

# Sentencing Council

**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**14 June 2019**  
**SC(19)JUN09 – Business Plan**  
**N/A**  
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## **1 ISSUE**

1.1 To agree the order of priorities for upcoming guidelines and their inclusion in the 2019-20 Business Plan.

## **2 RECOMMENDATION**

2.1 That the Council agrees:

- to the ordering of priorities as outlined in Annex A
- to publish the Business Plan in due course once full content is finalised (a copy will be circulated to the Governance subgroup and then Council for sign-off prior to publication).

## **3 CONSIDERATION**

### *Background information*

3.1 Business plans are generally published early in the new Financial Year, setting out the organisation's priorities for the forthcoming year. The annual report then outlines to what extent the objectives set out in the business plan have been met and other significant achievements or activities that have happened within the year.

3.2 Prior to last year, publication of the two documents had moved out of sync with the standard reporting cycle (annual reports moving to October or November and the business plan to September). Last year we moved to a more orthodox timetable and published our annual report in July in line with the rest of the business areas within MoJ. We had intended to publish the Business Plan in May but as our budgetary delegation was not issued until mid-June it ended up being published in July. This year we intend again to publish the Annual Report in July (and this is a substantive item on this month's agenda as well). At the time of writing, we have again had a delay in receiving our financial allocation. We have received provisional allocation of our settlement for this FY, which is in line with our expectations, but

have not received the written formal delegation letter. We therefore expect to publish the business plan early in July again as with last year.

3.3 The content of the business plan is mostly standard from year to year (for example the lists of members; the budgetary information; the setting out of our guideline development cycle). The two main areas of substance are the Chairman's foreword and the workplan. The focus of today's discussion is on the ordering of our priorities for upcoming guidelines to inform the workplan section. The workplan covers a rolling three-year period in order to give external audiences advance notice of forthcoming work and enable us to make early decisions on which guidelines to pick up next given that the lead in time for each (in terms of preparatory legal and analytical work) is considerable.

***Question 1: Is the Council content to retain this basic approach?***

*Discussion*

3.4 Annex A sets out the proposed order of priorities for the guidelines for the coming three years. The ordering of priorities is based on the following considerations:

- previous discussions at Council on priorities for the coming year;
- the need to consider the impact on analytical resource across guidelines and ensure a balance between new guidelines that are greater or lesser resource-intensive;
- the need to finalise the delivery of the Council's 2020 ambition to have revised all its predecessor body's guidelines, and to have produced guidelines for all the highest volume offences by its 10<sup>th</sup> anniversary;
- the need to ensure adequate resource to support the successful delivery of our 10 year anniversary events; and
- any emerging issues that have arisen since the last Council discussion on priorities.

3.5 Previously the Council had indicated that its next priority was to revisit the Burglary Guideline. Initially this was intended to be in advance of us starting the work on firearms, drugs, and immigration and modern slavery. However, last year we moved drugs up the agenda given the range of issues arising within drug offending. We also pushed burglary back given that the experience of revising assault suggested that the analytical input was substantial and picking up burglary straight after assault would place too great a pressure on

the Analysis and Research team. It was agreed then that burglary would be the next guideline after drugs and work has already started on this guideline, with an initial paper due in September.

3.6 Last month, Council agreed to revise our (relatively) recently published Terrorism Guideline given the legislative changes already enacted. Work on this has already kicked off with Vicky's arrival back and a first paper is due in July.

3.7 Other work already underway, or previously agreed, was the work to revise the remaining either way guidelines published by the SGC. This was to enable the Council to meet its 2020 target of issuing guidelines for all the major offences and to have replaced all of its predecessor bodies guidelines. Work on trademark offences has already started and a first paper was considered by Council in September 2018. Some of the remaining offences are being picked up as part of the work on Immigration and Modern Slavery, and Firearms. Council has already decided not to produce a guideline to replace that which deals with 'tax disc' offences on the grounds that they are rarely prosecuted since the introduction of digital vehicle licences and DVLA have confirmed they have no issue with this. Beyond these, the only remaining offences are driving related offences which are considered in more detail below.

3.8 There are a small number of amendments to the current MCSG guidelines that have been identified and agreed in principle by Council at our May meeting and we will begin to pick these up from September when gaps in the agenda and staff time allow.

3.9 In addition to these smaller MCSG amendments, there is an amendment that may be required to the Totality and Breach guidelines. There is a passage in the Breach of a Community Order Guideline, which gives guidance on dealing with an offender convicted of an offence during the currency of a community order. This passage is a direct lift from the Totality Guideline. It has been pointed out to us that it is at best misleading, and at worst inaccurate, in that it says:

- Where an offender, in respect of whom a community order made by a Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence and the additional offence.

3.10 The issue is that a magistrates' court can only commit the new offence to the Crown Court if there is a separate power to do so, otherwise it must sentence the new offence and may commit the offender to the Crown Court to consider re-sentencing the community order. There is also some case law on when it is appropriate for the magistrates' court to deal with the old offence and when to commit to the Crown Court. We suggest that this may mean that the emphasis of the guidance may need to be changed. We intend to consider this as with the minor MCSG amends, when gaps in the agenda allow.

3.11 We turn now to motoring offences. This is an area that has consistently been high on the list of guidelines to be considered. The intention for some time has been to wrap up a variety of motoring offences – from causing death by dangerous driving to some of the smaller either way offences – in a suite of motoring offences guidelines. However, we have pushed these back for some time now whilst the Government considered raising the statutory maximum for causing death by dangerous driving to life imprisonment. Following a public consultation the Government has now announced a firm intention to legislate to that effect, once parliamentary time allows. MoJ officials have indicated that this remains the Government's intention once a suitable legislative vehicle is found. Given the intention of the Government to legislate in this area and the strength of public feeling on this issue our recommendation is that causing death by dangerous driving, and at least those offences immediately below it in terms of seriousness, is pushed back. If we were to produce a guideline we risk disappointing those who take issue with the current statutory maximum as well as risking the work being instantly out of date were legislation to be brought forward.

3.12 Previously the Council had agreed to wrap up the remaining either way offences relating to motoring as part of one set of guidelines. However, we do think there is benefit in looking at some of these offences separately and in advance of the more serious motoring offences. Those that might be in scope include Taking of a Vehicle without Consent (TWOC), Aggravated TWOC, or dangerous driving: all of which are in the current MSGC. Picking these off would enable us to fulfil our 2020 commitment bar the more serious offences that are under consideration by Government.

**Question 3: Does the Council agree not to produce a full set of guidelines for motoring offences at this time?**

**Question 4: Does the Council agree to develop a guideline for the remaining either way motoring offences (precise scope to be agreed)?**

3.13 Other guidelines that Council has previously provisionally agreed to develop when time allows are a group of guidelines relating to cybercrime, and guidelines relating to witness intimidation and perverting the course of justice (to be developed together). Both of these pieces of work have now been added to our workplan as time would become available to begin to pick them up from January 2020

***Question 5: Does the Council agree to develop guidelines relating to Cybercrime, and Witness Intimidation and Perverting the Course of Justice as the next priorities?***

3.14 Assuming that Council agrees to the guidelines outlined above, the proposed order of priority, and draft timescales, would be as per Annex A.

***Question 6: Does the Council agree to the order of priorities as outlined in Ann***

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## Sentencing Council Guideline Work Plan – 2019 to 2022\*

(GREYED OUT BOXES HAVE ALREADY BEEN COMPLETED)

<b>Guideline</b>	<b>Consultation period</b>	<b>Publish definitive guideline</b>	<b>Definitive guideline in force<sup>1</sup></b>
Arson and Criminal damage	27 March 2018 – 26 June 2018	3 July 2019*	1 October 2019
Public order	9 May 2018 – 8 August 2018	Early October 2019	1 January 2020
General guideline (updating the SGC Seriousness guideline)	19 June 2018 – 11 Sept 2018	24 July 2019*	1 October 2019
Expanded explanations for offence specific guidelines (updating the SGC Seriousness guideline)	28 February – 23 May 2019	24 July 2019*	1 October 2019
Overarching guideline on mental health	9 April 2019 – 9 July 2019	March 2020	1 July 2020
Firearms offences	Late Sept 2019 – Late Dec 2019	November 2020	1 January 2021
Drug Offences: revision of SC guideline	October 2019 – January 2020	September 2020	1 January 2021
Further updates to MCSG offences and other minor amendments <sup>3</sup>	November 2019 to January 2020	June 2020	1 October 2020
Terrorism: revision of SC guideline	Autumn 2019	Summer 2020	1 October 2020
Revision of SC assault and SGC attempted murder guidelines	January 2020 – March 2020	February 2021	1 April 2021
Trademark offences	February 2020 – March 2020	September 2020	1 January 2021

<b>Guideline</b>	<b>Consultation period</b>	<b>Publish definitive guideline</b>	<b>Definitive guideline in force<sup>1</sup></b>
Immigration/modern slavery	March 2020 – May 2020	Spring 2021	2021
Burglary: revision of SC guideline	Spring 2020	Late 2020	2021
Motoring offences <sup>2</sup>	Summer 2020	2021	2021
Perverting the course of justice	Summer 2020	Late 2020	2021
Cybercrime	Autumn 2020	2021	2022

\* The dates shown in this work plan are indicative and may be subject to change

<sup>1</sup> In most instances we aim to bring definitive guidelines into force quarterly, on 1 January, 1 April, 1 July and 1 October

<sup>2</sup> Precise scope to be agreed but excluding Causing Death by Dangerous Driving excluded pending legislative change following Government review of offences

<sup>3</sup> Includes a correction to the Totality Guideline and consequential correction to the Breach Guideline