

Sentencing (Pre-consolidation Amendments) Bill

Equalities Statement

Policy summary

The purpose of the Sentencing (Pre-consolidation Amendments) Bill (“the Bill”) is to make changes to existing legislation in order to facilitate the Law Commission’s proposed Sentencing Code (“the Code”). The Bill is concerned with sentencing procedural law in England and Wales and as such will apply to all offenders equally, regardless of gender, race, religion, age or disability.

The Code is a consolidation of legislation governing sentencing procedure. It re-enacts law already in force and does not alter its substance or effect. The aim of the Code is to ensure that the law relating to sentencing procedure is readily comprehensible and operates within a clear framework as efficiently as possible. Before the Code can be enacted a number of changes are required to existing legislation in order for it to operate as intended.

The pre-consolidation amendments are generally limited to correcting minor errors and streamlining sentencing procedural law and only have effect for the purposes of the consolidation.

The Bill will also give effect to a technical device – the “clean sweep” – which, subject to some limited exceptions needed to protect an offender’s fundamental rights and ensure that no offender is subject to a greater penalty than that available, or subject to a minimum or mandatory sentence that did not apply, at the time of the offence, will allow for all offenders sentenced after the Code comes into force to be sentenced according to the Code, irrespective of when they committed the offence. The clean sweep will remove historic layers of savings and transitory provisions in current legislation, greatly simplifying the law and allowing for a single set of provisions to govern the sentencing process for offenders convicted after commencement of the Code.

The clean sweep applies only to provisions that will be consolidated by the Code, and does not apply more broadly.

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.

The provisions in the Bill generally apply to England and Wales only, although amendments made by the Bill to existing provisions in legislation have the same extent as those provisions.

Equality duties

Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;

- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying 'due regard' needs to be proportionately considered against the nine "protected characteristics" under the Equality Act 2010 – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity. This Equalities Statement considers the potential effects of our proposals according to the protected characteristics for which we have data: race, sex and age.

Equality considerations

Direct discrimination

The law in England and Wales applies to all members of the public. Similarly sentencing processes and procedure apply to all offenders. There is therefore no direct discrimination within the meaning of the Equality Act as the law applies equally to all offenders who contravene the law. We do not consider that this results in people being treated less favourably because of protected characteristics.

Indirect discrimination

Making changes to facilitate consolidation is a standard measure which precedes consolidation Bills. As a consolidation must operate on the current law, it is necessary to make certain changes to facilitate it, for example changing language to avoid inconsistency, correcting error or updating existing statutory references.

Our assessment is that the pre-consolidation amendments are not indirectly discriminatory within the meaning of the Equality Act as we believe they do not put people with protected characteristics (race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity) at a particular disadvantage when compared to others who do not share those characteristics.

With limited exceptions, to ensure that no offender is subject to a greater penalty than that available, or subject to a minimum or mandatory sentence that did not apply, at the time of the offence, as mentioned above, the clean sweep means that all offenders convicted after commencement of the Code would be sentenced by applying the sentencing law and procedure in the Code regardless of when the offence was committed.

The majority of those sentenced in the criminal justice system are males. Of 1,183,601 sentences imposed on people in 2018 (excludes companies, public bodies etc.), 787,800 (67%) were imposed on males, 287,383 (24%) on females, and in 108,418 cases (9%) the sex of the offender was unrecorded.

In terms of age, in 2018 20,226 sentences were imposed on those aged 10 to 17; 186,362 sentences were imposed on offenders aged between 18 and 24; and 885,078 sentences were imposed on those aged 25 and over. (In 38 cases the age of a young offender (a juvenile aged under 18) was not known; in 91,897 cases the age of an adult was not known).

The table below sets out the recorded data on ethnicity. The Ministry of Justice records more complete ethnicity information for offenders prosecuted, convicted and sentenced for serious, indictable offences. The data is often incomplete for summary offences dealt with in the magistrates' courts.

Ethnicity	No. of people sentenced in 2018	% of the 1,183,601 sentences imposed on people in 2018
White	119,663	10%
Black	15,133	1%
Asian	8,433	1%
Chinese and other	1,873	0%
Not stated	49,422	4%
N/A	984,380	83%
Mixed ethnicity	4,697	0%

We consider that these proposals are a proportionate means of achieving the legitimate aim, a consolidation of legislation governing sentencing procedure.

Advancing equality of opportunity

We have had regard to this aspect of the equality duty but do not consider any of the pre-consolidation amendments proposed would impact on the advancement of equality of opportunity.

Discrimination arising from disability and duty to make reasonable adjustments

We do not consider that any adjustments are required for disabled people over and above the ones already in place in courts and prisons.

Fostering good relations

We do not consider that there is any significant impact on the achievement of this objective.