

# Sentencing (Pre-consolidation Amendments) Bill

## Fact Sheet

### Introduction

1. The law of sentencing applies to over a million individual cases every year but is currently incredibly complex and disparate. The complexity of the current law leads to a disproportionate number of errors and unlawful sentences being imposed, resulting in delays, an unnecessary number of appeals, and an inefficient use of public money.
2. In 2014, the Government agreed that the Law Commission should undertake a project to consolidate sentencing procedural law.
3. The Sentencing (Pre-consolidation Amendments) Bill (“the Bill”) paves the way for the Sentencing Code (“the Code”), which will consolidate the law on sentencing procedure in England and Wales. The Code presents the law in a more logical order and in simpler terms. These improvements will assist judges and legal professionals in identifying and applying the law, thereby reducing the risk of error, appeals and delay in the sentencing process. The Code will also enhance the transparency of the process for the general public.
4. The Sentencing Code project has been subject to four formal public consultations (conducted by the Law Commission). Over 1,400 individuals and organisations were involved in the consultation process including Bar Council, Law Society, Council of HM Circuit Judges, Crown Prosecution Service and Sentencing Council. There was unanimous support for the reform. In November 2018, the Law Commission published a concluding report on the project alongside a draft Sentencing (Pre-consolidation Amendments) Bill and a draft Sentencing Code Bill. Enactment of the draft legislation is the main recommendation of the report.
5. Neither the Bill nor the Code introduce any new sentencing law, nor do they alter the maximum penalties available for an offence or increase the scope of minimum sentencing provisions.

### What are the proposed changes?

6. The Bill has two main objectives: (1) to remove historic layers of legislation by use of a technical device – the “clean sweep”; and (2) as a consolidation must operate on the current law, to make changes (“pre-consolidation amendments”) to the existing law of sentencing procedure in order to facilitate the consolidation in the Code.
7. A key cause of the current complexity in sentencing law is the need for sentencing courts to refer to different historic versions of sentencing procedural law, depending on the specific commencement criteria for the sentence in question - that could be the date of the commission of offence, date of charge, or date of appearance, for example. It is frequently unclear even to experienced practitioners which version of the law applies to an offence.
8. The clean sweep in the Bill attempts to remedy this by removing the need to identify and apply historic versions of the law. The effect of the clean sweep is that wherever an offender is convicted after commencement of the Code, the current law of sentencing procedure as enacted in the Code will apply. The clean sweep is subject to exceptions necessary to ensure that no offender is subject to a greater penalty than was available, or to a minimum or mandatory sentence that did not apply, at the time the offence was committed.
9. These exceptions ensure that the clean sweep does not contravene the general common law presumption against retroactivity, and accords with human rights protections against retroactive criminalisation and retroactive punishment – in particular, those provided by Article 7 of the European Convention on Human Rights.

10. The pre-consolidation amendments in the Bill are generally limited to correcting minor errors and streamlining sentencing procedural law. For example, changing language to avoid inconsistency, correcting error, or updating existing statutory references. They make amendments to legislation that will be included in the Code, and only have effect for the purpose of the consolidation. Such changes are an entirely standard measure which precedes consolidation Bills.
11. The Bill also provides the Secretary of State with two powers:
  - i. to designate further exceptions to the clean sweep to protect the Article 7 rights of offenders; and
  - ii. to make additional pre-consolidation amendments to the law. This power will enable the consolidation to incorporate any changes to sentencing procedural law that may arise between enactment of the PCA Bill and passage of the Sentencing Code Bill.
12. These changes, made by SI laid under the affirmative procedure, will be specifically limited to changes that the Secretary of State is of the opinion facilitate, or are otherwise desirable in connection with, the consolidation.
13. Once the Code is enacted the Bill will have served its purpose and will be largely repealed.

### **Territorial extent**

14. The majority of the Bill applies to England and Wales only, given that sentencing is a devolved matter in Scotland and Northern Ireland.
15. However, amendments made by the Bill to provisions in existing legislation have the same extent as those provisions.

### **Commencement**

16. The powers in the Sentencing (Pre-consolidation Amendments) Act will come into force on Royal Assent. The clean sweep and the pre-consolidation amendments in Schedule 2 will only come into force just before the Code is enacted.