

PE2182/A: Review the Domestic Abuse (Scotland) Act and introduce a minimum sentence for severe offences

Scottish Government written submission, 8 October 2025

Does the Scottish Government consider the specific asks of the petition to be practical or achievable?

Although the summary of the petition calls for “a review of the definition of domestic abuse”, the substance of the petition does not appear to include any information as to what may be sought in this regard. The information provided therefore focuses on the call for mandatory minimum sentences for severe domestic abuse offences also made in the petition.

With certain limited exceptions, it is long-standing policy for sentencing in Scottish criminal courts to give discretion to the court to decide a sentence based on the facts and circumstances of a case. The penalties available for almost all offences are generally provided up to a maximum, but with no minimum sentence required. This gives greatest discretion and flexibility to the independent court when sentencing.

Within this context, the Scottish Government would offer the following views on the call made for minimum mandatory sentences in the petition -

- The independent court is best placed to determine the appropriate sentence having regard to the individual facts and circumstances of each case.
- Establishing minimum sentencing would remove discretion from the court and mean the court was unable to apply full discretion when sentencing after considering the full facts and circumstances of a case.
- The maximum penalty for the offence of domestic abuse under the Domestic Abuse (Scotland) Act 2018 is 14 years.
- Different courts have different sentencing powers and the maximum sentence that a sheriff can impose in domestic abuse indictment cases (the most serious way to prosecute a case) in the sheriff court is 5 years' imprisonment; and in the High Court it is 14 years imprisonment (this being the overall maximum).
- Generally, what level of court criminal proceedings are raised in is a matter for the independent Crown Office and Procurator Fiscal Service (COPFS), who prosecute criminal cases, unless set by law.
- However, if upon conviction for a crime on indictment, a sheriff considers that the sentence they are able to impose is inadequate, there is a power within legislation to remit the matter to the High Court for sentencing by a judge.
- Whether this applies in any given case is a matter for the independent sheriff.

- Importantly, as part of the checks and balances within our criminal justice system, the independent COPFS can appeal against a sentence if they consider it is unduly lenient.
- This is a further safeguard where the appeal court can be asked to re-assess a sentence using their discretion and considering the facts and circumstances of a case.
- Crown Counsel (who are the most senior lawyers in Crown Office) will give careful consideration as to whether a sentence was unduly lenient or if the sentence imposed is within the range available to the judge in the exercise of their normal judicial discretion.
- This means there are protections in place to guard against sentences which, as a matter of law, are considered too lenient.

What, if any, action the Scottish Government is currently taking to address the issues raised by this petition, and is any further action being considered that will achieve the asks of this petition?

We acknowledge the importance of appropriate and effective sentencing in domestic abuse cases. We consider this is best done through the independent court to sentence based on the facts and circumstances of a case. However, in order to assist the independent court, we believe it is important that they can be offered guidance on how best to sentence in domestic abuse cases. That is why the Scottish Government supports the work of the independent Scottish Sentencing Council currently underway to review disposal range(s) for persons convicted of offences of domestic abuse. This is outlined in more detail below, where work is currently ongoing by the Council in this area.

Is there any further information the Scottish Government wish to bring to the Committee's attention, which would assist it in considering this petition?

The Committee may wish to note the role, and ongoing work, of the Scottish Sentencing Council in the area of domestic abuse.

The Scottish Sentencing Council, which is independent from the Scottish Government, has statutory functions to:

- Promote consistency in sentencing practice;
- Assist the development of policy in relation to sentencing; and
- Promote greater awareness and understanding of sentencing policy and practice.

One of the primary ways in which the Council fulfils its statutory functions is through the development of sentencing guidelines. Sentencing guidelines can be general and apply to all offences or they may focus on a particular type of offence or category of person who has offended. Any guidelines developed by the Council must be approved by the High Court before they have effect.

Sentencing guidelines are important because judges have to take them into account when sentencing offenders in a relevant case. This will help to ensure sentences are consistent, fair and proportionate. If the court does not follow a guideline in a case where the guideline applies they must give reasons.

A full list of guidelines, both currently in force and under development, can be found here: <https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines>

Relevant to the present Petition, the Council is currently developing a sentencing guideline in relation to domestic abuse.

The Council is currently seeking the views of judges (stage 3 of an 8 stage guideline development process). The next stage is for the Council to conduct a full public consultation on the proposed guideline. Accordingly, the Petitioner and others may feed into this area through participation in a public consultation in due course.

It might be helpful to share the link to the consultation hub of the Council's website for the Petitioner/Committee's ease of reference, which can be found here: [Scottish Sentencing Council - Citizen Space](#)

Criminal Justice Division