public confidence in the integrity of the Scottish criminal justice system.”

The Scottish Sentencing Council was established on 19 October under Part 1 of the Criminal Justice and Licensing (Sc) Act 2010 (the 2010 Act). It was formally launched at an event in Parliament House in November and held its inaugural meeting on 14 December 2015.

This is the Council’s first Business Plan. It describes the Council’s programme of work during the period October 2015 to October 2018. It was submitted to the Scottish Ministers on 26 September 2016.

## Objectives and Functions

### Statutory Framework

The Council’s **objectives** under the 2010 Act are to:

- *promote consistency in sentencing practice;*
- *assist the development of policy in relation to sentencing; and*
- *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; and*
- *publishing information about sentences imposed by the courts.*

It also has powers to publish information about, and conduct research into, sentencing and to provide advice and guidance of a general nature on sentencing matters.

**In carrying out all of our functions we will**

- *promote consistency,*
- *assist policy development, and*
- *promote greater awareness and understanding of sentencing*

## Sentencing Guidelines

### Approval

The Council must prepare sentencing guidelines for the consideration of the High Court of Justiciary, Scotland's supreme criminal court, which may approve them in whole or in part, and with or without modifications. Guidelines do not have effect unless approved by the Court.

### Scope and style

The Council has broad discretion as to the format and subject matter of sentencing guidelines. In particular, guidelines may cover:

- *the principles and purposes of sentencing;*
- *sentencing levels;*
- *the particular types of sentence that are appropriate for particular types of offence or offender; and*
- *circumstances in which guidelines may be departed from.*

### Effect

When sentencing an offender, a court must have regard to any sentencing guidelines which are applicable in relation to the case. If the court decides not to follow the guidelines it must state its reasons.

### Requests



The High Court and the Sheriff Appeal Court, when issuing a guideline judgment under section 118 or 189 of the Criminal Procedure (Scotland) Act 1995, respectively, can require the Council to prepare or review



sentencing guidelines. The courts must provide reasons when doing so. The Council must comply with any request from the High Court or Sheriff Appeal Court.

The Scottish Ministers may, at any time, request the Council to prepare or review sentencing guidelines on any matter. The Council must have regard to, but may decide not to comply with, a ministerial request. If the Council decides not to comply with a request by the Scottish Ministers it must provide them with reasons for its decision.

Subject to the High Court's approval, the Council must then publish the guidelines. It is required to review, from time to time, any guidelines it publishes.

### **Assessing impacts**

When preparing sentencing guidelines, the Council must also prepare an assessment of the likely costs and benefits of implementing the guidelines and an assessment of the likely effect on the criminal justice system generally.

### **Consultation on drafts**



Before submitting guidelines to the High Court for approval, the Council must publish them in draft form together with any relevant draft impact assessments. The Council must also consult the Scottish Ministers, the Lord Advocate, and any other people it considers appropriate. The Council has decided to conduct full public consultation on draft guidelines.

# Who We Are

## Our Members

### **The Lord Justice Clerk** Chair



Lady Dorrian was appointed as a judge of the Supreme Courts in 2005, having served as a temporary judge since 2002. She was appointed to the Inner House in November 2012. She is a graduate of the University of Aberdeen and was admitted to the Faculty of Advocates in 1981 before becoming Standing Junior Counsel to the Health and Safety Executive and Commission between 1987 and 1994. She served as Advocate Depute between 1988 and 1991, and as Standing Junior to the Department of Energy between 1991 and 1994. In 1994, she was also appointed Queen's Counsel. Between 1997 and 2001 she

was a member of the Criminal Injuries Compensation Board.

*The Chair of the Scottish Sentencing Council is the Lord Justice Clerk by virtue of the office. Lady Dorrian took up appointment as Lord Justice Clerk on 26 April 2016.*

### **The Hon. Lord Turnbull** Senator member



Lord Turnbull is a High Court judge. He was appointed as a judge of the Supreme Courts in 2006 and was appointed to the Inner House of the Court of Session on 1 September. Prior to his appointment to the Inner House he was the Lead Preliminary Hearings Judge and Administrative Judge for First Instance Criminal Cases in the High Court.

He was admitted to the Faculty of Advocates in 1982 and took silk in 1996. He was mainly instructed as defence counsel in criminal cases served as an Advocate Depute from 1995 and as Principal Advocate Depute from 2001. He was one of two Senior Crown Counsel in the Lockerbie bombing trial.

Lord Turnbull was a judicial member of the Parole Board for Scotland from 2011-2015.

*Lord Turnbull will hold office until 18 October 2020*

admitted to the Faculty of Advocates in 1981. He was a Curator of the Faculty Library (1981-1983), on the Institute of Chartered Accountants of Scotland's Disciplinary Committee (1996-2009) and a member of the Scottish Law Commission Advisory Group (2000-2003). He was appointed Queen's Counsel in 1993 and sheriff in 2009, before taking up his appointment as Sheriff Principal of South Strathclyde, Dumfries and Galloway in 2015. He is currently a judicial member of the Scottish Civil Justice Council.

*Sheriff Principal Abercrombie will hold office until 18 October 2020*

## **Sheriff Principal Ian R Abercrombie QC**

Sheriff Principal member



Sheriff Principal Abercrombie graduated with an LLB Hons from Edinburgh University in 1978 and was

## **Sheriff Norman McFadyen**

Sheriff member



Sheriff Norman McFadyen was appointed as a Sheriff in South

Strathclyde, Dumfries, and Galloway in 2010 and transferred to Lothian and Borders at Edinburgh in 2015. He has extensive experience of criminal trials and sentencing. He studied law at the University of Glasgow and joined the Crown Office and Procurator Fiscal Service as an apprentice solicitor in 1976, qualifying in 1978 and then undertaking a number of prosecution roles, rising to be Crown Agent and Chief Executive, the permanent head of the prosecution service in Scotland, in 2004.

Sheriff McFadyen is a board member of the International Society for Reform of Criminal Law and was a member of the reference group for the Criminal Justice System Objectives Review and the policy groups for the Civil Courts Review, chaired by the Rt Hon Lord Gill and, more recently, the Post-Corroboration Safeguards Review, chaired by the Rt Hon Lord Bony. He has lectured to a wide variety of audiences on criminal justice themes, including sentencing, nationally and internationally.

*Sheriff McFadyen will hold office until 18 October 2020*

## Allan Findlay

Summary Sheriff member



Mr Findlay was appointed as one of the first summary sheriffs on 01 April 2016. From 2008 he was one of two full time stipendiary magistrates and was a part time stipendiary magistrate from 1999. He graduated from Glasgow University in 1979 and practised in the Glasgow area as a solicitor specialising in litigation. Mr Findlay was senior partner of his own firm.

*Allan will hold office until 18 April 2017*

## Gillian Thomson

Justice of the peace member



Gillian Thomson has been a justice of the peace in Tayside, Central and Fife, sitting in Stirling, since 2001. She acts as an appraiser of fellow justices of the peace within the Sheriffdom.

Her background is in policy development and implementation around research and development in the university sector. She has led both national and international professional organisations and has been employed as a high level expert with the European Commission on policy development for both academic-industry interactions and energy research and development funding.

*Gillian will hold office until 18 October 2018*

## David Harvie, Crown Agent for Scotland

Prosecutor member



David Harvie is a Solicitor Advocate and joined the Crown Office and Procurator Fiscal Service, following a spell in private practice, in 1996. He worked as a Procurator Fiscal Depute in Paisley until 1999, when he was seconded to the Lockerbie criminal trial team until after the trial, when, after a brief spell in Policy, he was promoted to Principal Depute, Aberdeen.

In 2001 he was seconded to the Foreign and Commonwealth Office. He returned to Crown Office in 2004, where he became Deputy, then Head, of the National Casework Division with responsibility for Organised Crime, Financial Crime and Proceeds of Crime cases throughout Scotland.

In 2008, David was promoted to District Prosecutor Fiscal, Edinburgh



and East Lothian. And in August 2010 he was appointed as Area Prosecutor Fiscal for Central. In May 2011, David was appointed Interim Head of East Federation.

He was promoted to Director of Serious Casework and Procurator Fiscal North of Scotland in July 2011. David took up his previous post as Procurator Fiscal for the West of Scotland in April 2014 and was promoted as Crown Agent for Scotland in April 2016.

*David will hold office until 30 August 2021*

## Stephen O'Rourke

Advocate member



Stephen was called to the Bar in Scotland in 2002, served as an Advocate Depute from 2010 to 2013 and is currently a Standing Junior to

the Advocate General for Scotland. He has a mixed criminal and civil practice which has included many appearances in the Criminal Appeal Court in conviction and sentencing matters acting for both the Crown and individual appellants. He has a strong interest in sentencing reform within the context of Scotland's new appellate structures. He studied at Edinburgh University where he obtained a First in Scots Law in 1998.

*Stephen will hold office until 18 October 2019*

## John Scott QC

Solicitor member



John has been a solicitor since 1987, a solicitor advocate since 2001 and a QC since 2011. He has wide experience of courts at all levels and has practised exclusively in criminal law since 1990. He has been the

Convenor of the Howard League for Penal Reform in Scotland since 2006, a member for the reference group for Lord Carloway's Review into Criminal Law and Practice following the *Cadder* case in 2010/2011 and was Chair of the Independent Advisory Group on Stop and Search (report published 3 September 2015). He was also Chair of the Scottish Human Rights Centre from 1997 to 2005 and Chair of Justice Scotland from 2014 to 2015. He has a particular interest in appeals against conviction and sentence.

*John will hold office until 18 October 2018*

### **Constable member**

**Vacant**

The constable member post is currently vacant and an appointment will be made by the Scottish Ministers in due course.

### **Sue Moody**

**Victims expert**



Sue Moody has worked with and for survivors of crime for more than thirty years. She was the first Director of Victim Support Scotland and also the first Director of Victim Information and Advice (part of the Crown Office and Procurator Fiscal Service). As senior lecturer in the Law Faculty at Dundee University she undertook research on crime victims. Her most recent post before retirement in March 2015 was with the Survivor Scotland team at the Scottish Government, supporting survivors of abuse in care as children.

Sue is currently the Chair of the Scottish Refugee Council and a Board member of the Scottish Child Law Centre and of the Howard League. She also chairs a new charitable trust, McManus 168,

promoting the work of the McManus Art Gallery and Museum in Dundee.

*Sue will hold office until 18 October 2020*

## **Professor Neil Hutton**

Lay member



Neil Hutton was educated at the University of Edinburgh (MA 1976, PhD 1983) and has worked at the universities of Edinburgh, Dundee and Victoria University, New Zealand. He was appointed as a lecturer in the Law School at Strathclyde in 1990, became a Professor in 2001, and was Dean of the Faculty of Law, Arts and Social Sciences from 2005-2009.

He was a member of the team which designed a Sentencing Information System for the High Court between 1993 and 2002 and was a member of the Sentencing Commission for

Scotland between 2003 and 2006. He has published widely on sentencing and punishment and has been invited to speak in a number of international jurisdictions including Singapore, China, Australia and the USA.

*Neil will hold office until 18 October 2019*

## **Our Staff**

The Council is supported by a Secretariat team of 5.

### **Ondine Tennant**

Secretary

### **Andy Ruxton**

Principal Legal Officer

### **Andrew Bell**

Principal Research Officer

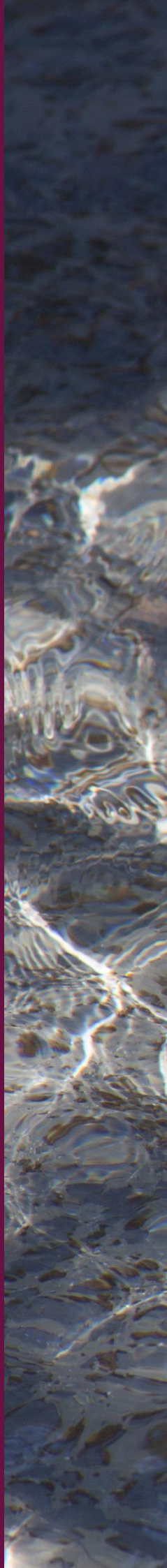
### **Carmen Murray**

Policy Officer

### **Val MacGregor**

Communications Officer

# How We Work



# Governance and Accountability

## Planning and Reporting

### Business plan and annual report

The Council is required to prepare and submit to the Scottish Ministers on a regular basis a **3 year business plan** setting out how it plans to carry out its functions. The Council must consult the Scottish Ministers, the Lord Advocate, the Lord Justice General and any other persons it considers appropriate in preparing the business plan. Scottish Ministers must lay the plan before Parliament and the Council must publish it. The plan can be revised at any time during the three year period it covers (in accordance with section 12 of the Criminal Justice and Licensing (Scotland) Act 2010).

The Council is also required to submit an **annual report** to the Scottish Ministers after the end of every financial year. The Scottish Ministers must lay the report before the Scottish Parliament and the report must be published by the Council.

## Proceedings



The Council has the power to set its own proceedings. These are contained in our **standing orders**. The standing orders deal with matters such as the frequency of meetings, collective decision making, publication of Council papers, and public communications.

The standing orders also include **rules of conduct** to which all members have subscribed. This deals with subjects such as registration and declaration of interests and lobbying.

The standing orders and rules of conduct are available on our website and are subject to annual review.

## Openness and Transparency

We are committed to operating in an open and transparent way and understand that this is an essential part of good governance and achieving accountability. In line with this commitment, details of the way we work, and our governance arrangements and corporate



information is publicly available on our website. In addition, our website includes details of all Council meetings, including non-confidential meeting papers.

### Freedom of information



The Council is subject to the Freedom of Information (Scotland) Act 2002. In accordance with the Information Commissioner's Model Publication Scheme 2015, the Council has produced a draft **Guide to Information** available through the Model Scheme. Our Guide to Information provides more details on:

- *the information we publish;*
- *how to easily find that information;*
- *what charges may be applied for producing information; and*
- *how to request information that has not been published.*

### Complaints

The Council is subject to Schedule 2 of the Scottish Public Services

Ombudsman (SPSO) Act 2002, which requires us to produce a complaints procedure and also to publish complaints information on a quarterly and annual basis. This information will be published on our website and in our annual report.

We have published a Complaints Handling Procedure detailing how we will deal with complaints, what constitutes a complaint, the different stages of the procedure and the timescales involved.

### How we spend our funds

We will detail in each business plan what activity we propose to carry out during the period covered by the plan and set out in our annual report what has been carried out in the previous year. The plan and report will provide information on the Council's budget and expenditure. Both these documents are submitted to the Scottish Ministers and laid before the Scottish Parliament.

The **Expenses Scheme** details what Council members are able to claim for costs associated with the Council's business.

Information on our procurement exercises and contracts with external providers is available on the

procurement of goods and services  
page of our website.

## Appointments and Recruitment



The Scottish Sentencing Council is made up of 12 members. Council members were appointed during the summer of 2015 and encompass a wide range of expertise and experience from across the Scottish criminal justice system. The Chair is the Lord Justice Clerk (Scotland's second most senior judge with particular responsibility for criminal law) by virtue of the office. Lady Dorrian became Council Chair in April 2016, on her appointment as Lord Justice Clerk.

Judicial and legal members are appointed by the Lord Justice General, in accordance with The Scottish Sentencing Council (Procedure for Appointment of Members) Regulations 2015.

Lay members are appointed by the Scottish Ministers.

## Membership Overview

Category	Description	Appointed by
<b>Chair</b>	The Lord Justice Clerk (Chair)	Chair by virtue of holding office of Lord Justice Clerk
<b>Judicial</b>	One first instance High Court judge One sheriff Two persons holding the office of summary sheriff or justice of the peace One further eligible judicial member or a sheriff principal	Lord Justice General, having consulted the Scottish Ministers
<b>Legal</b>	One prosecutor One advocate One solicitor	Lord Justice General, having consulted the Scottish Ministers  The prosecutor member is nominated by the Lord Advocate
<b>Lay</b>	One constable One person with knowledge of victims' issues One other person who is not qualified as a judicial or legal member	Scottish Ministers, having consulted the Lord Justice General  The constable member is nominated by the Chief Constable of Police Scotland

## Relationship with Other Bodies

### Relationship with the Scottish Courts and Tribunals Service (SCTS)

The SCTS provides staff, services and accommodation to the Council, under section 62 of the Judiciary and Courts (Scotland) Act 2008. The costs of the Council fall to the SCTS and our budget is set by the SCTS Board.

### Relationship with the Scottish Parliament and other bodies

The Council must prepare and submit a three year business plan to the Scottish Ministers, after consulting the Ministers, the Lord Advocate, the Lord Justice General, and any other people it considers appropriate. It must also prepare and submit an annual report to the Scottish Ministers, including details on its activities, performance and what it has spent. The Scottish Ministers may direct that the Council provides certain information in its business plan or annual report.

Both the annual report and the business plan are to be laid before the Scottish Parliament.

There are several groups involved in selecting individuals as Council members.

- **Judicial and legal members:** are appointed by the Lord Justice General. The prosecutor member is appointed on the nomination of the Lord Advocate. The Faculty of Advocates and Law Society of Scotland, as the relevant professional organisations, must be consulted before the advocate and solicitor member, respectively, are appointed.
- **Lay members:** are appointed by the Scottish Ministers, with the constable member being appointed by Ministers on the nomination of the Chief Constable of Police Scotland.

The Lord Justice General and Scottish Ministers must consult each other before making any appointments to the Council.

## Resources

The SCTS has the statutory function of providing, or ensuring the provision of, the property, services and staff for the Council. As such, the costs of the Council are borne by the SCTS and its budget is determined by the SCTS Board, which is chaired by the Lord President.

## Staff

The Council Secretariat is made up of: a Secretary (Grade 6), Principal Legal Officer (Grade 7), Principal Research Officer (Grade 7), Policy Officer (HEO)

and a Communications Officer (HEO). The approximate annual staffing costs including salary, pension and National Insurance contributions, are £284,000 (based on average total costs of staff operating at relevant grade, based on 2015/16 figures, to the nearest £1000).

It is expected that the development of sentencing guidelines and the preparation of accompanying cost/benefit analyses and assessments on the impacts on the criminal justice system (as are required under the 2010 Act) will involve a significant amount of research and analysis.

The SCTS is required under section 10 of the 2010 Act to provide such sentencing information as may be reasonably required by the Council. While it is intended to make use of existing resources across the justice agencies to assist with the Council's information needs this is an additional function. The Secretariat is exploring with SCTS what additional resource may be necessary to support this work.

There is also an impact on the Lord President's Private Office, which will be responsible for advising the Lord Justice General on Council matters and the High Court on guidelines submitted to it. It is currently

considered that this can be met from within existing resources.

## Budget Allocation

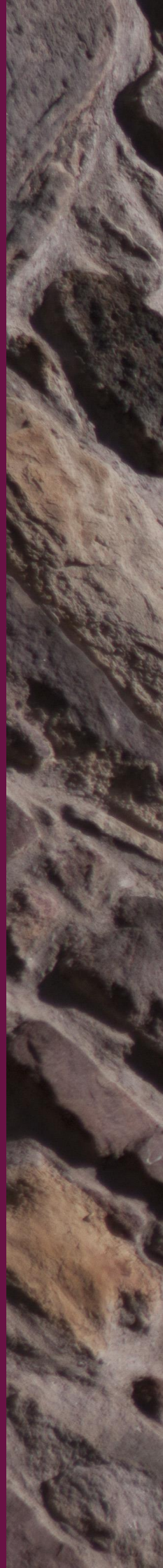
The Council was allocated a direct expenditure budget (i.e. excluding staffing costs) of £114,500 in 2015/16, and £197,000 in 2016/17, the detail of which is provided in the table below. Decisions on the 2017/18 budget will be taken by the SCTS Board in due course.



Budget allocation (£)		
Description	2015/16*	2016/17
<b>General office expenditure</b> Publishing, printing, stationery etc.	10,000	10,000
<b>Accommodation</b> Venue hire for consultation events or ad hoc meetings.	10,000	20,000
<b>Research and consultancy</b>	50,000	83,000
<b>Training and expenses</b>	12,500	24,000
<b>Hospitality</b>	7,000	25,000
<b>Promotion and publicity</b>	25,000	35,000
<b>Total</b>	<b>114,500</b>	<b>197,000</b>

\*partial year of operation

# Work Programme 2015-18



# How We Will Carry Out Our Functions

## A Framework for Guidelines

The development of sentencing guidelines is one of the Council's primary functions. Guidelines will be the key mechanism for delivering the Council's objective to promote consistency in sentencing practice.

While the High Court has been able, since 1996, to issue guideline judgments in appeal cases providing the courts with guidance on appropriate sentences in similar cases, a power now replicated for the Sheriff Appeal Court in determining appeals in summary criminal proceedings, there has never before been a system for sentencing guidelines specifically for the Scottish jurisdiction. To formulate the most appropriate approach within the Scottish context, the Council will take into account, among other things, what lessons can be learned from other jurisdictions with guideline systems, the needs of the Scottish judiciary, and the views of persons with an interest, role and expertise in the sentencing process.

The following preparatory work will therefore be carried out.

## Guideline methodology



A methodology for the drafting and development of guidelines will be agreed, setting out what form and style guidelines should take and the process for their preparation. This will help ensure from the outset that a coherent body of guidelines can be developed over time. This work will be carried out alongside the development of individual guidelines as the nature of the guidelines to be developed is likely to inform decisions as to their style and structure (for example, whether a tabular or narrative or other style should be adopted). The work to develop the methodology need not delay the preparation of individual guidelines, as the planning, research and engagement on individual guidelines can be carried out prior to drafting.

A review of the systems operating elsewhere, including engagement with other jurisdictions to gain a first-hand experience of the approaches and lessons learned, will be undertaken in early course. We will actively seek

judicial input into the design of guidelines as it will be essential that guidelines are of practical use to the judiciary.

While it is difficult to estimate the resource and timescales required to produce a guideline without knowing the subject matter, it is expected that the end-to-end process will take around 18-24 months. A broad outline of the process might be as follows.

- **Initial scoping work:** *building an evidence base, defining the scope of a proposed guideline, and project planning. Around 3-6 months required.*
- **Council meeting:** *decision whether or not to proceed with preparation of guideline.*
- **Drafting and consultation:** *a further 3-6 months at least would be required for the drafting process. This will be an iterative process which will involve a degree of targeted consultation and testing with relevant parties.*
- **Consultation on draft guideline:** *the Council has decided to carry out full public consultation on all draft guidelines. The consultation process and subsequent analysis and consideration of responses may take around 6 months.*
- **Preparation of final guideline and submission to High Court for approval:** *subject to the outcome of consultation, it is anticipated that around 6 months may be required for making any*

*necessary revisions to a draft guideline, for the Court to consider a final guideline, and for it to be made publicly available prior to its coming into effect.*

## Selecting guideline topics

The 2010 Act gives the Council broad discretion as to the subject matter of guidelines. However, the Council must comply with any request by High Court of Justiciary or the Sheriff Appeal Court for the preparation or review of a guideline. The Council must also give consideration to any request made by the Scottish Ministers for the preparation or review of a guideline.

The following matters will be taken into account in selecting topics for guidelines.

- **Statutory request by the High Court or Sheriff Appeal Court:** *will oblige the Council to prepare or review a guideline in the event of a request.*
- **Statutory request by the Scottish Ministers:** *the Council will have regard to any request by Ministers for the preparation or review of any guideline.*
- **Public value,** *particularly where a guideline is expected to improve awareness or understanding and/or public confidence and to what extent.*

- **Impact on sentencing practice:** particularly in relation to the volume of offenders, offences or disposals, and/or the extent to which a guideline might be expected to promote consistency.
- **Areas of particular difficulty or complexity,** for example because of the nature of the subject matter or the applicable law.
- **New legislation or developments in case law** require a guideline to be reviewed.
- **Resources required** for the preparation of a guideline and the resources available to the Council.
- **Other factors** may need to be taken into account in selecting guidelines. For example, the interaction with other guidelines in existence or under development, or whether there are plans for legislation which may have implications for a guideline's content.

Without knowing the terms and scope of a request it is not possible to estimate the resource or timescales involved in meeting or considering any request. The Council will therefore retain a flexible approach in setting its work programme and the business plan has been prepared with this in mind. In the event of a request being received, the business plan may need to be reviewed.

#### When selecting guideline topics we will consider

- **statutory requests**
- **public value**
- **impact**
- **difficulty or complexity**
- **changes in the law**
- **resources required**
- **any other relevant factors**

## Guidelines We Will Prepare

### The first guidelines

We have decided as a first step to prepare a guideline, or set of guidelines, setting out the **general principles and purposes of sentencing**. Although guidance is available - in the form of court decisions - on appropriate sentences in particular cases, the fundamental principles and purposes of sentencing have not been expressly defined in any single piece of legislation or court judgment. We believe that this will bring significant benefits to the public in terms of explaining the sentencing process and the factors which are taken into account. We consider that the development of such a definition may also assist with the development of the methodology, as regards the

style that guidelines should take generally.

We will also prepare a guideline on **sentencing young people**. This is an area of complexity and with potential to significantly improve public education and confidence. We understand that in sentencing there are opportunities to consider how harmful behaviour demonstrated by young people can be best addressed and will consider the potential effects of different types and levels of sentence on younger people. Consideration will specifically be given to how the personal circumstances which are common to many young people who have committed offences should be taken into account in sentencing (for example, age and maturity and experience of trauma or bereavement). We will consider whether this should complement, or form part of a broader guideline on the general principles and purposes of sentencing. As part of this, we will also consider to what extent general principles and purposes should deal with characteristics particular to other types of offender.

Recognising that there is a broad spectrum of interests in, and individuals and groups affected by, the sentencing process, we will seek views on the scope and content of

guidelines through regular stakeholder engagement.

It is our intention that this first suite of guidelines will be submitted to the High Court for approval by autumn 2018.

**By autumn 2018 we will prepare guidelines on**

- *the general principles and purposes of sentencing, and*
- *sentencing young people.*

**We will consider whether these matters should be addressed by a single guideline, or separately.**

**We will also consider whether to include the particular characteristics of different types of offender in this work.**

**Guidelines to be submitted after 2018**

We believe that guidelines of general application should be supplemented by guidelines dealing with offences and will begin work on two offence-specific guidelines in this planning period.

While we are of the view that matters of significant public concern, such as property crime, or crimes of violence, are priority areas that should be addressed by guidelines we consider



that, for a variety of reasons, it would be prudent to deal with lower volume offences prior to high volume offences.

The Scottish Government is currently contemplating extending the presumption against short-term sentences. We consider that it would be appropriate to allow changes in sentencing practice following any such change to bed in before embarking on work to establish current practice in high volume areas. In any case, we consider it advisable to prepare the first offence-specific guidelines in more discrete areas in order that the development process can be reviewed and refined before implementing a guideline with far-reaching impacts. We also note that high volume offences are more likely to require a higher resource input.

During 2015-18 we therefore intend to begin preparatory work for the development of guidelines on **environmental and wildlife offences**, and **causing death by driving**. We consider both to be serious matters, sometimes involving complex circumstances which may lead to a difficult sentencing decision. We believe the availability of guidelines in both these areas will contribute to improving public education and confidence. We

anticipate these guidelines will be submitted to the High Court in 2019.

#### During 2015-18 we will undertake preparatory work to develop guidelines on

- *environmental and wildlife offences, and*
- *causing death by driving*

## Consideration of Further Guidelines

This Business Plan covers the period from the Council's establishment in October 2015 to September 2018. As such it only covers 2 years of future work.

As stated above, we believe it is essential that guidelines are prepared on high volume and serious crimes, such as those involving violence. To that end it is our current intention to give specific consideration to including **domestic violence** and/or **theft and property offences** in the Council's second Business Plan. In respect of domestic violence, we think it premature to carry out any work in this area prior to parliamentary consideration of the Scottish Government's proposed new offence of domestic abuse. And any extension of the presumption against short-term

sentences, in relation to property offences in particular, will need to be taken into account.

A proportionally large number and a wide range of people are affected by **theft and property offences** each year: in the 2014/15 Scottish Crime and Justice Survey, 73% of people reporting experiencing crime in the previous twelve months reported being the victim of theft or property crimes. These offences also account for a very high proportion of offences sentenced and can therefore be expected to have a significant impact on sentencing practice: almost a third of short-term (less than 4 years) custodial sentences are given for theft and property offences (Criminal Proceedings in Scotland Statistical Bulletin 2014-15, Scottish Government, February 2016).

In light of its very wide applicability and value towards promoting public understanding, among other reasons, we will also give consideration to whether a guideline on **sentence discounting**, where an offender receives a reduced sentence for pleading guilty, should be developed.

Preparations for the 2018-2021 Business Plan will begin in 2017/18 and we welcome views on what matters it should include.

In 2017/18 we will consider the case for guidelines on

- *domestic violence*
- *theft and property offences*
- *sentence discounting*

## Research and Information



The Council is committed to making decisions on the basis of evidence. With this in mind, a range of qualitative and quantitative research with judicial office holders and other groups involved in the sentencing process will be carried out to inform the development of sentencing guidelines, the assessments of their impacts, and sentencing policy and practice more broadly.

Some of this work will be carried out by the Council itself but we will also seek to work with other bodies, NGOs, academics and others. To this end, the Council will develop a framework for the carrying out and commissioning of research and analysis to be carried

out under its auspices. In terms of any commissioned research, it is anticipated that a **clear framework** will allow projects to be begun with relative speed, and encourage research in the areas the Council deems to be of particular importance or priority. Open and transparent procurement processes will be followed in respect of any externally commissioned research.

### **Assessing the effects of guidelines**

Guidelines must be accompanied by an assessment of the costs and benefits of their implementation and likely effects on the criminal justice system. Changes in sentencing practice have the potential to have significant implications on various parts of the justice system. It will be vital to ensure that these assessments are based on accurate and relevant information, in order that other organisations are able to anticipate and prepare for any such changes. Effective collaboration with others will therefore be necessary. It may be helpful to establish information sharing arrangements (whether in general terms or in respect of the development of individual guidelines) with other justice agencies to support this work and discussions in this regard will be taken forward during 2016.

As well as having direct resourcing implications for the criminal justice system, sentencing can have significant impacts on offenders and their families, on victims and their families, on local communities and on society more generally. Research would require to be carried out should the Council wish to consider the effects or effectiveness of sentencing in this wider sense.

Guidelines will be reviewed on a systematic basis, in line with the Council's statutory duties and work will begin on developing a framework for the evaluation of guidelines during 2017.

### **Sentencing of sexual offences**

Given our view that attention must be given to sentencing of high volume and serious crimes, we intend to begin **research into sentencing of sexual offences** during the period covered by this Business Plan. Sexual offending has increasingly become an area of public concern in recent years and accounts for a high proportion of sentences, particularly in the High Court. In addition, the circumstances in sexual offence cases are often complex, which can lead to difficult sentencing decisions. Sexual offending covers a wide range of offences and sentencing options and we will give careful consideration to

the scope of this research and whether we should give particular focus to specific areas. This research will help us to decide whether a guideline on sexual offences should be prepared.

### **Short-term sentences**

There is a great deal of activity in hand or in contemplation in Scotland in relation to short-term sentences (of various lengths). While it might be inadvisable to prepare guidelines in areas where change might be imminent we believe that it would be helpful to provide information and resources on areas of complexity, policy developments, available sentencing options and research on the effects of different types of sentence, accessible by all and designed for use in training for those working in the administration of justice – including the judiciary, practitioners and those working in service delivery.

### **Assisting Policy Development**

The Council has considered in particular the scope of its objective to assist with policy development in relation to sentencing under the 2010 Act. Contributing to policy development may take many forms. Government could ask the Council for views on, or to carry out research in

relation to, proposals for legislation or new policy initiatives. The Council could provide evidence to Parliament on new legislation or as part of a committee inquiry, or on the operation of recent legislation as part of parliamentary post-legislative scrutiny. Other organisations could seek the Council's views or input into proposals for new initiatives.

During the period covered by this Business Plan, we intend to concentrate on the preparation of sentencing guidelines and putting in place the mechanisms to enable their development. We will consider questions of policy as they arise and will include details of our consideration in our annual report.

The Council has, however, agreed in general terms that it would be appropriate to respond to consultations or calls for evidence on proposals for legislation in relation to substantive sentencing matters (i.e. sentencing levels or types of disposal). The Council will give consideration to individual invitations to assist with policy development as they arise. Priority will be given to consideration of requests by Government, Parliament and the courts. The Council may decide not to address matters which are not aligned with

work streams either underway or in contemplation.

During the work to develop sentencing guidelines, it is likely that matters will come to the Council's attention that it may wish to highlight or recommend to other organisations, for instance, research findings, local initiatives or examples of best practice, or perhaps areas of difficulty in legislation. We will consider such matters as they arise.

## Communications and Engagement



Input from those with knowledge and experience of the criminal justice system will be essential to the successful development of sentencing guidelines and in other aspects of the Council's work. There will be many opportunities across the Council's various work streams to consult and collaborate with individuals, groups and organisations with an interest in the sentencing process. We are committed to working productively with others and will actively seek input from

interested parties, giving consideration to the most appropriate ways for doing so.

The third statutory objective to promote greater awareness and understanding of sentencing policy and practice will be borne in mind in carrying out all of the Council's work. While the development and dissemination of individual guidelines will of itself go some way to promoting greater awareness and understanding, the Council will carry out activity with the aim of public education and improving the knowledge base in relation to sentencing.

To **promote public education**, we will:

- *develop the Council's website with explanatory material on the sentencing process, including a jargon buster;*
- *publish easy-read and accessible documents to explain sentencing and our work;*
- *publish guideline judgments accompanied by simplified summaries; and*
- *provide public information, including responding in general terms to queries on sentencing matters.*

We will give consideration to specific projects aimed at improving awareness of sentencing among the

general public and will actively seek to collaborate with other organisations in this regard, where appropriate.

**To improve public education and participation in our work we will**

- *work with others to provide accessible information*
- *produce easy-read documentation*
- *be responsive to public queries*
- *consult broadly and in a variety of ways*

We will also undertake promotional work to assist in raising awareness of the Council and its activities.

All of this work will address the Council's objective to promote awareness and understanding of sentencing policy and practice. We anticipate that activity to improve the knowledge base around sentencing will also contribute to the promotion of consistency of sentencing practice.

To **improve the knowledge base**, we will:

- *promote and disseminate research, information and statistics among sentencers, practitioners, and others working within the criminal justice system;*
- *engage with training and development bodies; and*
- *engage with academics and researchers and collaborate where appropriate.*





<b>Work Programme 2015-18</b>			
<b>Subject</b>	<b>Description</b>	<b>Tasks</b>	<b>Indicative timescale</b>
<b>GUIDELINES</b>			
<b>Methodology</b>	<p>Council has broad discretion as to format, style and content of guidelines.</p> <p>Consideration to be given to most appropriate style and format and the process for preparing individual guidelines.</p>	<p>Review of guideline systems in other jurisdictions, including literature review and direct engagement with other jurisdictions and sentencing advisory bodies elsewhere.</p> <p>Judicial input and testing.</p>	<p>To be agreed 2016/17.</p>
<b>General Principles and Purposes</b>	<p>Guideline to be prepared.</p> <p>Consideration to be given as to whether this guideline should include or be prepared alongside a guideline on sentencing young people.</p> <p>Consideration will also be given to whether and to what extent particular characteristics of other types of offenders</p>	<p>Scoping work and judicial input.</p> <p>Research, including with sentencers and stakeholders.</p> <p>Development of guideline and assessment of likely impacts.</p> <p>Public consultation.</p> <p>Consider consultation responses and finalise guideline.</p>	<p>Subject to scope, submit to High Court for approval 2017/18.</p> <p>High Court sets entry into force date.</p>

	should be addressed in this guideline.	Submit to High Court for approval.	
<b>Sentencing young people</b>	<p>Guideline to be prepared.</p> <p>A decision as to whether this should be prepared as part of guideline on general principles and purposes is required.</p>	<p>Scoping work and judicial input.</p> <p>Research, including with sentencers and stakeholders.</p> <p>Development of guideline and assessment of likely impacts.</p> <p>Public consultation.</p> <p>Consider consultation responses and finalise guideline.</p> <p>Submit to High Court for approval.</p>	<p>If preparing separately from principles and purposes submit to High Court for approval by spring 2018.</p> <p>High Court sets entry into force date.</p>
<b>Environmental and wildlife offences</b>	<p>Scoping work and research to begin to allow guideline to be submitted to High Court in 2019.</p>	<p>Scoping work and judicial input.</p> <p>Research, including with sentencers and stakeholders.</p> <p>Initial development of guideline and assessment of likely impacts.</p>	<p>Scoping work and initial research to be carried out by autumn 2018.</p> <p>Timing of drafting of guideline will depend on the results of the above work.</p>
<b>Causing death by driving</b>	<p>Scoping work and research to begin to allow guideline to be issued to High Court in 2019.</p>	<p>Scoping work and judicial input.</p> <p>Research, including with sentencers and stakeholders.</p>	<p>Scoping work and initial research to be carried out by autumn 2018.</p>

		Initial development of guideline and assessment of likely impacts.	Timing of drafting of guideline will depend on the results of the above work.
<b>Selection of topics for 2018-2021</b>	<p>Consideration to be given to further guidelines to be prepared during second business plan period.</p> <p>Specific consideration will be given as to whether to include domestic violence, theft and property offences, and sentence discounting.</p>	<p>Consider evidence base for each of the 3 potential guideline topics.</p> <p>Await parliamentary consideration of any new offence of domestic abuse.</p> <p>Consider impacts of any extension of the presumption against short-term sentences.</p>	<p>Consideration during 2017/18; second business plan to be submitted September 2018.</p>
<b>RESEARCH AND INFORMATION</b>			
<b>Research commissioning framework</b>	<p>Research will require to be carried out and commissioned to assist with development of guidelines and accompanying impact assessments, public education activity, and to monitor the application of guidelines. A commissioning framework will allow research projects to be begun swiftly.</p>	<p>Various models to be explored; arrangements with other organisations or academic institutions may need to be agreed.</p>	<p>Framework to be implemented 2016/17.</p>

<b>Sentencing of sexual offences</b>	<p>Research to be begun on sentencing of sexual offences.</p> <p>Consideration to be given to scope and whether particular focus should be given to specific areas.</p>	<p>Scope to be defined and consideration to be given to whether external research requires to be commissioned.</p>	<p>To be begun in 2017/18.</p>
<b>Short-term sentences</b>	<p>Preparation of resources and explanatory materials.</p>	<p>Consideration to be given to particular areas of difficulty.</p> <p>Policy developments to be monitored and information to be prepared and communicated as appropriate.</p>	<p>To be published as appropriate between 2017 and 2018.</p>
<b>Ad hoc research proposals</b>	<p>Council anticipates requests to endorse, participate in, or assist with research projects.</p>	<p>Consideration to be given to individual requests on a case by case basis.</p>	<p>Ongoing.</p>
<b>Publishing information</b>	<p>Council has specific duty to publish information about sentences handed down by the courts.</p>	<p>Website pages on research and information to be developed.</p>	<p>Initial website pages to be developed by October 2016; thereafter ongoing.</p>
<b>POLICY, PRACTICE AND LEGISLATIVE DEVELOPMENTS</b>			
<b>Policy and legislative proposals</b>	<p>The Council has a statutory objective to assist with the development of policy in relation to sentencing.</p>	<p>Consideration to be given to proposals or developments on a case by case basis.</p> <p>Policy and legislative developments will require to be monitored.</p>	<p>Ongoing.</p>

<b>Case law</b>	Developments in case law may require to be taken into account in preparing guidelines.	Monitoring required.	Ongoing.
<b>COMMUNICATIONS, ENGAGEMENT AND PROMOTIONAL ACTIVITY</b>			
<b>Stakeholder engagement</b>	Introductory meetings with interested parties to raise awareness of Council's establishment and discuss participation in Council activity and development of guidelines.	Mapping exercise to identify key stakeholders to be carried out.  Bilateral meetings with members and/or Secretariat to be arranged.  Attendance/participation at conferences and events.	Ongoing.
<b>Judicial awareness</b>	Presence at events and internal communications to raise awareness with the judiciary and encourage participation.	Presentations at judicial events, including Sheriffdom Conferences, and induction and training events.  Items of interest on judicial intranet.	Ongoing.
<b>Website development</b>	Development of website, including pages providing public information about sentencing, and research and information on sentencing.	Specification required for developers to carry out work.  Guideline judgments issued by High Court and Sheriff Appeal Court to be published on website with easy read summaries.	Initial development to be completed by autumn 2016, ongoing thereafter.  Guideline judgments to be published from spring 2016.

<p><b>Promotion of guidelines</b></p>	<p>Consultation, development of guidelines and impact assessments, will require to be promoted and publicised at various stages.</p>	<p>Communications plan to be developed for individual guidelines.</p> <p>Justice agencies, practitioner organisations, and Judicial Institute for Scotland to be kept informed of developments to assist with awareness-raising and allow time for any internal training requirements.</p>	<p>Ongoing.</p>
<p><b>Public education</b></p>	<p>Council has duty to promote greater awareness and understanding of sentencing policy and practice.</p>	<p>Various projects to be identified.</p> <p>Consideration to be given to promotional videos/website features to be used as a public education tool/resource.</p>	<p>Timescales will be developed for individual projects.</p>
<p><b>Visits to other organisations</b></p>	<p>Series of visits to various justice delivery organisations, research institutions and NGOs to gain first-hand experience and highlight areas of good practice.</p>	<p>Programme of events underway; consideration to be given to visits of particular relevance to guidelines under development.</p>	<p>Ongoing.</p>
<p><b>Media relations</b></p>	<p>Media reports will be of relevance to Council in relation to communicating Council activity, gauging issues of interests or concern to the public and as a means of potential public education.</p>	<p>Media monitoring.</p> <p>Consideration of sentencing features.</p> <p>Promotional literature to be prepared on Council activity as required.</p>	<p>Ongoing.</p>



<b>CORPORATE AND GOVERNANCE ACTIVITY</b>			
<b>Freedom of Information (Scotland) Act (FOISA) 2002</b>	Publication scheme and systems and processes required to ensure compliance with FOISA obligations.	Documentation to be made available on Council website.  FOISA processes and policies to be kept under review.	Complete; processes and policies to be kept under regular review.
<b>Records Management</b>	Development of Records Management Plan (RMP) for compliance with Public Records (Sc) Act 2002 obligations.	Develop RMP in conjunction with SCTS and National Records of Scotland.	By end 2016.
<b>Complaints process</b>	Council is subject to Scottish Public Services Ombudsman Act 2002 which requires a complaints procedure to be put in place.	Complaints Handling Procedure and other public information to be made available on website.  Procedures and policies to be kept under review.	Complete; processes and policies to be kept under regular review.
<b>Council operating procedures</b>	Operating procedures, standing orders and rules of conduct for members and scheme of delegation.	Standing Orders and Rules of Conduct to be made available on Council website.  Documentation and processes to be kept under regular review.	Procedures agreed at first Council meeting 14 December 2015.  To be kept under regular review and updated as necessary.
<b>High Court approval procedures</b>	2010 Act is silent on procedures for consideration and approval of guidelines by High Court.	Council and High Court to consider and develop a process.	To be agreed and process implemented before end 2016.

<p><b>Business plan</b></p>	<p>Council is required to submit a 3 year business plan to Scottish Ministers every 3 years from the date of its establishment.</p>	<p>Scottish Ministers, Lord Justice General and Lord Advocate to be consulted during development of business plan.</p> <p>Consideration to be given to consultation with any other persons.</p> <p>Submit report to Ministers.</p> <p>Council to publish once plan laid before Scottish Parliament.</p>	<p>Second business plan (covering period 2018-2021 to be developed 2017/18) to be submitted to Ministers by 26 September 2018.</p>
<p><b>Annual report</b></p>	<p>Council is required to prepare and submit to Scottish Ministers, on an annual basis, a report on how it has carried out its functions</p>	<p>Submit report to Ministers</p> <p>Council to publish once report laid before Scottish Parliament.</p>	<p>Report to be submitted as soon as practicable after 31 March each year.</p>



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