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## Judges restrict child porn sentences



Scottish judges have ruled that people convicted of downloading child pornography from the internet should not face more than a year in prison.

The decision by the three appeal judges conflicted with Scottish ministers' plans to increase the maximum penalty to five years and was criticised by children's charities.

However, the judges also rejected an earlier ruling that the offence could be viewed as a victimless crime, which received a broad welcome from campaigners.

The ruling came on Thursday from the Lord Justice General, Lord Rodger, sitting with Lord Abernethy and Lord Sutherland.

They decided that taking depraved images from a website for "personal gratification" should not lead to a jail term of more than nine to 12 months - except in "the most exceptional



Lord Sutherland:  
"Aggravating factors"

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circumstances".

The judges also said that if only a limited number of pictures were downloaded, on only a few occasions, by someone with no significant criminal record that person could escape a prison sentence.

The ruling followed the case of international weightlifter Alan Ogilvie, who was jailed for two years for downloading 22,000 obscene photos of young boys from the internet.

Sheriff Andrew Lothian described the pictures as "some of the most disgusting it has been my misfortune to come across".

He decided that the level of involvement amounted to "complicity in child abuse" as Ogilvie was part of the necessary audience for such activities to be carried out.

“  
**It would only be in the most exceptional circumstances that any sentence in excess of nine to 12 months would be imposed for an offence of this nature**

”  
**Lord Sutherland**

However, the sentence was reduced to six months on appeal.

That meant that the 32-year-old, from Piersfield in Edinburgh, was released as he had already served five months' imprisonment before the hearing.

Ogilvie's solicitor-advocate Ray Megson argued that his client should not have been jailed if English sentencing guidelines had been followed.

### **'Victimless crime'**

The appeal was originally brought before two judges, but was sent to a bench of three so guidelines could be given over sentencing.

A previous appeal hearing had indicated that on one view such offences could be regarded as "victimless offences".

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But that view was rejected by the three judges, who said Sheriff Lothian "cannot be faulted" for concluding that the pictures represented serious child abuse and that the victims would not be photographed in such a way without the existence of customers like Ogilvie.

But Lord Sutherland said: "Factors which would be regarded as aggravations and thus leading towards custodial disposal would be the number of images concerned, the nature of the images and the period over which they were downloaded.



The ruling was made at the appeal court

"Previous convictions for any offence of a sexual nature would also be highly relevant.

"As far as the length of any custodial sentence is concerned, we bear in mind that the downloading of a pre-existing image is of a less serious character than the activity of personally taking photographs.

"We consider that it would only be in the most exceptional circumstances that any sentence in excess of nine to 12 months would be imposed for an offence of this nature."

In a statement, the Scottish Executive said: "The executive believes that the penalties available for downloading pre-existing pornographic images of children from the internet must reflect the seriousness with which society regards them.

### **'Appropriate sentence'**

"We intend, therefore, in the Criminal Justice Bill to increase the maximum penalty available to five years.

"The opinion issued today is something judges will

take account of, but it is for the judge in any individual case to determine the appropriate sentence based on the facts before them."

Children's NCH Action for Children Scotland said it was pleased about the ruling that downloading child porn was a victimless crime but was concerned about the sentencing ruling.

Children 1st also criticised the sentencing ruling and said downloading child porn was a "serious crime and should be treated as such".

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