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가

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1.1.

19

1990

1.2.

, , , 1991
(Criminal Justice Act 1991) 가
 . 1961, 1967, 1972, 1977, 1982, 1987, 1988, 1991, 1993
(Criminal Justice Act) 1994 (Criminal Justice and Public
Order Act), 1997 () (Crime(sentences)Act), 1998
(Crime and Disorder Act)
(consolidating act) 2000 (Powers of
Criminal Court(Sentencing)Act) .

1.3. 2000
 가 2000 (Criminal Justice and Court
 Services Act) 2003 (Criminal Justice Act 2003) .
 2003 . 2003
 .
 (previous convictions)
 ,
 (community sentence)
 . (Sentencing Guidelines Council)
 .

1.4. 1991 (Criminal Justice Act 1991)
 (principle of proportionality) .
 1 ,2 ,6
 . (deterrence), (incapacitation)
 가 .
 가
 ,
 .(1991 2 (2)(b) . M. Wasik & A. von Hirsch, 'Section 29
 Revised: Previous Convictions in Sentencing' (1994) Crim. L. Rev 409.)
 2003 (Criminal Justice Act 2003)
 . 142 ,
 ('(deserved)) ,
 . 142 1 , '
 , (),
 , ,
 .

가 . , (menu-of-aims approach) . () . 1991 1991 가 . 1990 가 . 가 (sentencing standards) 가 . (J,Roberts, Sentencing Reform in England and Wales : Review of Recent Developments,2006) 2003 ('smorgasbord'approach) . 142 , , , . . (J,Roberts, Sentencing Reform in England and Wales : Review of Recent Developments,2006)

1.5. 가,

가 .

.(Powers of Criminal
Court(Sentencing) Act 2000, 3)
5 (Magistrates' Courts Act 1980 132) 6 (Powers of Criminal
Court(Sentencing) Act 2000, 78) .

1.6. tariff (tariff 1800 ,
, ,)
, 1970 (Queen's Counsel) David
Thomas가

Thomas가
Sentencing Reference가
Tariff 가 가
가
가
가

1.7. Tariff ,

(initial tariff) (1),
 .(2)
 , 가
 , , , , ,
 , (jump effect) .
 .
 (plea of guilty)
 . 25% 33%가 .
 2000 157 .
 .
 가 가
 , ,
 .
 tariff (Court of Appeal)
 , (Crown Court)
 (Magistrates' Court)
 . 1998
 80
 .
 1.8. , tariff ,
 . (intermediate
 recidivist) (inadequate recidivist)
 .
 (individualised sentencing)
 .
 20 30 가 가
 가 가

가 .

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2.

2.1. () ,

, managerial .

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가 .

2.2. .

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가 .

가

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. public confidence

() 가 .

() punishment, crime reduction

reparation 가 .

2.3. ,

가 .

1) deterrence (general deterrence

specific deterrence) 2) incapacitation () 3) rehabilitation 가 .

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2.4.

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commensurate with the seriousness of offences

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1991

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failure to respond previous sentences,

just desert

punishment fitting the crime

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가

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seriousness

matching

commensurate

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Magistrates'

Court Sentencing Guideline

non-statutory guidelines

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2.5.

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가 theory of the legal framework

public confidence

가

guideline judgements

progressive loss of mitigation

1 가

2.6. Offenders' carrers

1) 가 가

2) 가 . 1998

18 10 가

19.1 4

3) 10

25%

가

가 가 , ,

predictability

bouncing around

Crown court sentencing

on record

2.7.

가 , (Sentencing
behaviour)

가 가

2.8. 12

가 ,

가 가
12
. 1998 54%
56% 5 가 . 2000 40%
, 53%

가

가

Prison Service

lack of honesty

2.9. 12

가

가

4

가

parole

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, 1-4

가

가

Home Detention Curfew Scheme

가

가

Parole Board

가

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Probation service

()

Prison and Probation Inspectorates
re-entry to the community

가 가

가

가

가

2.10.

alternatives to imprisonment

serious enough

but not so serious as to require imprisonment

relative severity

. 2000

Criminal Justice and Court

Service Act 53

just desert

(2000

() Powers of Criminal Courts(Sentencing) Act

42,51)

compulsory work

가

가

2.11.

. 가

가

가

가

pure executive

recall to prison , 가

가

가

revoking

licence

continuous review가

가

Drug Treatment and Testing Order

follow through

2.12. 1991

three tiers of seriousness of

offence

가

punishment in the community

so serious that no other sentence would be

adequate

non-financial community penalties

가
 . ()
 .
 가 가 .
 가 .
 unit fine
 가 가 .
 .
 sentencing options for the less serious
 offences discharge, 가

2.13. 1991

just desert (principle of proportionate
 punishment) , deterrence가
 가 1991
 , 1993
 . 1993 failure to respond to previous
 sentences 가 .
 2000 () 50
 가
 가 Criminal
 Justice and Court Services Act
 .
 1990 ()

가 . ,
 ,
 . 가
 ,
 가 .

2.14.

가 . Sentencing Advisory Panel

가 .
 가 가
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 가 .
 , ,
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2.15.

Judicial Studies Board
 .
 .
 가
 offence seriousness sentence
 severity
 appropriate levels of severity
 for any given level of seriousness comparative seriousness

가 .

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가 .

2.16. ()

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treatment

nothing works

.

‘ appropriate punishment’ (just desert)

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what

works

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old treatment model

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what works in preventing re-offending

through work with offenders under sentence

.

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2.17. ,

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What works

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가

OASys

가 .

OASys

가 actuarial

risk assessment , 가
clinical risk assessment가 .

What works ,
가

가 .
2 2-15% (2001 56% 2003 40%)

가 .
What works . Nothing
works 가
가 .

2.18.

Action plan order, referral order,
reparation order .

가 가 joint working

1998

Crime and Disorder Act

prevent offending by children and young persons

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2.19. 2000

Criminal Justice and Court Service Act 2000

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‘ conditional prison sentence’

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hang over

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2.20. ()

가

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가

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. 1991

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just desert

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가 workability .
, , (, , ,),
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가 .

2.21.

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가 .

1)

가 .

2) 가

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1) 가

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2)

3) crime reduction element
cost of the punitive element of sentence

가

2.22.

가

가

가

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가

가

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가

가

가

가

가

가

가

life style choice

Offenders' Index

reconviction rate .

criminal history

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가 .

criminal careers

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가 가 .

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가

가

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가

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going rate of sentence severity ,

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가

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가 가

가 가

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2.23.

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가

가

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15% 가

1%

1%

7% 가

가

가

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가

가

가

가

가

incapacitation effect

crime reduction effect

가

2.24.

가

- . What work

2.25.

restorative justice , public and victim satisfaction

restorative justice

2.26.

just fit
가 . 가
가 가

punishment relative amount of

punishment

가 .

commensurate with the seriousness of the offence

conviction 가 previous

가 ,

가

가 .

2.27. principles of sentencing
 . proportionate, consistent,
 free from improper discrimination, compliant with human
 rights, transparent .
 efficiency(),
 effectiveness(), economy() .
 value for money workability .
 , ,
 . 1998
 Human Rights Act .

2.28. proportionate sentencing
 . just desert .
 가 .
 .
 가 assessed risk of re-offending
 consequent harm 가 ,
 . 가
 risk assessment system ,
 .
 seriousness
 of the criminal conduct가 가 .
 serious harm to the public 가
 가 가 .

- 2.29. ‘seriousness of criminal conduct’ ,
 가 ,
 persistent criminality .
- 가 가 .
 가 , 가
 가
 denunciation retribution .
 persistent criminality intrusive punitive
 previous conviction 가 indicator가
 .
- . offence seriousness, seriousness of record,
 acceptable sentences 가 .
 severity of sentence .
 severity of the punishment
 criminal history .
 seriousness of the offence
 risked harmfulness culpability .
- 가 가 .
- 2.30. sentencing guideline 가
 가 , 가 ,

, 가 . 가
 , relevance
 가 . 가
 continuing course of criminal conduct .
 ‘ totality principle’
 가 treated as a whole .
 . ,
 combined effect 가 가 ,
 가 가
 .
 discount for bulk offending , 가 cumulative approach
 ,
 가 charge sheet
 . 가 added severity combined
 sentence
 .
 serious enough
 가
 . compensation order
 . Proceeds of Crime Bill
 confiscation order .
 가 가 ,
 .
 .
 .

가 .

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가

가

가

가

incapacitation effect

2.31.

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가

가 가

가

가

가 , 가

가

가

가 가

totting up points system

1)

2) mandatory minimum sentence

3) , 가

simple totting up system

가 가

가 가 ,
disqualaification .
,
. persistent criminals 가
가
. 가
가 , 가
.
simple accumulating points system 가
.
, 가 .
가
. 가
.
, 가
가
.
가 accumulative approach 가
. 가 defensible
relationship .
.
2.32. repeated offending .
(2000 109,110,111) ,
, ,
.

mandatory minimum sentence .

2001

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.(Home Office,

Making Punishments Works, 2001,2.16.)

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가

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‘tariff’ ‘going rate’

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2.33.

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entry point . ,

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가 .

2.34.

가

18 ,

가 3 . domestic burglary

14 , 가 가

5 , 가

1999

18

8596 3 12 .

14 가 가

7 .

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indicative

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2.35. .

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가

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uniformity

consistency

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Professor Lady Wedderburn

‘Justice for

Women’

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principle of

equal treatment

가

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Cout of Appeal(Criminal Division) 1982

Haleth

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가

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- 가 . 가
- 가
- 2.36. 가 ,
- 1991 95
- , 2000 Race Relations(Amendment) Act
- 1991 95 가
- 가
- 가
- 2.37. 가 1991 95
- 가

가

2.39. 가 workable ,

가

가

가

2000 Joint Criminal Justice Inspectorate

‘ Information Needs within the Criminal Justice System’

discetionary release 가

dangerous offenders’

가 1991

95 , 80 . 80

outcome 가

가

evaluative information

가 ,

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2.40.

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pre-sentence report

가,

victim statement

가

2.41.

12

가 ,

가

12

, 가 , (,)

가

12

가

custody plus

12

가 . 가

가 .

‘가’

2.43. 12

가 .

interim

order ≤ 1 .

2.44.

가

가 , 가 , 가 .

가,

가 .

‘ ’ envelope .

. 가

가
가 .

3.

3.1. (common law) 가 , . 가 . 1930 , 1960 , 1980 . ‘21 21 (21st century crime requires 21st century solutions)’ . (Home Office, Rebalancing the Criminal Justice System, 2006, 7)

3.2. 가 , 가 . , . . (Home Office, A Five Year Strategy for Protecting the Public and Reducing Re-offending, 2006, 9-10) 가 .

가 가 . 가 가 . 가 . (soft)

가 .

3.3. (sentencing 가 ,
 . Sentencing policy
 penal policy .) 가 .
 가
 가 .
 가 ,
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 가 가 가
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3.4. 2001 (Making Punishment Works, Halliday)
 .
 가
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 가

3.5. 2001

. (Home Office, Making Punishments Works, 2001, 11)

- 1) ,
가 .
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- 2) .

3.6. 2001

. (Home Office, Making Punishments Works, 2001, 21)

- 1) just desert
가 가

- 2) .

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- 3) ,

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- 4) 가

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(entry point) .

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9) 1991 95

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10) 12 가

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11) 가 ,

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3.7. 2001

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2003

(Criminal Justice Act) .

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sentencing review procedure

community sentence

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(sentencing management)

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3.8.

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(entry

points) (entry points

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3.9.

(persistent offenders)

가

가 가

(custody plus sentence) .

가 , 가

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4.

4.1. 1980 (Court of Appeal)

(guideline judgement) .

((Magistrates' court) (Magistrates'

Association)가) 1998 (Crime and Disorder Act

1998) (Sentencing Advisory Panel)

. (Crime and Disorder Act 1998 80-82)

가 . , ,

가

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. R v Milford Have Port Authority(2000) Environmental

Law Review 632

Sea Empress

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4.2. 2003 171

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, 2005

2004

, 가
.
(Criminal Law Review, 2004, 969)

4.3.

(Court of Appeal Criminal Division) (Lord Chief Justice)

. 3 15
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, , , ,
, , , , 가, , , ,
.

4.4. 2006 2003

가 (custody plus order), ,
(allocation of cases for trial), (assault and other offences against
person), (theft from a shop) (consultation paper)

2007 (theft and dishonesty), (causing
death by driving offences), (Offences Taken into
Consideration),

가 .

4.5. 2001

. (Home Office, Making Punishments Work 57) 2002 (Justice For All) , .

. (Home Office, Justice for All, 2002, para.5.17)

. (Home Office, Managing Offenders, Reducing Crime, 2003,31)

(Crown Court) . (Guideline Judgements Case Compendium) .) 가 . , ,

가 . 가 , , 가 (democratic deficit) . (Sentencing Guideline Council, Newsletter, Issue 1,2004 9 ; A.Ashworth & E.Player, Criminal Justice Act 2003:The Sentencing Provisions, Modern Law Review,2005, 829)

4.6.

가 .

(A.Ashworth & E.Player, 2005, 828)

가 2003

가 ,

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4 가 .

4.7. 2004 3

(Sentencing Guideline Council)가 . 2003

(Criminal Justice Act)

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가 .

(allocation guideline) .

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4.8. (Lord Chief Justice)

12 . (,

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4 . (Criminal Justice

Act 2003, 167)

4.9. 가 (Sentencing Guideline)
 ('guidelines relating to
 the sentencing of offenders, which may be general in nature or limited to a particular
 category of offence or offender') . (Criminal Justice Act 2003, 170 1)

('criteria for determining the seriousness of the offence or offences, including
 criteria for determining the weight to be given to any previous convictions of
 offenders') . (170 8)

('must have regard to') (172), ('departure')
 . (174)

5.

5.1. ,
 , (Home Secretary)
 (Lord Chancellor) . (Criminal Justice Act 2003,
 170 8)

(consultation paper)

5.2. (Chief Executive of National Offender Management Service)

(draft sentencing guideline)

(Hose of Common Home Affairs Committee)

가

(Judicial Studies Board)

2

(definitive sentencing guideline)

5.3. 2004-2005 가

(comparative ranking of offence), (women in prison),

(breaches of orders), 가 (aggravating and mitigating

factors), (Revised Magistrates' Court Sentencing

Guidelines) (allocation), (youth offenders),

가 (Bail Act offences), (burglary),

(criminal damage), (drug supply), (Theft

Act offences), (violent crimes)

2005-2006 가

(hate crime), (victim surcharge), (arson),
 (commercial burglary), (drug street/social supply),
 (environmental offences), (driving offences), (tax credit
 fraud)

2006-2007

가

(Conditional Cautioning), (Offences in the Road Safety
 Bill where death results), (Cost and Effectiveness of
 Sentencing), (Environmental and Regulatory Offences),
 (Women offenders), (Restorative Justice),
 (Manslaughter by diminished responsibility), 가
 (Manslaughter where the offender did not intend to kill or cause serious harm),
 (Hate Crime)

2008

(Guidelines for sentencing young offenders), (
 Corporate Manslaughter), (Review of the law on Homicide)

5.4.

2004-2007

8

2004	- (reduction in sentence for a guilty plea) - 2003 (new sentences) - (seriousness)	

2005		(manslaughter by reason of provocation)
2006		- (robbery) - (breach of protective order) - 가 (domestic violence)
2007	2003 (Sexual Offence Act 2003)	

5.5. (reduction in sentence for a guilty plea)

2003

5.6. (seriousness)

, 2003

143 1

가

5.7. 2003 (Sexual Offence Act 2003)

2003 2005

5.8. (manslaughter by reason of provocation)

5.9. (robbery)

1-12 , -10

5.10. 가 (domestic violence)

가

가 . 가 가

5.11. 가 2003 (Sexual Offence Act 2003)

2007 4 . ‘

’ (Sentencing Guideline Council, Press

Release, 30 April 2007) 2003

2006 6 (Sexual Offences Act 2003) 50

, 2007 1

2004 2006 5 1 가

2006 6 2007 4

50

, 가

2007 97%가

7 3

5 , 가

(Millbery,2003) . 2003

1 가

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6. 가

6.1. 가

가 .

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가 .

2003 (non-aggravating

burglary offences) ,

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가 .(Guardian

2003 1 14) (soft on crime)

,

가 .

6.2. 2005 (sentencing discount)

3 1 , 4

1 , 10 1 ,

3 1 ,

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가 가 .

15

2003

21

가

(guideline)

.(Guardian 2004 9 21)

6.3.

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가

가

.(A.Ashworth & E.Player, Criminal Justice Act 2003 : The sentencing provisions,

2005, 829)

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가

. (M.Tonry, The Politics and

Process of Sentencing Commissions,1991,320)

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6.4. 가 가

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. 가

, (Sentencing Guideline Council, Newsletter, Issue 1, 2004 9)

. (A. Ashworth & E. Player, 2005, 830)

6.5. .
, 2005 (Lord Chief
Justice) 가 (moratorium) .

가 .

Ashworth 가 ,
.. (J. Roberts, Sentencing Reform in England and
Wales : Review of Recent Developments, 2006)

6.6. 가 가
 가 .
 . 2003
 .
 가 ,

.(J,Roberts, Sentencing Reform in England and Wales : Review of Recent Developments,2006)

6.7. 가
 , , , ,
 , . (M.Tonry,
 The Politics and Process of Sentencing Commissions,1991,317)

가 ,
 . (‘No sentencing commission that starts poorly is likely
 to end well’, M.Tonry, The Politics and Process of Sentencing Commissions,1991,323)

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- Sentencing Guideline Council, Sexual Offence Act 2003, 2006
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