



**Law
Commission**
Reforming the law

Sentencing law in England and Wales
Legislation currently in force
Part 4 – Guidelines

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Part 4. Guidelines

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4.1 Statutory provisions about the Council

4.1.1. Creation of the Council

CJA 2009 s.118¹⁹³³: Sentencing Council for England and Wales

s.118(1) - there is to be a Sentencing Council for England and Wales.

s.118(2) - Schedule 15 makes provision about the Council.

CJA 2009 Sch.15¹⁹³⁴: The Sentencing Council for England and Wales

Constitution of the Council

para.1 The Council is to consist of—

- (a) 8 members appointed by the Lord Chief Justice with the agreement of the Lord Chancellor (“judicial members”);
- (b) 6 members appointed by the Lord Chancellor with the agreement of the Lord Chief Justice (“non-judicial members”).

Appointment of a person to chair the Council etc

para.2 The Lord Chief Justice must, with the agreement of the Lord Chancellor, appoint—

- (a) a judicial member to chair the Council (“the chairing member”), and
- (b) another judicial member to chair the Council in the absence of the chairing member.

Appointment of judicial members

para.3 (1) A person is eligible for appointment as a judicial member if the person is—

- (a) a judge of the Court of Appeal,
 - (b) a puisne judge of the High Court,
 - (c) a Circuit judge,
 - (d) a District Judge (Magistrates' Courts), or
 - (e) a lay justice.
- (2) The judicial members must include at least one Circuit judge, one District Judge (Magistrates' Courts) and one lay justice.
- (3) When appointing judicial members, the Lord Chief Justice must have regard to the desirability of the judicial members including at least one person who appears to the Lord Chief Justice to have responsibilities relating to the training of judicial office-holders who exercise criminal jurisdiction in England and Wales.

¹⁹³³ Commencement: Section 118(1) in force 6 April 2010, SI 2010/816 art.2 and Sch.1 para.7. Section 118(2) in force 1 February 2010, so far as it relates to the provisions specified in SI 2010/145 Sch.1 para.23, SI 2010/145 art.2(2) and Sch.1 para.9, otherwise, in force 6 April 2010, SI 2010/816 art.2 and Sch.1 para.7.

¹⁹³⁴ Commencement: Sch.15 paras.1-4 and 6-9 and paras.5, 7 and 10 for the purposes of making appointments, in force 1 February 2010, SI 2010/145 Sch.1 para.23, otherwise, in force 6 April 2010, SI 2010/816 art.2 and Sch.1 para.7.

- (4) “*Judicial office-holder*” has the meaning given by section 109(4) of the Constitutional Reform Act 2005 (c. 4).

Appointment of non-judicial members

para.4(1) A person is eligible for appointment as a non-judicial member if the person appears to the Lord Chancellor to have experience in one or more of the following areas—

- (a) criminal defence;
- (b) criminal prosecution;
- (c) policing;
- (d) sentencing policy and the administration of justice;
- (e) the promotion of the welfare of victims of crime;
- (f) academic study or research relating to criminal law or criminology;
- (g) the use of statistics;
- (h) the rehabilitation of offenders.

para.4(2) The persons eligible for appointment as a non-judicial member by virtue of experience of criminal prosecution include the Director of Public Prosecutions.

President of the Council

para.5(1) The Lord Chief Justice is to have the title of President of the Sentencing Council for England and Wales.

para.5(2) The President is not a member of the Council.

Lord Chancellor's representative

para.6(1) The Lord Chancellor may appoint a person to attend and speak at any meeting of the Council.

para.6(2) The person appointed under sub-paragraph (1) must be a person appearing to the Lord Chancellor to have experience of sentencing policy.

Terms of appointment

para.7(1) The Lord Chancellor may by order make provision—

- (a) as to the term of office, resignation and re-appointment of judicial members and non-judicial members;
- (b) enabling the Lord Chancellor to remove a judicial member from office, with the agreement of the Lord Chief Justice, on the grounds of incapacity or misbehaviour;
- (c) enabling the Lord Chancellor to remove a non-judicial member from office on the grounds of incapacity or misbehaviour.

para.7(2) The following provisions apply to an order under sub-paragraph (1)—

- (a) if the order includes provision falling within sub-paragraph (1)(a), the Lord Chancellor must consult the Lord Chief Justice about that provision before making the order;
- (b) if the order includes provision falling within sub-paragraph (1)(b), the order may not be made unless the Lord Chief Justice agrees to the inclusion of that provision.

Vacancies etc

para.8 The validity of anything done by the Council is not affected by any vacancy among its members, by any defect in the appointment of a member or by any failure to comply with paragraph 2, 3 or 4.

Remuneration etc

para.9(1) The Lord Chancellor may pay—

- (a) to any judicial member who is appointed by virtue of being a lay justice, such remuneration or expenses as the Lord Chancellor may determine, and
- (b) to any other judicial member, such expenses as the Lord Chancellor may determine.

para.9(2) The Lord Chancellor may pay to any non-judicial member such remuneration or expenses as the Lord Chancellor may determine (except that, where the Director of Public Prosecutions is such a member, no remuneration may be paid to the Director).

Interpretation

para.10 In this Schedule “*lay justice*” means a justice of the peace who is not a District Judge (Magistrates' Courts).

Annual report

CJA 2009 s.119¹⁹³⁵: Annual report

s.119(1) - the Council must, as soon as practicable after the end of each financial year, make to the Lord Chancellor a report on the exercise of the Council's functions during the year.

s.119(2) - the Lord Chancellor must lay a copy of the report before Parliament.

s.119(3) - the Council must publish the report once a copy has been so laid.

s.119(4) - Sections 128(3), 130 and 131 make further provision about the content of reports under this section.

s.119(5) - if section 118 comes into force after the beginning of a financial year, the first report may relate to a period beginning with the day on which that section comes into force and ending with the end of the next financial year.

CJA 2009 s.128¹⁹³⁶: Monitoring

s.128(1) - the Council must—

- (a) monitor the operation and effect of its sentencing guidelines, and
- (b) consider what conclusions can be drawn from the information obtained by virtue of paragraph (a).

s.128(2) - the Council must, in particular, discharge its duty under subsection (1)(a) with a view to drawing conclusions about—

¹⁹³⁵ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹³⁶ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- (a) the frequency with which, and extent to which, courts depart from sentencing guidelines;
- (b) the factors which influence the sentences imposed by courts;
- (c) the effect of the guidelines on the promotion of consistency in sentencing;
- (d) the effect of the guidelines on the promotion of public confidence in the criminal justice system.

s.128(3) - when reporting on the exercise of its functions under this section in its annual report for a financial year, the Council must include—

- (a) a summary of the information obtained under subsection (1)(a), and
- (b) a report of any conclusions drawn by the Council under subsection (1)(b).

CJA 2009 s.130¹⁹³⁷: Resources: effect of sentencing practice

s.130(1) - the annual report for a financial year must contain a sentencing factors report.

s.130(2) - a sentencing factors report is an assessment made by the Council, using the information available to it, of the effect which any changes in the sentencing practice of courts are having or are likely to have on each of the following—

- (a) the resources required for the provision of prison places;
- (b) the resources required for probation provision;
- (c) the resources required for the provision of youth justice services.

CJA 2009 s.131¹⁹³⁸: Resources: effect of factors not related to sentencing

s.131(1) - the annual report for a financial year must contain a non-sentencing factors report.

s.131(2) - the Council may, at any other time, provide the Lord Chancellor with a non-sentencing factors report, and may publish that report.

s.131(3) - a non-sentencing factors report is a report by the Council of any significant quantitative effect (or any significant change in quantitative effect) which non-sentencing factors are having or are likely to have on the resources needed or available for giving effect to sentences imposed by courts in England and Wales.

s.131(4) - non-sentencing factors are factors which do not relate to the sentencing practice of the courts, and include—

- (a) the recalling of persons to prison;
- (b) breaches of orders within subsection (5);
- (c) patterns of re-offending;
- (d) decisions or recommendations for release made by the Parole Board;
- (e) the early release under discretionary powers of persons detained in prison;
- (f) the remanding of persons in custody.

¹⁹³⁷ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹³⁸ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

s.131(5) - the orders within this subsection are—

- (a) community orders (within the meaning of section 177 of the Criminal Justice Act 2003 (c. 44)),
- (b) suspended sentence orders (within the meaning of section 189(7) of that Act),
and
- (c) youth rehabilitation orders (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008 (c. 4)).

4.1.2. Creation of guidelines

CJA 2009 s.120¹⁹³⁹: Sentencing guidelines

- s.120(1) - in this Chapter “*sentencing guidelines*” means guidelines relating to the sentencing of offenders.
- s.120(2) - a sentencing guideline may be general in nature or limited to a particular offence, particular category of offence or particular category of offender.
- s.120(3) - the Council must prepare—
- (a) sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentences for guilty pleas), and
 - (b) sentencing guidelines about the application of any rule of law as to the totality of sentences.
- s.120(4) - the Council may prepare sentencing guidelines about any other matter.
- s.120(5) - where the Council has prepared guidelines under subsection (3) or (4), it must publish them as draft guidelines.
- s.120(6) - the Council must consult the following persons about the draft guidelines—
- (a) the Lord Chancellor;
 - (b) such persons as the Lord Chancellor may direct;
 - (c) the Justice Select Committee of the House of Commons (or, if there ceases to be a committee of that name, such committee of the House of Commons as the Lord Chancellor directs);
 - (d) such other persons as the Council considers appropriate.
- s.120(7) - in the case of guidelines within subsection (3), the Council must, after making any amendments of the guidelines which it considers appropriate, issue them as definitive guidelines.
- s.120(8) - in any other case, the Council may, after making such amendments, issue them as definitive guidelines.
- s.120(9) - the Council may, from time to time, review the sentencing guidelines issued under this section, and may revise them.
- s.120(10) - subsections (5), (6) and (8) apply to a revision of the guidelines as they apply to their preparation (and subsection (8) applies even if the guidelines being revised are within subsection (3)).
- s.120(11) - when exercising functions under this section, the Council must have regard to the following matters—
- (a) the sentences imposed by courts in England and Wales for offences;
 - (b) the need to promote consistency in sentencing;
 - (c) the impact of sentencing decisions on victims of offences;
 - (d) the need to promote public confidence in the criminal justice system;

¹⁹³⁹ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- (e) the cost of different sentences and their relative effectiveness in preventing re-offending;
- (f) the results of the monitoring carried out under section 128.

CJA 2009 s.121¹⁹⁴⁰: Sentencing ranges

- s.121(1) - when exercising functions under section 120, the Council is to have regard to the desirability of sentencing guidelines which relate to a particular offence being structured in the way described in subsections (2) to (9).
- s.121(2) - the guidelines should, if reasonably practicable given the nature of the offence, describe, by reference to one or more of the factors mentioned in subsection (3), different categories of case involving the commission of the offence which illustrate in general terms the varying degrees of seriousness with which the offence may be committed.
- s.121(3) - those factors are—
 - (a) the offender's culpability in committing the offence;
 - (b) the harm caused, or intended to be caused or which might foreseeably have been caused, by the offence;
 - (c) such other factors as the Council considers to be particularly relevant to the seriousness of the offence in question.
- s.121(4) - the guidelines should—
 - (a) specify the range of sentences (“the offence range”) which, in the opinion of the Council, it may be appropriate for a court to impose on an offender convicted of that offence, and
 - (b) if the guidelines describe different categories of case in accordance with subsection (2), specify for each category the range of sentences (“the category range”) within the offence range which, in the opinion of the Council, it may be appropriate for a court to impose on an offender in a case which falls within the category.
- s.121(5) - the guidelines should also—
 - (a) specify the sentencing starting point in the offence range, or
 - (b) if the guidelines describe different categories of case in accordance with subsection (2), specify the sentencing starting point in the offence range for each of those categories.
- s.121(6) - the guidelines should—
 - (a) (to the extent not already taken into account by categories of case described in accordance with subsection (2)) list any aggravating or mitigating factors which, by virtue of any enactment or other rule of law, the court is required to take into account when considering the seriousness of the offence and any other aggravating or mitigating factors which the Council considers are relevant to such a consideration,
 - (b) list any other mitigating factors which the Council considers are relevant in mitigation of sentence for the offence, and

¹⁹⁴⁰ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- (c) include criteria, and provide guidance, for determining the weight to be given to previous convictions of the offender and such of the other factors within paragraph (a) or (b) as the Council considers to be of particular significance in relation to the offence or the offender.
- s.121(7) - for the purposes of subsection (6)(b) the following are to be disregarded—
- (a) the requirements of section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentences for guilty pleas);
 - (b) sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence;
 - (c) any rule of law as to the totality of sentences.
- s.121(8) - the provision made in accordance with subsection (6)(c) should be framed in such manner as the Council considers most appropriate for the purpose of assisting the court, when sentencing an offender for the offence, to determine the appropriate sentence within the offence range.
- s.121(9) - the provision made in accordance with subsections (2) to (8) may be different for different circumstances or cases involving the offence.
- s.121(10) - the sentencing starting point in the offence range—
- (a) for a category of case described in the guidelines in accordance with subsection (2), is the sentence within that range which the Council considers to be the appropriate starting point for cases within that category—
 - (i) before taking account of the factors mentioned in subsection (6), and
 - (ii) assuming the offender has pleaded not guilty, and
 - (b) where the guidelines do not describe categories of case in accordance with subsection (2), is the sentence within that range which the Council considers to be the appropriate starting point for the offence—
 - (i) before taking account of the factors mentioned in subsection (6), and
 - (ii) assuming the offender has pleaded not guilty.

CJA 2009 s.122¹⁹⁴¹: Allocation guidelines

- s.122(1) - in this Chapter “*allocation guidelines*” means guidelines relating to decisions by a magistrates' court under section 19 of the Magistrates' Courts Act 1980 (c. 43), or the Crown Court under paragraph 7(7) or 8(2)(d) of Schedule 3 to the Crime and Disorder Act 1998 (c. 37), as to whether an offence is more suitable for summary trial or trial on indictment.
- s.122(2) - the Council may prepare allocation guidelines.
- (3) - Where the Council has prepared guidelines under subsection (2), it must publish them as draft guidelines.

¹⁹⁴¹ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- s.122(4) - the Council must consult the following persons about the draft guidelines—
- (a) the Lord Chancellor;
 - (b) such persons as the Lord Chancellor may direct;
 - (c) the Justice Select Committee of the House of Commons (or, if there ceases to be a committee of that name, such committee of the House of Commons as the Lord Chancellor directs);
 - (d) such other persons as the Council considers appropriate.
- s.122(5) - the Council may, after making any amendment of the draft guidelines which it considers appropriate, issue the guidelines as definitive guidelines.
- s.122(6) - the Council may, from time to time, review the allocation guidelines issued under this section, and may revise them.
- s.122(7) - subsections (3) to (5) apply to a revision of the guidelines as they apply to their preparation.
- s.122(8) - when exercising functions under this section, the Council must have regard to—
- (a) the need to promote consistency in decisions of the kind mentioned in subsection (1), and
 - (b) the results of the monitoring carried out under section 128.

CJA 2009 s.123¹⁹⁴²: Preparation or revision of guidelines in urgent cases

- s.123(1) - this section applies where the Council—
- (a) decides to prepare or revise sentencing guidelines or allocation guidelines, and
 - (b) is of the opinion that the urgency of the case makes it impractical to comply with the procedural requirements of section 120 or (as the case may be) section 122.
- s.123(2) - the Council may prepare or revise the guidelines without complying with—
- (a) in the case of sentencing guidelines, section 120(5), and
 - (b) in the case of allocation guidelines, section 122(3).
- s.123(3) - the Council may—
- (a) in the case of sentencing guidelines, amend and issue the guidelines under section 120(7) or (8) without having complied with the requirements of section 120(6)(b) to (d), and
 - (b) in the case of allocation guidelines, amend and issue the guidelines under section 122(5) without having complied with the requirements of section 122(4)(b) to (d).
- s.123(4) - the guidelines or revised guidelines must—
- (a) state that the Council was of the opinion mentioned in subsection (1)(b), and
 - (b) give the Council's reasons for that opinion.

¹⁹⁴² Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

CJA 2009 s.124¹⁹⁴³: Proposals by Lord Chancellor or Court of Appeal

- s.124(1) - the Lord Chancellor may propose to the Council—
- (a) that sentencing guidelines be prepared or revised by the Council under section 120—
 - (i) in relation to a particular offence, particular category of offence or particular category of offenders, or
 - (ii) in relation to a particular matter affecting sentencing;
 - (b) that allocation guidelines be prepared or revised by the Council under section 122.
- s.124(2) - subsection (3) applies where the criminal division of the Court of Appeal (“the appeal court”) is seised of an appeal against, or a reference under section 36 of the Criminal Justice Act 1988 (c. 33) (reviews of sentencing) with respect to, the sentence passed for an offence (“the relevant offence”).
- s.124(3) - the appeal court may propose to the Council that sentencing guidelines be prepared or revised by the Council under section 120—
- (a) in relation to the relevant offence, or
 - (b) in relation to a category of offences within which the relevant offence falls.
- s.124(4) - a proposal under subsection (3) may be included in the appeal court's judgment in the appeal.
- s.124(5) - if the Council receives a proposal under subsection (1) or (3) to prepare or revise any guidelines, it must consider whether to do so.
- s.124(6) - for the purposes of this section, the appeal court is seised of an appeal against a sentence if—
- (a) the court or a single judge has granted leave to appeal against the sentence under section 9 or 10 of the Criminal Appeal Act 1968 (c. 19) (appeals against sentence), or
 - (b) in a case where the judge who passed the sentence granted a certificate of fitness for appeal under section 9 or 10 of that Act, notice of appeal has been given,
- and the appeal has not been abandoned or disposed of.
- s.124(7) - for the purposes of this section, the appeal court is seised of a reference under section 36 of the Criminal Justice Act 1988 (reviews of sentencing) if it has given leave under subsection (1) of that section and the reference has not been disposed of.
- s.124(8) - this section is without prejudice to any power of the appeal court to provide guidance relating to the sentencing of offenders in a judgment of the court.

¹⁹⁴³ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

4.1.3. Other functions and duties of the Council

CJA 2009 s.127¹⁹⁴⁴: Resource implications of guidelines

- s.127(1) - this section applies where the Council—
- (a) publishes draft guidelines under section 120 or 122, or
 - (b) issues guidelines as definitive guidelines under either of those sections.
- s.127(2) - the Council must publish a resource assessment in respect of the guidelines.
- s.127(3) - a resource assessment in respect of any guidelines is an assessment by the Council of the likely effect of the guidelines on—
- (a) the resources required for the provision of prison places,
 - (b) the resources required for probation provision, and
 - (c) the resources required for the provision of youth justice services.
- s.127(4) - the resources assessment must be published—
- (a) in a case within subsection (1)(a), at the time of publication of the draft guidelines;
 - (b) in a case within subsection (1)(b), at the time the guidelines are issued or, where the guidelines are issued by virtue of section 123, as soon as reasonably practicable after the guidelines are issued.
- s.127(5) - the Council must keep under review any resource assessment published under this section, and, if the assessment is found to be inaccurate in a material respect, publish a revised resource assessment.

CJA 2009 s.128¹⁹⁴⁵: Monitoring

- s.128(1) - the Council must—
- (a) monitor the operation and effect of its sentencing guidelines, and
 - (b) consider what conclusions can be drawn from the information obtained by virtue of paragraph (a).
- s.128(2) - the Council must, in particular, discharge its duty under subsection (1)(a) with a view to drawing conclusions about—
- (a) the frequency with which, and extent to which, courts depart from sentencing guidelines;
 - (b) the factors which influence the sentences imposed by courts;
 - (c) the effect of the guidelines on the promotion of consistency in sentencing;
 - (d) the effect of the guidelines on the promotion of public confidence in the criminal justice system.

¹⁹⁴⁴ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁴⁵ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- s.128(3) - when reporting on the exercise of its functions under this section in its annual report for a financial year, the Council must include—
- (a) a summary of the information obtained under subsection (1)(a), and
 - (b) a report of any conclusions drawn by the Council under subsection (1)(b).

CJA 2009 s.129¹⁹⁴⁶: Promoting awareness

- s.129(1) - the Council must publish, at such intervals as it considers appropriate—
- (a) in relation to each local justice area, information regarding the sentencing practice of the magistrates' courts acting in that area, and
 - (b) in relation to each location at which the Crown Court sits, information regarding the sentencing practice of the Crown Court when it sits at that location.
- s.129(2) - the Council may promote awareness of matters relating to the sentencing of offenders by courts in England and Wales, including, in particular—
- (a) the sentences imposed by courts in England and Wales;
 - (b) the cost of different sentences and their relative effectiveness in preventing re-offending;
 - (c) the operation and effect of guidelines under this Chapter.
- s.129(3) - for the purposes of subsection (2), the Council may, in particular, publish any information obtained or produced by it in connection with its functions under section 128(1).

CJA 2009 s.132¹⁹⁴⁷: Duty to assess impact of policy and legislative proposals

- s.132(1) - this section applies where the Lord Chancellor refers to the Council any government policy proposal, or government proposal for legislation, which the Lord Chancellor considers may have a significant effect on one or more of the following—
- (a) the resources required for the provision of prison places;
 - (b) the resources required for probation provision;
 - (c) the resources required for the provision of youth justice services.
- s.132(2) - for the purposes of subsection (1)—
- “government policy proposal”* includes a policy proposal of the Welsh Ministers;
- “government proposal for legislation”* includes a proposal of the Welsh Ministers for legislation.
- s.132(3) - the Council must assess the likely effect of the proposal on the matters mentioned in paragraphs (a) to (c) of subsection (1).
- s.132(4) - the Council must prepare a report of the assessment and send the report—
- (a) to the Lord Chancellor, and
 - (b) if the report relates to a proposal of the Welsh Ministers, to the Welsh Ministers.
- s.132(5) - a single report may be prepared of the assessments relating to 2 or more proposals.

¹⁹⁴⁶ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁴⁷ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- s.132(6) - if the Lord Chancellor receives a report under subsection (4) the Lord Chancellor must, unless it relates only to a proposal of the Welsh Ministers, lay a copy of it before each House of Parliament.
- s.132(7) - if the Welsh Ministers receive a report under subsection (4) they must lay a copy of it before the National Assembly for Wales.
- s.132(8) - the Council must publish a report which has been laid in accordance with subsections (6) and (7).
- s.132(9) - in this section “*legislation*” means—
- (a) an Act of Parliament if, or to the extent that, it extends to England and Wales;
 - (b) subordinate legislation made under an Act of Parliament if, or to the extent that, the subordinate legislation extends to England and Wales;
 - (c) a Measure or Act of the National Assembly for Wales or subordinate legislation made under such a Measure or Act.

4.1.4. Interpretation

CJA 2009 s.136¹⁹⁴⁸: Interpretation of this Chapter

- s.136 - in this Chapter, except where the context otherwise requires—
- “*allocation guidelines*” has the meaning given by section 122;
 - “*annual report*” means a report made under section 119;
 - “*the category range*” has the meaning given by section 121(4)(b);
 - “*the Council*” means the Sentencing Council for England and Wales;
 - “*definitive sentencing guidelines*” means sentencing guidelines issued by the Council under section 120 as definitive guidelines, as revised by any subsequent guidelines so issued;
 - “*financial year*” means a period of 12 months ending with 31 March;
 - “*the offence range*” has the meaning given by section 121(4)(a);
 - “*prison*”—
 - (a) includes any youth detention accommodation within the meaning of section 107(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (detention and training orders), but
 - (b) does not include any naval, military or air force prison;
 - “*probation provision*” has the meaning given by section 2 of the Offender Management Act 2007 (c. 21);
 - “*sentence*”, in relation to an offence, includes any order made by a court when dealing with the offender in respect of the offender's offence, and
 - “*sentencing*” is to be construed accordingly;
 - “*sentencing guidelines*” has the meaning given by section 120;
 - “*the sentencing starting point*”, in relation to the offence range, has the meaning given by section 121(10);
 - “*youth justice services*” has the meaning given by section 38(4) of the Crime and Disorder Act 1998 (c. 37).

¹⁹⁴⁸ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

4.2 Using and applying the guidelines

4.2.1. Duty to follow sentencing guidelines

Duty of court to follow sentencing guidelines

CJA 2009 s.125¹⁹⁴⁹: Sentencing guidelines: duty of court

s.125(1) - every court—

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.

Offence ranges: No duty to sentence within category range

CJA 2009 s.125¹⁹⁵⁰: Sentencing guidelines: duty of court

s.125(2) - subsections (3) and (4) apply where—

- (a) a court is deciding what sentence to impose on a person (“P”) who is guilty of an offence, and
- (b) sentencing guidelines have been issued in relation to that offence which are structured in the way described in section 121(2) to (5) (“the offence specific guidelines”).

s.125(3) - the duty imposed on a court by subsection (1)(a) to follow any sentencing guidelines which are relevant to the offender's case includes—

- (a) in all cases, a duty to impose on P, in accordance with the offence specific guidelines, a sentence which is within the offence range, and
- (b) where the offence-specific guidelines describe categories of case in accordance with section 121(2), a duty to decide which of the categories most resembles P's case in order to identify the sentencing starting point in the offence range;

but nothing in this section imposes on the court a separate duty, in a case within paragraph (b), to impose a sentence which is within the category range.

No category suitable

CJA 2009 s.125¹⁹⁵¹: Sentencing guidelines: duty of court

s.125(2) - subsections (3) and (4) apply where—

- (a) a court is deciding what sentence to impose on a person (“P”) who is guilty of an offence, and
- (b) sentencing guidelines have been issued in relation to that offence which are structured in the way described in section 121(2) to (5) (“the offence specific guidelines”). s.125(4) - subsection (3)(b) does not apply if the court is of the

¹⁹⁴⁹ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁵⁰ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁵¹ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

opinion that, for the purpose of identifying the sentence within the offence range which is the appropriate starting point, none of the categories sufficiently resembles P's case.

Reductions in sentence

CJA 2009 s.125¹⁹⁵²: Sentencing guidelines: duty of court

s.125(5) - subsection (3)(a) is subject to—

- (a) section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentences for guilty pleas),
- (b) sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (c. 15) (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence, and
- (c) any rule of law as to the totality of sentences.

Duty is subject to statutory restrictions etc.

CJA 2009 s.125¹⁹⁵³: Sentencing guidelines: duty of court

s.125(6) - the duty imposed by subsection (1) is subject to the following provisions—

- (a) section 148(1) and (2) of the Criminal Justice Act 2003 (restrictions on imposing community sentences);
- (b) section 152 of that Act (restrictions on imposing discretionary custodial sentences);
- (c) section 153 of that Act (custodial sentence must be for shortest term commensurate with seriousness of offence);
- (d) section 164(2) of that Act (fine must reflect seriousness of offence);
- (da) section 224A of that Act (life sentence for second listed offence for certain dangerous offenders);
- (e) section 269 of and Schedule 21 to that Act (determination of minimum term in relation to mandatory life sentence);
- (ea) sections 1(2B) and 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for certain offences involving offensive weapons);
- (f) section 51A of the Firearms Act 1968 (c. 27) (minimum sentence for certain offences under section 5 etc);
- (fa) sections 139(6B), 139A(5B) and 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for certain offences involving article with blade or point or offensive weapon);
- (g) sections 110(2) and 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (minimum sentences for certain drug trafficking and burglary offences);
- (h) section 29(4) and (6) of the Violent Crime Reduction Act 2006 (c. 38) (minimum sentences for certain offences involving firearms).

¹⁹⁵² Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁵³ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

Orders under the Mental Health Act 1983

CJA 2009 s.125¹⁹⁵⁴: Sentencing guidelines: duty of court

s.125(7) - nothing in this section or section 126 is to be taken as restricting any power (whether under the Mental Health Act 1983 (c. 20) or otherwise) which enables a court to deal with a mentally disordered offender in the manner it considers to be most appropriate in all the circumstances.

Interpretation

CJA 2009 s.125¹⁹⁵⁵: Sentencing guidelines: duty of court

s.125(8) - in this section—

“mentally disordered”, in relation to a person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983;

“sentencing guidelines” means definitive sentencing guidelines.

¹⁹⁵⁴ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁵⁵ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

4.2.2. Duty to have regard to sentencing guidelines

Offence committed on/after 6 April 2010

Coroners and Justice Act 2009 (Commencement No. 4, Transitional and Saving Provisions) Order 2010 (SI 2010/816)¹⁹⁵⁶

- art.7(1) - existing guidelines which have effect immediately before the coming into force, by virtue of article 2 and paragraph 8 of the Schedule, of section 125(1) of the 2009 Act (sentencing guidelines: duty of court) are to be treated as guidelines issued by the Sentencing Council for England and Wales under section 120 of the 2009 Act (sentencing guidelines).
- art.7(5) - in this article, “existing guidelines” has the meaning given in paragraph 28(2) of Schedule 22 to the 2009 Act.

Offences committed before 6 April 2010

CJA 2009 Sch.22 para.27¹⁹⁵⁷

- para.27(1) - nothing in section 125 or 126 has effect in relation to the sentencing of persons for offences committed before the commencement of the section in question.
- para.27(2) - where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of sub-paragraph (1) to have been committed on the last of those days.

Coroners and Justice Act 2009 (Commencement No. 4, Transitional and Saving Provisions) Order 2010 (SI 2010/816)¹⁹⁵⁸

- art.7(2) - the repeal of section 172 of the Criminal Justice Act 2003 (duty of court to have regard to sentencing guidelines), which takes effect by virtue of article 2 and paragraph 22(b)(iv) of the Schedule, shall have no effect where a court is sentencing an offender for, or exercising any other function relating to the sentencing of offenders in respect of, an offence committed before 6th April 2010; and for these purposes “guidelines” in section 172(2) shall be treated as including definitive sentencing guidelines within the meaning of section 136 of the 2009 Act.

¹⁹⁵⁶ Commencement: 16 March 2010

¹⁹⁵⁷ Commencement: 6 April 2010, CJA 2009 s.182(4) and SI 2010/816 art.2 and Sch.1 para.21(d).

¹⁹⁵⁸ Commencement: 16 March 2010

4.3 Interaction with other sentencing orders

Discretionary life and extended determinate sentences

CJA 2009 s.126¹⁹⁵⁹: Determination of tariffs etc.

- s.126(1) - Section 125(3) (except as applied by virtue of subsection (3) below) is subject to any power a court has to impose—
- (c) an extended sentence of imprisonment by virtue of section 226A of the Criminal Justice Act 2003;
 - (d) an extended sentence of detention by virtue of section 226B of that Act.
- s.126(2) - subsection (3) applies where a court determines the notional determinate term for the purpose of determining in any case—
- (a) the order to be made under section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (life sentence: determination of tariffs),
 - (c) the appropriate custodial term for the purposes of 226A(6) of the Criminal Justice Act 2003 (extended sentence for certain violent or sexual offences: persons 18 or over), or
 - (d) the appropriate term for the purposes of section 226B(4) of that Act (extended sentence for certain violent or sexual offences: persons under 18).
- s.126(3) - Subsections (2) to (5) of section 125 apply for the purposes of determining the notional determinate term in relation to an offence as they apply for the purposes of determining the sentence for an offence.

Interpretation

CJA 2009 s.126¹⁹⁶⁰: Determination of tariffs etc.

- s.126(4) - in this section references to the notional determinate term are to the determinate sentence that would have been passed in the case if the need to protect the public and the potential danger of the offender had not required the court to impose a life sentence (in circumstances where the sentence is not fixed by law) or, as the case may be, an extended sentence of imprisonment or detention.
- s.126(5) - in subsection (4) “*life sentence*” means a sentence mentioned in subsection (2) of section 34 of the Crime (Sentences) Act 1997 other than a sentence mentioned in paragraph (d) or (e) of that subsection.

¹⁹⁵⁹ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁶⁰ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

4.4 Functions/powers of the Secretary of State and the Lord Chancellor

Secretary of State's powers

CJA 2009 Sch.22 para.28¹⁹⁶¹

para.28(1) - without prejudice to the generality of section 177, an order under subsection (3) of that section made by the Lord Chancellor may provide—

- (a) for the Sentencing Council for England and Wales to exercise any function conferred on the Sentencing Guidelines Council by any provision of Chapter 1 of Part 12 of the Criminal Justice Act 2003 (c. 44) pending the repeal of the provision in question by this Act;
- (b) for existing guidelines which have effect immediately before the coming into force of section 125(1) to be treated as guidelines issued by the Sentencing Council for England and Wales under this Act;
- (c) that, in relation to the sentencing of persons for offences committed before the coming into force of section 125(1), any provision of Chapter 1 of Part 12 of the Criminal Justice Act 2003 repealed by this Act continues to have effect with such modifications as are specified in the order.

para.28(2) - “Existing guidelines” means—

- (a) sentencing or allocation guidelines issued as definitive guidelines under section 170 of the Criminal Justice Act 2003;
- (b) guidelines with respect to sentencing which were included in any judgment of the Court of Appeal given before 27 February 2004 and have not been superseded by sentencing guidelines so issued.

Lord Chancellor's functions etc.

Note: The Lord Chancellor has the power to make requests to the Council under CJA 2009 ss.124 and 132.

CJA 2009 s.133¹⁹⁶²: Assistance by the Lord Chancellor

s.133 - the Lord Chancellor may provide the Council with such assistance as it requests in connection with the performance of its functions.

CJA 2009 s.134¹⁹⁶³: Entrenchment of Lord Chancellor's functions

s.134 - in Schedule 7 to the Constitutional Reform Act 2005 (c. 4) (protected functions of the Lord Chancellor), in Part A of paragraph 4—

- (a) for the entry for the Criminal Justice Act 2003 (c. 44) substitute—
“Criminal Justice Act 2003 (c. 44)
Section 174(4)
Section 269(6) and (7)”, and

¹⁹⁶¹ Commencement: 1 February 2010, CJA 2009 s.184(4)(f) and SI 2010/145 art.2 and Sch.1 para.26(d).

¹⁹⁶² Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

¹⁹⁶³ Commencement: 6 April 2010, SI 2010/816 art.2 and Sch.1 para.8.

- (b) after the entry for the Tribunals, Courts and Enforcement Act 2007 (c. 15) insert—
 - “Coroners and Justice Act 2009 (c. 25)
 - Section 119(1) and (2)
 - Section 120(6)
 - Section 122(4)
 - Section 124(1)
 - Section 131(2)
 - Section 132(1), (4) and (6)
 - Section 133
 - Schedule 15”.