



House of Commons  
Home Affairs Committee

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**Draft Sentencing  
Guidelines 1 and 2:  
Government Response  
to the Committee's  
Fifth Report of Session  
2003–04**

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**First Special Report of Session 2004–05**

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## Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Home Office and its associated public bodies; and the administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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### Committee staff

The current staff of the Committee are Dr Robin James (Clerk), Mr Mark Etherton (Second Clerk), Kate Akester (Adviser (Sentencing Guidelines)), Dr Ben Morris (Committee Legal Specialist), Mr Ian Thomson (Committee Assistant), Sarah Verrinder (Secretary) and Mr John-Paul Flaherty (Senior Office Clerk).

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# First Special Report

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On 4 November 2004 the Home Affairs Committee published its Fifth Report of Session 2003–04, *Draft Sentencing Guidelines 1 and 2*.<sup>1</sup> On 11 February 2005 we received the Government’s response to the Report. It is reproduced as an Appendix to this Special Report.

In the Government Response, the Select Committee’s conclusions and recommendations are in bold text. The Government’s response is in plain text.

## Appendix: Government response

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I welcome the Home Affairs Committee’s report on the first draft guidelines produced by the Sentencing Guidelines Council. I am sorry that we did not respond within the usual time scale; I am grateful to the committee for agreeing to an extension.

The Sentencing Guidelines Council plays a major part in the work we are doing to make sentencing more consistent, to re-balance sentencing and improve public confidence in the criminal justice system. I am grateful for your extremely helpful and cogent comments on the first draft guidelines.

Most of the report, of course, was directed towards the Council, but I wanted to take the opportunity to respond to those comments that relate directly to the Government’s role. My comments are annexed.

*Rt Hon Charles Clarke MP*  
*Secretary of State for the Home Department*

*(Paragraphs are numbered according to the numbers used in the conclusion of the Committee’s report.)*

### ***Draft Guideline 1—Reduction in sentence for a guilty plea***

**7. It is not clear whether, at the time of the passage of the 2003 Act, either the Home Secretary or the House at large realised the full implications of paragraph 12 of Schedule 21 to the Act [which applies the arrangements for reduction for a guilty plea to the new provisions for murder tariffs]. This situation almost certainly arose because the provisions relating to murder tariffs were introduced by way of government new clauses at report stage, i.e. comparatively late in the passage of the Bill through the House. This prevented effective parliamentary scrutiny either by select or standing committee. It is a classic illustration of the truth of the maxim, “legislate in haste and repent at leisure”. We hope the lesson will be learnt by the Home Office and the House that it is highly undesirable for major criminal justice provisions to be put before**

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<sup>1</sup> The final versions of the Guidelines are available on the Sentencing Guidelines Council’s website: [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

Parliament at a late stage in proceedings on a Bill. The House and the public have the right to expect that in future adequate time will be allowed for effective scrutiny of major legislative proposals. (Paragraph 37)

8. By making express provision for murder tariffs in the 2003 Act, Parliament sent a clear signal that it does wish murder to be treated as significantly different from other offences—and we endorse this view. We believe that the Sentencing Guidelines Council acted in a reasonable manner when it included murder as well as other offences within the ambit of the draft guideline. Nonetheless we believe that the draft in its present form does not fully reflect the wishes of Parliament indicated by the enactment of the special provisions for murder in the 2003 Act. Nor does it fully reflect public disquiet about the extent to which reductions for a guilty plea, especially when applied in addition to reductions for other ‘mitigating circumstances’, may reduce sentences for murder significantly below the ‘starting points’ set out in the Act. (Paragraph 39)

10. We considered whether the draft guideline might be amended to indicate a 20% limit in murder cases...However, there is a strong argument that any such limitation should be imposed through statute, and that in the absence of express statutory provision such a model might be subject to challenge in the courts. There is also the point that the existing 20% limit applies to two categories of the so-called ‘three strikes and you are out’ rules; there is no obvious analogy with murder cases. For these reasons we do not favour such an amendment to the draft guideline at this stage (but see our further recommendation in paragraph 44 below). (Paragraph 43)

11. In the medium term, the best solution might well be for Parliament to legislate to remove the ambiguity and confusion which has inadvertently arisen out of the conjunction of the 2003 Act’s provisions and the draft guideline, by making express statutory provision for some restriction, in respect of murder, of the normal reductions in sentence for a guilty plea. (Paragraph 44)

12. In the short term, we recommend that the Sentencing Guidelines Council should consider possible ways of amending the draft guideline in order to reflect Parliament’s clear wish that murder be treated as a separate and especially grave category of offence. In particular, we ask the Council to take account of public concern over the extent to which reduction in sentence for a guilty plea, in addition to reductions for other mitigating circumstances, may produce a ‘multiplier effect’ which reduces individual sentences for murder very significantly below the starting points set out in the 2003 Act. We would wish to see sentencers advised that in the case of murder, reduction in sentence for a guilty plea should not normally be granted in addition to reductions for other mitigating circumstances. It may be that further legislation is required in order to give legal authority to this recommendation; but if it were possible for the Council, without acting *ultra vires*, to amend the draft guideline along these lines, this would undoubtedly help to maintain public confidence in the criminal justice system. (Paragraph 45)

### *Response to paragraphs 7-12*

The murder principles were introduced as early as was possible in the circumstances. The provisions were precipitated by the judgment in the case of Anderson, on 25 November

2002. The Home Secretary announced his intention to introduce amendments to the Criminal Justice Bill at its second reading on 4 December, and it took until Commons report stage to finalise appropriate legislation on this highly complex issue.

We agree with the Committee that, by making express provision for murder tariffs in the CJA, Parliament sent a clear signal that it does wish murder to be treated as significantly different from other offences; and we are pleased that the guideline now ensures that. We also agree that the issue of guilty pleas in murder cases merits further consideration in the light of recent public debate. We will be looking at it in parallel with the recently announced murder review. This will include exploring the need for further legislation. In the meantime, we are confident that the guideline will ensure tariffs are consistent with the murder principles.

### ***Draft Guideline 2—Overarching principles: seriousness and New sentences: Criminal Justice Act 2003***

**25. The success of these bold sentencing reforms depends on adequate funding of the Probation Service in all areas, and we expect the Government to take the necessary steps to ensure that this is secured. (Paragraph 66)**

The Government is clear about the resource implications of the Criminal Justice Act. The Home Office has already announced the recruitment of up to 1,800 extra frontline probation and local support staff. This will bring the total number of probation staff to 21,000 and continues year-on-year increases in probation staff numbers.

The SR04 settlement will mean an increase of typically 10% for probation areas. This is a significant increase and compares very well with funding for other parts of the Criminal Justice System. It is an increase on top of the additional resources already invested in the Probation Service, whose total budget is, in real terms, 55% higher in 2004–05 than in 1997–98.

**26. We note that intermittent custody is only, as yet, being piloted, and has not yet been evaluated. We are particularly keen to see the development of intermittent custody pilots for women prisoners. We look forward to the opportunity to monitor the introduction of the new sentences. (Paragraph 70)**

Pilots of intermittent custody began on 26 January 2004 at Kirkham Prison, in Lancashire, for male offenders and at Morton Hall Prison, in Lincolnshire, for females.

Sentencers have generally welcomed the flexibility which the new sentence provides and by 16 January (51 weeks into the pilot), a total of 151 intermittent custody orders had been imposed. The level of compliance has been exceptionally high, reflecting a positive attitude on the part of offenders who have responded well to the opportunities provided by the sentence to preserve employment and family ties.

In two cases, the imposition of an intermittent custody order preserved the employment, not only of the offender, but also his employees. Other offenders, particularly female offenders, have welcomed the way in which intermittent custody has enabled them to maintain caring responsibilities for their children. Over two-thirds of intermittent custody

offenders report having dependent children and, in a number of cases, the sentence has kept families together and prevented children going into care.

The previous Home Secretary responded to the success of the pilots by announcing the extension of intermittent custody beyond the two pilot sites and planning for that expansion is now underway. In the short term, this will involve an increase in the number of participating courts for the two existing pilot sites. The longer term expansion of intermittent custody will take place within the context of the current review of the prison estate.