

Scottish  
Sentencing  
Council



# Sentencing young people

A Scottish Sentencing Council consultation

February 2020

Website: [www.scottishsentencingcouncil.org.uk](http://www.scottishsentencingcouncil.org.uk)

Email: [sentencingcouncil@scotcourts.gov.uk](mailto:sentencingcouncil@scotcourts.gov.uk)

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## Chair's foreword



The Scottish Sentencing Council was established in 2015 as an independent advisory body to promote consistency in sentencing, including through the preparation of sentencing guidelines for the courts.

In our business plan, published in October 2018, we stated our intention to complete a set of three general guidelines on the principles and purposes of sentencing, the sentencing process, and the sentencing of young people.

We intend these general guidelines to form a framework for every sentencing decision in Scotland and provide a basis for future guidelines on specific offences. We also hope that they will promote a consistent approach to sentencing, and help to explain to the public how sentencing decisions are made.

The first of these guidelines, 'Principles and purposes of sentencing', was approved by the High Court in October 2018, and came into force in November 2018. The second, 'The sentencing process', was subject to public consultation in summer 2019, and will be submitted to the High Court for approval in due course.

I am now pleased to introduce this public consultation on the Council's third draft guideline, 'Sentencing young people'.

The sentencing of a young person is a complex and challenging exercise. It requires a different approach to the sentencing of an older person, but the reasons for this could perhaps be more widely understood. The draft guideline therefore aims to increase public knowledge and confidence by explaining the process of sentencing a young person. It sets out why a more individualistic approach is necessary and highlights the need to take into account factors common to many young people who commit offences, including adverse childhood experiences such as trauma or bereavement. Above all, perhaps, it explains why rehabilitation is a primary consideration when sentencing a young person, due to a young person's greater capacity for change and reflecting the fact that their level of maturity may

reduce their culpability for the offence. This also recognises the disproportionate effect some sentences may have on younger people compared with older people, for example in terms of their employment prospects.

It is important to note, however, that this guideline must not be considered in isolation. It interacts with, and must be read alongside, the 'Principles and purposes of sentencing' and 'The sentencing process' guidelines, together with any relevant offence guidelines once these are in force.

As with all of our work, we have taken an evidence-based and consultative approach to the development of this draft guideline.

We have held workshops and discussions with stakeholders, consulted members of the judiciary, and engaged with young people – including young people with experience of the criminal justice system – to seek their views of youth offending and the issues to be considered in sentencing.

We have also conducted and commissioned extensive research into how young people develop physically and psychologically. In particular, we have considered research into the age at which the brain reaches full maturity in order to inform our decision about how a young person should be defined in the guideline. Research conducted on our behalf which considered and evaluated the range of evidence on the topic concluded that there is compelling evidence that our brains do not fully mature until at least age 25 and that this should be taken into account in judicial decision-making.

Taking all of this into account we propose that the guideline should apply to all those under the age of 25 at the time of sentencing. While we recognise this may be controversial we understand that cognitive maturity does not develop fully until one's mid-twenties and are persuaded that there is a case for sentencing young adults under the age of 25 on a different basis to older people.

In line with our overarching statutory objectives, we expect the guideline will promote consistency in the approach to sentencing young people. In addition, we hope that by emphasising rehabilitation and reinforcing the individualistic approach taken by the Scottish courts to the sentencing of young people, the guideline will help to ensure opportunities for

rehabilitation are fully considered, thereby helping to reduce reoffending and contributing to economic benefits to the criminal justice system in the long-term.

To ensure our guidelines are of use to the courts, court users, and to the public in general we consider it vital to get the widest possible range of views on our guidelines. For that reason, one of our very first decisions was to conduct a full public consultation on all of our draft guidelines. The publication of this consultation does not mark the end of the guideline development process, however, and we will continue to hear from and meet with interested parties during the consultation period.

I hope that you take the time to consider and respond to this consultation, and I look forward to receiving your views.

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

## Responding to this consultation

Responses to this consultation are welcomed by **23:59 on 22 May 2020**.

Responses can be submitted online at:

<https://consultations.scottishsentencingcouncil.org.uk/ssc/young-people/>

If you cannot respond online, please contact us about other ways to submit a response. We can be contacted by email at: [sentencingcouncil@scotcourts.gov.uk](mailto:sentencingcouncil@scotcourts.gov.uk) or by post at:

Scottish Sentencing Council  
Parliament House  
Parliament Square  
Edinburgh  
EH1 1RQ

We will publish the responses we receive, except where respondents ask for confidentiality. Where confidentiality is sought it should be noted that the Scottish Sentencing Council is subject to the [Freedom of Information \(Scotland\) Act 2002](#) so we may be required to release some information if requested.

If you have any questions about the consultation process, or have any difficulties with the online response form, please contact us by email at: [sentencingcouncil@scotcourts.gov.uk](mailto:sentencingcouncil@scotcourts.gov.uk) or by phone on 0300 790 0006.

## Introduction

### The Scottish Sentencing Council

The Scottish Sentencing Council was established in 2015 under the [Criminal Justice and Licensing \(Scotland\) Act 2010](#)<sup>1</sup>. It is chaired by the Lord Justice Clerk<sup>2</sup>, the Rt Hon Lady Dorrian. In addition to the Chair, the Council is presently made up of:

- 5 judges – a High Court judge, a sheriff principal, a sheriff, a summary sheriff, and a justice of the peace
- 3 people with legal qualifications – a solicitor, an advocate, and a prosecutor
- 3 people who are not judges or lawyers – a police officer, a person with knowledge of victims' issues, and one other person

More information about our members is available on the Council's [website](#).

We have three objectives which, by law, we must aim to achieve when carrying out our functions. We must seek to:

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

Our main responsibilities include:

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

We also publish information about sentencing, carry out research into sentencing, and provide advice and guidance of a general nature about sentencing. Our [current business plan](#), for the period 2018-21, has more information about our work programme.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2010/13/contents>

<sup>2</sup> The Lord Justice Clerk is the second most senior judge in Scotland.

Our website has a range of resources aimed at explaining of how sentencing works, including:

- a [jargon buster](#) (which may be helpful in explaining some of the terms used in this consultation)
- a [mythbuster](#)
- [interactive sentencing exercises](#) where you can “be the judge”
- [explanatory videos](#) – also available on [YouTube](#) – describing the sentencing process
- [educational materials](#) for use by teachers as part of the modern studies curriculum

## Developing sentencing guidelines

An important part of our role in promoting consistency is to prepare sentencing guidelines for the Scottish courts. When sentencing someone who has committed an offence, a court<sup>3</sup> must take into account any relevant sentencing guidelines. If a court decides not to follow the guidelines, the judge must state the reasons for that decision. Any guidelines we develop must be approved by the [High Court of Justiciary](#)<sup>4</sup> before they have any effect.

Sentencing guidelines can be general, which means they cover all offences. Or they can be more specific and cover a particular offence or group of offences.

As a first step, we decided to prepare three general guidelines. We held a public consultation on our first guideline, '[Principles and purposes of sentencing](#)', in summer 2017. That guideline sets out that all sentences in Scotland must be fair and proportionate, and describes various principles which contribute to this. It also describes the main purposes a sentence should try to achieve, such as protection of the public, rehabilitation, and punishment. It was approved by the High Court in October 2018 and applies to all sentences imposed by the courts from 26 November 2018.

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<sup>3</sup> The word “court” is used in this consultation paper to include judges in the High Court, sheriffs principal, sheriffs, summary sheriffs, and justices of the peace, when presiding over a court.

<sup>4</sup> <http://www.scotcourts.gov.uk/the-courts/supreme-courts/high-court/about-the-high-court>

A public consultation on our second proposed guideline, setting out the sentencing process, took place in summer 2019. The sentencing process guideline explains the steps taken by courts when they decide what sentence should be imposed, and the various [factors](#) that they consider. We expect to present this guideline to the High Court for its consideration in due course.

The guideline on the sentencing of young people is our third general guideline, and it also applies to all offences. However, it is more specific than the two guidelines mentioned above, because it *only* applies where the person being sentenced is a young person.

In addition to these general guidelines, we are also developing guidelines which apply to particular offences. We expect that the first of our offence guidelines will relate to offences of causing death by driving. We have also [announced](#) our intention to prepare guidelines on rape, sexual assault, and indecent images of children. Further information about the guidelines we are developing, and the way in which we do that, can be found on our [website](#).

## Approval process and consultation

Sentencing guidelines developed by the Council must be approved by the [High Court of Justiciary](#) before they apply to decisions about sentencing. Before submitting a guideline for approval, we must publish a draft of the guideline. We also have to publish a draft impact assessment giving our views on the likely impact, costs, and benefits of the guideline. We are required to consult the Scottish Ministers and the [Lord Advocate](#) on these drafts.

We must also invite views from anyone else we think should be consulted. To ensure our guidelines are useful and that we have as much information as we can about their effects, we want to hear from as wide a range of people as possible. This includes the public as well as criminal justice organisations, charities, and other organisations which have an interest in the guideline. With this in mind, we consult publicly on all our draft guidelines.

## Consultation on the sentencing young people guideline

This consultation seeks your views on the draft guideline on the sentencing of young people, which can be found at:

<https://consultations.scottishsentencingcouncil.org.uk/ssc/young-people/>

**Part 1** of the consultation paper sets out the reasons why we have developed a guideline on sentencing young people, and explains the approach we are taking.

**Part 2** explains the various parts of the draft guideline, and sets out the consultation questions in context.

**Part 3** is a list of all the consultation questions.

The consultation should be completed online at:

<https://consultations.scottishsentencingcouncil.org.uk/ssc/young-people/>

## Part 1: Developing the guideline

### Why are we developing this guideline?

The sentencing of young people is complex and challenging. It generally requires a more individualistic approach, with a need to take the unique personal circumstances of the young person into account. For example, many young people who have committed offences also have experience of trauma, including higher than average experience of traumatic bereavement<sup>5</sup>. And depending on the maturity of the young person, their level of blame (culpability) for the offence will generally be lower than that of an older person. A young person who has not reached full maturity may also have a greater capacity for change, and therefore greater potential to be successfully rehabilitated.

We believe that a guideline on sentencing young people will bring a number of benefits. We have developed it with the following aims in mind:

- to increase public knowledge and confidence by explaining the process of sentencing a young person and how it differs from sentencing an older person
- to increase understanding by ensuring that young people and others interested in a particular case know what is happening during the sentencing process and what the sentence is
- to assist judges and lawyers in the criminal courts, particularly through identifying the main factors that should be considered when sentencing a young person
- to promote consistency in the sentencing of young people

This guideline will be our third general guideline, after the 'Principles and purposes of sentencing' and 'The sentencing process' guidelines. Taken together, our general guidelines will provide a clear explanation of how sentencing works in Scotland. They will also provide a strong foundation for the development of guidelines focusing on particular offences.

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<sup>5</sup> Vaswani, N., Paul, S., & Papadodimitraki, Y. (2016). *Our Lives With Others: An Evaluation of Trauma, Bereavement and Loss Developments at HMYOI Polmont*. Glasgow. <https://cycj.org.uk/wp-content/uploads/2016/11/Our-Lives-with-Others-Evaluation-Report-.pdf>

## How we have developed this guideline

We have carried out a range of research and consultation to help inform the structure and content of this guideline. We held a [conference](#) in April 2017 to consider a variety of possible approaches to the guideline. Organisations and individuals from across the justice system and beyond were represented at the conference, including criminal justice organisations, charities including victim support groups, organisations with interest and expertise in young people affected by the justice system, academics, and judges.

We carried out research involving focus groups to examine [public views of youth offending](#), followed by a [literature review of youth offending and sentencing in Scotland and other jurisdictions](#), which examined the available research on this subject. This highlighted a number of things which we have considered in drafting the guideline, such as:

- research on the stages of brain development
- evidence of the high number<sup>6</sup> of young people who have offended who have had [adverse childhood experiences](#)<sup>7</sup>
- research about the sentencing approaches which might be most effective in reducing reoffending

We shared the draft guideline with judges across Scotland and asked them for their views. We also considered guidance from the High Court about the sentencing of children and young people. This is set out in a number of High Court judgments on appeals against sentence<sup>8</sup>.

Our recent work has involved:

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<sup>6</sup> Vaswani, N. (2018). *Adverse Childhood Experiences in Children at High Risk of Harm to Others: A Gendered Perspective*. [https://cycj.org.uk/wp-content/uploads/2018/08/Adverse-Childhood-Experiences-in-high-risk\\_CYCJ- Final-Version-proofed.pdf](https://cycj.org.uk/wp-content/uploads/2018/08/Adverse-Childhood-Experiences-in-high-risk_CYCJ- Final-Version-proofed.pdf)

<sup>7</sup> <https://www.gov.scot/publications/adverse-childhood-experiences/>

<sup>8</sup> In particular, we looked at the judgments in [Kane v Her Majesty's Advocate](#), [Greig v Her Majesty's Advocate](#), [McCormick v Her Majesty's Advocate](#) and [Smart v Her Majesty's Advocate](#).

- focus groups with young people, including with some young people who have committed crimes and are not currently in custody, and with some who are currently serving a community sentence. This will be considered alongside responses to this consultation
- a [literature review](#) of the latest evidence concerning brain development, which we have taken into account in defining who young people are for the purposes of this guideline
- a [consultation workshop](#) with members of the Scottish Youth Parliament<sup>9</sup> in which we sought their views about some key aspects of the guideline

We will also be hearing from and meeting with groups of young people and stakeholders during this consultation.

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<sup>9</sup> The Scottish Youth Parliament provides a national platform for young people to discuss issues important to them and influence change. Every two years approximately 160 Members of the Scottish Youth Parliament (MSYPs: aged 14-25) are elected to represent all 32 local authorities, and several national voluntary organisations. Further information about the Scottish Youth Parliament can be found at <https://syp.org.uk/>

## Part 2: The draft guideline explained

### Approach to the guideline

We considered two ways to address the sentencing of young people in a guideline or guidelines: a principle-based approach or an offence-specific approach.

A principle-based approach means developing a single guideline for all sentencing decisions about young people, regardless of the offence. An offence-specific approach, on the other hand, would require many different guidelines. It would mean either saying in each offence guideline how young people should be sentenced differently from older people for the same offence, or developing a completely separate set of offence guidelines focussing only on the sentencing of young people.

We take the view that a principle-based approach is better. It avoids the risk of confusion in saying different things about the sentencing of both young and older people in the same guideline. And it is much simpler than having two different guidelines for each offence. It also recognises that while the sentencing of young people needs a different approach, this does not vary much from offence to offence. The process can be set out in general terms for judges to apply and adapt as necessary.

The guideline therefore sets out what makes young people different from fully mature adults and how this affects the selection of the most appropriate sentence. This means, for example, taking into account the effect that a lack of maturity could have on a young person's culpability (or level of blame). It could also mean recognising that young people have a greater capacity for change by imposing a sentence which focuses on rehabilitation.

We have kept the guideline brief so that it is easy to refer to. It is not intended to cover every possible situation, but it sets out how the sentencing of young people should generally be approached. In order to be useful to the public (including young people) as well as the courts, the guideline is expressed as clearly and simply as possible. It avoids unnecessary jargon and provides clear explanations of ideas.

It is important to note that the guideline is not a standalone document. It must be read alongside the Council's other general guidelines, 'Principles and purposes of sentencing' and 'The sentencing process'<sup>10</sup>. It will also have to be read alongside any other applicable guideline, such as, for example, any relevant offence guideline.

**Q1) Do you agree or disagree that a principle-based approach to the guideline is the right approach?**

- Agree
- Disagree

Please provide any reasons for your answer.

## Applicability

It is important to note that by "young people" we mean both children and young adults. But the question of who should and should not be treated as a young person when being sentenced is not a straightforward one. There is no single age at which individuals are considered by society to be fully mature adults for all purposes. However, while it may be difficult to establish a clear line between young people and fully mature adults, we consider it vital that we make it as clear as possible who the guideline applies to. A court needs to be sure whether a guideline applies or does not apply to the case before it. We think that defining a young person by their age is the only practical way of achieving this. A consequence of this is that someone who is only slightly older than whatever age we use would not fall within the scope of the guideline. However, this is an unavoidable effect of the need to define a young person by reference to age.

We considered whether the guideline should only cover the sentencing of those who are young people when they are being sentenced, or if it should also cover the sentencing of an older person who was young at the time they committed the offence. While the sentencing of

<sup>10</sup> The draft sentencing process guideline can be found here: [https://consultations.scottishsentencingcouncil.org.uk/ssc/the-sentencing-process/supporting\\_documents/The%20sentencing%20process%20%20draft%20guideline.pdf](https://consultations.scottishsentencingcouncil.org.uk/ssc/the-sentencing-process/supporting_documents/The%20sentencing%20process%20%20draft%20guideline.pdf). Please note that this is not the final version of the guideline.

such older people does involve some of the same issues, it is also significantly different in a number of ways – for example, the fact that young people have greater capacity for change and rehabilitation would not be relevant.

For this reason, and to ensure the guideline is as straightforward as possible, it will only apply to those who are young people at the point of sentencing. We intend to address the sentencing of older people who were young at the time of the offence in ‘The sentencing process’ guideline.

Scottish law sets out certain age limits in relation to children and young adults, which means that they are already treated differently by the courts. In Scotland’s criminal justice system:

- a child is defined as someone who is under 16
- the age of criminal responsibility is increasing from 8 to 12 years
- a child under the age of 12 cannot be prosecuted for an offence
- children over 12 and under 16 who have committed an offence can be dealt with in either the [children’s hearings system](#)<sup>11</sup> or the criminal justice system
- the children’s hearings system can also, in some circumstances, consider cases involving young people until they reach 18
- there are restrictions on the reporting of cases involving those who are under 18

The law also gives certain protections to young people under the age of 21 when it comes to sentencing:

- a custodial sentence cannot be imposed on a person who is under 21 unless the court is of the opinion that no other method of dealing with them is appropriate
- anyone under 21 cannot be sent to an adult prison

In a [nationally representative survey of public perceptions of sentencing](#)<sup>12</sup> which was carried out by Ipsos MORI on our behalf, respondents were asked for their views about the age up

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<sup>11</sup> <http://www.chscotland.gov.uk/the-childrens-hearings-system/>

<sup>12</sup> <https://www.scottishsentencingcouncil.org.uk/news-and-media/news/wide-ranging-survey-reveals-public-attitudes-towards-sentencing/>

to which they felt someone should be treated as a young person for sentencing. The most common response (37%) was that 16 was the appropriate age.

Although the guideline will apply to the sentencing of a child under 16 who has committed an offence, we do not think that it should apply only to those under that age. It is unusual for children under 16 who commit offences to be prosecuted at all. More importantly, the characteristics which we think the guideline should take into account – such as risk-taking behaviour, poor decision-making, lack of maturity, and greater capacity for change – extend beyond childhood into young adulthood.

We also do not think that the guideline should apply only to those under the age of 18. In our view, the current statutory framework provides a much stronger case for defining a young person in the guideline as someone who is under 21 than as someone who is under 18<sup>13</sup>. A custodial sentence can only be imposed on a person who is under 21 where the court is of the opinion that no other method of dealing with them is appropriate, and someone under 21 can be sent to a young offenders institution but not to an adult prison. This means that courts already take a significantly different approach to the sentencing of those under 21. We think there would be a risk of confusion if the guideline applied only to those under the age of 18.

We have considered a range of research into brain development and maturation carried out nationally and internationally over the last two decades which suggests that the brain may not be fully developed until around at least the age of 25.<sup>14</sup> In particular, the research indicates that there are three different stages of brain development:

1. Physical maturity of the brain, which occurs during childhood at around ages 12-13.
2. Intellectual maturity, or the development of “*fundamental logical-operational thought processes*”, which occurs during adolescence, and continues up to age 18.

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<sup>13</sup> Reflecting the different statutory framework, the [guideline on sentencing children and young people](#) produced by the Sentencing Council for England and Wales defines a young person as someone who is under 18.

<sup>14</sup> See paragraphs 3.5 – 3.13 of the literature review of youth offending and sentencing in Scotland and other jurisdictions: <https://www.scottishsentencingcouncil.org.uk/media/1961/youth-offending-and-sentencing-in-scotland-and-other-jurisdictions-literature-review-2.pdf>

3. Emotional maturity, which develops during young adulthood. This is the final and most complex phase involving the development of higher “executive functions” such as the ability to plan, and to control emotions. Advances in functional neuroimaging suggest that these regions of the brain do not fully develop until around the age of 25.

In order help us in deciding how a young person should be defined in the draft guideline, we commissioned [research from the University of Edinburgh](#). This research has reviewed the latest published neurological research and evaluated the strength of the evidence that the brain does not fully develop until around age 25. The key conclusions of this review are that:

- development of the brain continues until at least age 25
- continuing development of the brain during adolescence and young adulthood means that young people have less impulse control, and less ability to plan their actions and make rational decisions. They are more vulnerable to negative influences and peer pressure than fully mature adults
- risk factors, such as adverse childhood experiences, traumatic brain injuries, and alcohol/substance abuse, affect how the brain develops
- brain development varies by individual

Alongside this, we have considered evidence which suggests that most young people who offend begin to give up crime by their mid-twenties<sup>15</sup>. This has been linked to the development of strong social bonds brought about by, among other things, getting a job or getting married (or entering a stable relationship), which can increase financial stability and improve emotional wellbeing.

We have also looked at how other jurisdictions treat young people who have committed crimes. Germany allows courts the option to treat young people who have offended as juveniles up to the age of 21<sup>16</sup>. In the Netherlands, young people who have offended can be

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<sup>15</sup> Sapouna, M., Bisset, C., Conlong, A. and Matthews, B. (2015) *What Works to Reduce Reoffending: A Summary of the Evidence*. Justice Analytical Services, Scottish Government. Available from: <http://www.gov.scot/Resource/0047/00476574.pdf>

<sup>16</sup> Hazel, N., 2008. *Cross-national comparison of youth justice*. The University of Salford. Available from: [http://dera.ioe.ac.uk/7996/1/Cross\\_national\\_final.pdf](http://dera.ioe.ac.uk/7996/1/Cross_national_final.pdf)

included in the juvenile justice system up to the age of 23<sup>17</sup>. And in Switzerland, young adults are given less severe sentences until they are 25 years old<sup>18</sup>.

We have therefore decided that the guideline should define a young person as someone under 25 for the purpose of this public consultation. We recognise that this is potentially controversial, particularly given that a young person can marry, vote, join the armed forces, or learn to drive at a much earlier age. However, reaching full maturity is a process, not an event. If a young person, for example, gets married or learns to drive, that does not in itself mean that he or she has become a fully mature adult. The process of maturing, from all of the evidence we have seen, may continue until around the age of 25, in line with the development of the brain and the drop-off in offending behaviour. Until around that age a young person may continue to be more vulnerable to peer pressure and negative influences or more likely to take risks without appreciating the consequences of their actions.

The research and evidence we have considered suggests young people under 25 are more likely to be rehabilitated successfully than older people. Therefore we think rehabilitation should be a primary consideration when sentencing a young person. We consider this later in the consultation.

It is important to emphasise a number of things about our choice of age for the purposes of this consultation. First, we have not made a final decision about what the age in the guideline should be. In taking this decision, we will give full consideration to the views expressed in response to this consultation, and to the evidence available to us. Second, whatever age is used does not affect the general approach we have taken. The guideline will contain the same advice even if a different age is used. Finally, it does not mean that we are suggesting courts should necessarily treat a 16 year old in the same way as someone who is 24. A 16 year old may well be less mature and therefore less blameworthy than a 24 year old. It is also possible that someone who is 23 or 24 could be less mature than an 18 year old. The

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<sup>17</sup> Sibella Matthews, Vincent Schiraldi & Lael Chester (2018): Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System, Justice Evaluation Journal, DOI: <https://doi.org/10.1080/24751979.2018.1478443>

<sup>18</sup> Hazel, N., 2008. *Cross-national comparison of youth justice*. The University of Salford. Available from: [http://dera.ioe.ac.uk/7996/1/Cross\\_national\\_final.pdf](http://dera.ioe.ac.uk/7996/1/Cross_national_final.pdf)

key point is that in each case we think the court should consider the young person's degree of maturity and how this affects their level of blame for the offence. This approach will help determine the most appropriate sentence.

**Q2) Do you agree or disagree that the guideline should apply to people under the age of 25?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q3) If you disagree that the guideline should apply to people under the age of 25, at what age should the guideline cease to apply?**

Please provide any reasons for your answer.

## Introduction

Paragraph 3 explains that the guideline takes account of research into how young people develop physically and psychologically, and into the differences between young people and older people<sup>19</sup>. Although we think it is important to highlight the research and evidence base of the guideline, we do not think it is necessary or appropriate in the guideline to go into detail about the nature of the research or evidence. Our guidelines are intended to provide practical guidance on sentencing, rather than a summary of available research and evidence.

Paragraph 3 goes on to mention one of the guideline's key ideas – that young people have greater potential to be rehabilitated. This will be discussed in more detail later in this paper in relation to the purposes of sentencing a young person.

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<sup>19</sup> Details of this research are available on our website at <https://www.scottishsentencingcouncil.org.uk/media/2044/20200219-ssc-cognitive-maturity-literature-review.pdf>

Paragraph 4 explains that the guideline takes account of distinct aspects of existing Scottish law about the sentencing of young people and the treatment of young people generally. It also takes account of the [United Nations Convention on the Rights of the Child](#) (“UNCRC”)<sup>20</sup>. We considered whether any specific aspect of the present legislative framework for sentencing young people (for example, the scope of the children’s hearings system) should be included. Although it would help to set the context for the guideline’s principles, we decided against this. This was partly to keep the guideline brief, but also because it could mean that the guideline would need to be changed if any legislation referred to is amended.

### **Principles and purposes of sentencing a young person**

Judges will be required to take into account our guidelines on the ‘Principles and purposes of sentencing’ and ‘The sentencing process’ when sentencing a young person, as they must do in sentencing in all cases. In this section of the guideline, we have outlined the ways in which the principles and purposes of sentencing differ in emphasis when applied to the sentencing of a young person.

Although we have not repeated the overall principles and purposes of sentencing in this guideline (whereby a court must consider whether a sentence should seek to achieve various aims such as punishment or protection of the public, and other matters, such as the need to take into account the impact on the victim and others affected by the case) these should all be considered in the sentencing of a young person. That is why we say at paragraph 5 of the guideline that it must be read alongside the ‘Principles and purposes of sentencing’ and ‘The sentencing process’ guidelines. We have included a link to the “Principles and purposes of sentencing” guideline to help make this clear (and will add one to the sentencing process guideline once it is in force, for the same reason).

#### *Principles of sentencing*

The intention in paragraph 6 of the guideline is to make it clear that the exercise of sentencing a young person is different from that of sentencing an older person. This is

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<sup>20</sup> <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

mainly because of a young person's lack of maturity and greater capacity for change. Paragraph 7 highlights the factors which should be taken into account when sentencing a young person. These reflect a range of personal circumstances common to many young people who commit offences.

At paragraph 7 of the guideline we decided to limit the number of examples provided on the ways in which a lack of maturity can affect a young person's behaviour, and what should be taken into account when considering the best interests of a young person, given that it would not be possible to provide a complete list for either.

Paragraphs 8 and 9 set out the requirement for courts to adopt an individualistic approach to sentencing young people, and to take account of the possibility that some sentences may have more of an adverse effect on a young person than an older person. A sentence which may be appropriate for an older person may have a disproportionate impact on a young person. For example, a custodial sentence might have a greater impact on a young person's education, employment, and housing prospects than it would on an older person who has a more settled position in society. This might make it harder for the young person to be successfully reintegrated into society.

### *Purposes of sentencing*

The 'Principles and purposes of sentencing' guideline says that the purposes of sentencing may include (in no particular order):

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

While each of these purposes may apply to the sentencing of a young person to a greater or lesser degree, the guideline states in paragraph 10 that rehabilitation should be given greater emphasis than other purposes of sentencing when sentencing a young person. This

reflects the fact that there is significant potential for a young person's behaviour to be changed and the risk of reoffending reduced, particularly as a result of their still developing maturity and their capacity for change. A focus on rehabilitating young people through the sentencing process presents an opportunity to stop future offences being committed and to benefit both that individual and society as a whole.

There was a majority in support of this idea in the [national survey of public perceptions of sentencing](#) which is referred to above. Respondents were asked for their views on the single most important thing Scottish courts should be trying to achieve when sentencing in general and when sentencing young people. For sentencing in general, 50% of respondents thought that protecting the public was most important. However, for sentencing young people, 54% said that rehabilitation was the single most important aspect.

**Q4) Do you agree or disagree that the relationship between this guideline and the 'Principles and purposes of sentencing' guideline is set out clearly?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q5) Do you agree or disagree that paragraph 7 of the guideline gives enough information about the factors that should be taken into account when sentencing a young person?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q6) If you do not agree that paragraph 7 of the guideline gives enough information about the factors that should be taken into account when sentencing a young person, what additional information should it provide?**

Please provide any reasons for your answer, including any examples that you feel should be included.

**Q7) Do you agree or disagree that rehabilitation should be given greater emphasis than other purposes of sentencing in this guideline?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q8) Do you agree or disagree that rehabilitation should be a primary consideration when sentencing a young person?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q9) Which, if any, other purposes of sentencing should be emphasised in this guideline?**

Please provide any reasons for your answer.

### **Assessment of seriousness**

The assessment of seriousness is a key part of the sentencing process, and will, accordingly, be covered in our sentencing process guideline (on which we held a public

consultation last summer). As with aspects of the ‘Principles and purposes of sentencing’ guideline discussed above this section is intended to highlight additional considerations which may be relevant when sentencing a young person.

In particular, paragraph 12 mentions issues which a court should take into account in assessing the culpability of a young person. It makes a specific statement that a young person’s level of culpability – the extent to which they can be blamed for the offence – is likely to be lower than that of an older person.

**Q10) Is the section on the assessment of seriousness helpful?**

- Yes
- No

Please provide any reasons for your answer.

**Identifying the most appropriate sentence**

*Information and advice*

Having sufficient information is vital in making a fully informed sentencing decision. This section states that the judge should ensure that he or she has the information necessary to identify and impose the most appropriate sentence. Some of the information we think may be particularly relevant for this purpose in relation to young people is set out at paragraph 13.

It is important to note that in many cases courts will have information about the young person from a criminal justice social work report (“CJSWR”). A CJSWR provides the court with detailed information about a young person’s background, education, and health, among other things. We do not think there is a need to repeat in the guideline the information covered in a CJSWR. Instead we have aimed to list the information that we think is most relevant to the sentencing of a young person (although there may be some overlap with what is in a CJSWR). Again, this is not intended to be a complete list.

We also recognise the value that children's hearings can bring in terms of informing appropriate and constructive sentencing. The children's hearings system<sup>21</sup> deals with children and young people in Scotland under the age of eighteen for a number of reasons. This includes where they plead guilty to, or are found guilty of, a crime and are referred by the court. A children's hearing – which involves a panel of volunteers from the local community – will decide what should happen to the young person, based on what is in the young person's best interests.

There are certain circumstances<sup>22</sup> where the court must refer the case of a young person under the age of 18 who is being prosecuted for a crime to a children's hearing for advice about how the young person should be treated. This applies where the young person is already subject to a compulsory supervision order (although if their case is in the High Court, the High Court does not have to seek the advice of a children's hearing but may choose to do so). If the young person is not subject to a compulsory supervision order and is under the age of 16 the court *may* refer their case to a children's hearing for advice. Where the young person is aged between 16 and 17 and a half and is being prosecuted on a summary complaint the court *may* refer their case to a children's hearing for advice. After considering that advice, the court can either sentence the young person, or send their case to the children's hearing for disposal.

We think that the children's hearing should be consulted for advice where possible. We have therefore proposed, at paragraph 14, that judges should refer cases to a children's hearing for advice where it is competent (that is, within the court's power) to do so.

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<sup>21</sup> Further information about the children's hearings system is provided by the Scottish Children's Reporter Administration at [https://www.scra.gov.uk/young\\_people/questions-and-answers/](https://www.scra.gov.uk/young_people/questions-and-answers/) and by Children's Hearings Scotland at <http://www.chscotland.gov.uk/the-childrens-hearings-system/information-for-young-people/>.

<sup>22</sup> See section 49 of the Criminal Procedure (Scotland) Act 1995  
<https://www.legislation.gov.uk/ukpga/1995/46/section/49>

**Q11) Do you agree or disagree that paragraph 13 of the guideline identifies the information which is of most relevance to sentencing a young person?**

- Agree
- Disagree

Please provide any reasons for your answer, including any other information that you feel should be included.

**Q12) Do you agree or disagree with paragraph 14 of the guideline stating that cases should be referred to a children's hearing for advice where it is competent to do so?**

- Agree
- Disagree

Please provide any reasons for your answer.

### *Features of an appropriate sentence*

All cases are unique. We consider that the judge overseeing the case is best placed to consider the appropriate sentence having had regard to all the circumstances. For this reason, we have not attempted to set out what specific sentences may be appropriate. However, we consider effective sentences for young people to have a number of attributes in common, which are set out at paragraph 15. These may apply to a greater or lesser degree depending on what sentence is imposed: a fine might only involve one or two attributes, a community payback order might cover most of them, and a custodial sentence might also involve a number of them through programmes aimed at rehabilitation and reintegration, albeit attendance at such programmes in custody is voluntary.

**Q13) Do you agree or disagree with the proposed features of an appropriate sentence for a young person set out at paragraph 15 of the guideline?**

- Agree
- Disagree

Please provide any reasons for your answer.

*Sentencing range*

In our view, the nature and length of a sentence imposed on a young person should be different from that which might be imposed on an older person being sentenced for a similar offence. This is especially so if rehabilitation is to be a primary consideration.

This places no restriction on the full range of sentencing options available to judges, and, as is stated at paragraph 17 of the guideline, all of these options – including custodial sentences – remain open to courts when sentencing a young person. However, the guideline makes it clear at paragraph 18 that a custodial sentence should only be imposed on a young person when the judge is satisfied that no other sentence is appropriate. This reflects the existing statutory provision in section 207(3) of the Criminal Procedure (Scotland) Act 1995<sup>23</sup>, although the guideline would go further than the statute if the final version treats all those under the age of 25 as young people.

In addition to providing advice, we consider that the children’s hearing may have an important role in the eventual disposal. We have therefore proposed at paragraph 19 of the guideline that for young people under 18 judges should consider sending a case to the children’s hearing to be dealt with (this will usually involve being subject to supervision by the local authority), where the court has the power to do so.

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<sup>23</sup> Section 207(3) provides that “The court shall not...impose detention on an offender unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion”.  
<https://www.legislation.gov.uk/ukpga/1995/46/section/207>

**Q14) Do you agree or disagree that the approach set out in paragraphs 17 and 18 of the guideline is appropriate?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q15) Do you agree or disagree that judges should consider remitting each case to a children's hearing for disposal, where it is competent to do so?**

- Agree
- Disagree

Please provide any reasons for your answer.

### **Potential impacts of the guideline**

We must carry out an assessment of the likely costs and benefits of guidelines and of their likely effects on the criminal justice system generally. We must publish this at the same time as publishing any draft guidelines. We would be grateful for your views on the potential impacts of this guideline to assist with our assessment. This will also help further development of the guideline itself.

We think that the main benefits of this guideline will be to:

- increase public understanding of how sentencing decisions about young people are made
- explain why the sentences imposed on young people should differ from those imposed on older people for similar offences
- increase public confidence in the sentencing of young people

We also consider that it will be helpful to judges in capturing, in an easy to reference document, the various factors which should be considered when sentencing a young person.

We have examined whether the guideline is likely to result in any increased costs, in collaboration with other bodies within the criminal justice system. We consider that these will be mainly related to the potential for an increase in the number of children's hearings and associated legal aid costs, but will update our assessment to take account of responses to this consultation. The draft impact assessment is available here:

<https://consultations.scottishsentencingcouncil.org.uk/ssc/young-people/>

**Q16) Do you think the guideline will influence sentencing practice in Scotland?**

- Yes
- No

Please provide any reasons for your answer.

**Q17) Do you agree or disagree that the guideline will increase public understanding of how sentencing decisions in respect of young people are made?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q18) Do you agree or disagree that the guideline will increase public confidence in the sentencing of young people?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q19) Do you agree or disagree with the assessment of the specific, identified impacts the guideline is expected to have?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q20) What benefits do you think will come from the introduction of this guideline, if any?**

Please provide any reasons for your answer.

**Q21) What costs (financial or otherwise) do you think will come from the introduction of this guideline, if any?**

Please provide any reasons for your answer.

### **Further comments**

The consultation process is a critical part of developing sentencing guidelines which will assist judges and the public. We welcome any further comments on this guideline.

**Q22) Would you like to make any other comments about any matter arising from this consultation?**

### Part 3: Consultation questionnaire

**Q1) Do you agree or disagree that a principle-based approach to the guideline is the right approach?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q2) Do you agree or disagree that the guideline should apply to people under the age of 25?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q3) If you disagree that the guideline should apply to people under the age of 25, at what age should the guideline cease to apply?**

Please provide any reasons for your answer.

**Q4) Do you agree or disagree that the relationship between this guideline and the 'Principles and purposes of sentencing' guideline is set out clearly?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q5) Do you agree or disagree that paragraph 7 of the guideline gives enough information about the factors that should be taken into account when sentencing a young person?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q6) If you do not agree that paragraph 7 of the guideline gives enough information about the factors that should be taken into account when sentencing a young person, what additional information should it provide?**

Please provide any reasons for your answer, including any examples that you feel should be included.

**Q7) Do you agree or disagree that rehabilitation should be given greater emphasis than other purposes of sentencing in this guideline?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q8) Do you agree or disagree that rehabilitation should be a primary consideration when sentencing a young person?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q9) Which, if any, other purposes of sentencing should be emphasised in this guideline?**

Please provide any reasons for your answer.

**Q10) Is the section on the assessment of seriousness helpful?**

- Yes
- No

Please provide any reasons for your answer.

**Q11) Do you agree or disagree that paragraph 13 of the guideline identifies the information which is of most relevance to sentencing a young person?**

- Agree
- Disagree

Please provide any reasons for your answer, including any examples that you feel should be included.

**Q12) Do you agree or disagree with paragraph 14 of the guideline stating that cases should be referred to a children's hearing for advice where it is competent to do so?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q13) Do you agree or disagree with the proposed features of an appropriate sentence for a young person set out at paragraph 15 of the guideline?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q14) Do you agree or disagree that the approach set out in paragraphs 17 and 18 of the guideline is appropriate?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q15) Do you agree or disagree that judges should consider remitting each case to a children's hearing for disposal, where it is competent to do so?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q16) Do you think the guideline will influence sentencing practice in Scotland?**

- Yes
- No

Please provide any reasons for your answer.

**Q17) Do you agree or disagree that the guideline will increase public understanding of how sentencing decisions in respect of young people are made?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q18) Do you agree or disagree that the guideline will increase public confidence in the sentencing of young people?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q19) Do you agree or disagree with the assessment of the specific, identified impacts the guideline is expected to have?**

- Agree
- Disagree

Please provide any reasons for your answer.

**Q20) What benefits do you think will come from the introduction of this guideline, if any?**

Please provide any reasons for your answer.

**Q21) What costs (financial or otherwise) do you think will come from the introduction of this guideline, if any?**

Please provide any reasons for your response.

**Q22) Would you like to make any other comments about any matter arising from this consultation?**

**END OF QUESTIONS**

**Scottish Sentencing Council**  
**Parliament House**  
**Parliament Square**  
**Edinburgh**  
**EH1 1RQ**

[sentencingcouncil@scotcourts.gov.uk](mailto:sentencingcouncil@scotcourts.gov.uk)  
[www.scottishsentencingcouncil.org.uk](http://www.scottishsentencingcouncil.org.uk)

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