

Title: Sentencing (Pre-consolidation Amendments) Bill IA No: MoJ050/2020 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)			
	Date: 16 January 2020			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
	Contact for enquiries: Ollie.Simpson@justice.gov.uk			
Summary: Intervention and Options				RPC Opinion: N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£N/A	N/A	N/A	Not in scope	Not A QRP

What is the problem under consideration? Why is government intervention necessary?

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. The aim of the Law Commission’s proposed Sentencing Code (“the Code”) is to set out sentencing provisions in a clear, simple and logical way, to provide the courts with a point of reference and to allow for updates to sentencing procedural law to be made in a single place. The Code is a consolidation of existing sentencing procedural legislation but for it to work effectively, technical amendments to existing legislation will need to be made by way of a primary law change in the Sentencing (Pre-consolidation Amendments) Bill (“the Bill”). The Bill will facilitate the enactment and operation of the Code. The Code will be brought forward separately from the Bill at a future date.

What are the policy objectives and the intended effects?

The Bill will remove historic layers of sentencing procedural legislation by use of a technical device – the “clean sweep” – which, subject to some limited exceptions needed to protect an offender’s fundamental rights, will allow for all offenders convicted after the Code comes into force to be sentenced according to the Code, irrespective of when they committed the offence. The Bill will also make “pre-consolidation amendments” to legislation that will be consolidated in the Code, for example changing language to avoid inconsistency, correcting error or updating existing statutory references. These changes only have effect for the purposes of the consolidation of sentencing procedural law in the Code and will not come into force unless the Code is enacted.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: do nothing. This would mean no consolidation of the legislation governing sentencing procedure.

Option 1: introduce the Code with pre-consolidation amendments. This will allow the full benefits of the Code to be realised, greatly simplifying sentencing procedural law and allowing for a single set of provisions to govern the sentencing process for offenders convicted after commencement of the Code.

Option 1 is the preferred option as it best meets the policy objectives.

Will the policy be reviewed? No . If applicable, set review date:						
Does implementation go beyond minimum EU requirements?			No			
Are any of these organisations in scope?			Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

FULL ECONOMIC ASSESSMENT

Price Base Year 19/20	PV Base Year 19/20	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

There are no monetised costs associated with the Bill.

Other key non-monetised costs by 'main affected groups'

There will be no non-monetised costs from the Bill itself, the function of which is to amend the law to realise the full benefits of the Code. The costs of developing the Bill and the Code have been absorbed in the Law Commission's budget. There will be some indirect costs of the Code in terms of judicial training, but these are expected to be absorbed within the Judicial College's budget. There may also be small costs associated with providing guidance materials and information to the public online.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

There will be no direct monetised benefits from the Bill itself, although if the full benefits of the Code are realised it will bring much needed clarity to the law, reducing errors, delays and making sentencing hearings more efficient.

Other key non-monetised benefits by 'main affected groups'

There are no direct non-monetised benefits from the Bill itself, the function of which is to amend the law to realise the full benefits of the Code. The Code will have benefits for the judiciary, and for the wider public, in helping to ensure that offenders receive a lawful sentence in the first instance, without the uncertainty and extra time required for appeals.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

We assume the Bill will be passed largely as drafted and that no substantial amendments to the law are made, or proposed during its passage through Parliament which would fundamentally affect the Bill's operation. We assume that the Bill's provisions will come into force directly before the Code does. Most of the Bill will be repealed at that point.

BUSINESS ASSESSMENT

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

Evidence Base (for summary sheets)

A. Background

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 contributes 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. The Government therefore agreed in 2014 that the Law Commission should undertake a project to consolidate sentencing procedural law.
2. The aim of the Law Commission's Sentencing Code Bill ("the Code"), published in November 2018, is to set out the relevant sentencing provisions in a clear, simple and logical way, to provide the courts with a single point of reference for procedural provisions and to allow for all updates to sentencing procedure to be made in a single place. Once enacted, the Code will bring much needed clarity to the law, reducing errors, delays and making sentencing hearings more efficient.
3. To achieve the benefits of the Code, and for it to operate as intended, there are some, mainly technical, changes required to existing legislation to facilitate the consolidation and to remove historic, and now redundant, layers of legislation. These are contained within the Sentencing (Pre-consolidation Amendments) Bill ("the Bill").
4. The Bill effects two main objectives: (1) to remove historic layers of legislation by use of a technical device – the "clean sweep"; and (2) to make changes to the existing law of sentencing procedure in order to facilitate the consolidation of sentencing procedural law in the Code. 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. Removing historic layers of legislation will have the effect of repealing partially saved provisions concerning sentencing procedure which are no longer needed, thereby 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.
5. Once the Code is enacted the Bill will have served its purpose and will be largely repealed.

B. Policy Rationale & Objectives

Economic Rationale

6. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).
7. The primary rationale for intervention in this case is efficiency. Having to apply multiple, historic layers of sentencing procedural law results in inefficiencies as sentencers and legal advisers need to spend time navigating several different pieces of legislation, as well as trying to establish clearly which law applied when the offence took place. When errors are made, this results in further resources being deployed to rectify the mistake, resulting either in changes made via the "slip rule", or further court hearings up to and including the Court of Appeal. This results in an economic cost to the criminal justice system, and impacts on defendants, as well as victims and their families, and a wider loss of confidence in the system.
8. Removing historic layers of legislation and streamlining the law will pave the way to consolidation in the Code which will mean that sentencers and legal advisers have a clear point of reference for sentencing procedural law, resulting in less time spent identifying legislative provisions, and less time and resource spent rectifying errors.

Policy objective

9. The policy objective of this consolidation exercise is to set out the relevant sentencing provisions in a clear, simple and logical way, to provide the courts with a point of reference for procedural provisions, which a court would need to rely upon during the sentencing process, and to allow for all updates to sentencing procedure to be made in a single place.
10. The objective of the Bill is to remove historic layers of legislation, which will have the effect of repealing partially saved provisions concerning sentencing procedure which are no longer needed – i.e. removing old transitional legislation which applies only to offences committed before a certain date. This will greatly simplify the law and allow for a single set of provisions to govern the sentencing process for offenders convicted after commencement of the Code, even where the offences were committed before its commencement.
11. The Bill will also make changes to existing sentencing law to facilitate the consolidation, for example changing language to avoid inconsistency, correcting errors or updating existing statutory references.

C. Affected Stakeholder Groups, Organisations and Sectors

12. The groups most affected by the introduction of the Code are the judiciary and legal professionals, who will benefit from a single, consolidated source of sentencing procedural law, as well as a streamlined and clear framework.
13. However, they will not need to understand or be aware of the operation of the clean sweep or the pre-consolidation amendments in the Bill. These will take effect at the point of commencement of the Code and will then have served their purpose.

D. Description of Options Considered

14. To meet the policy objectives, two options have been considered:
 - a) Option 0: **Do Nothing**. This would mean no consolidation of the legislation governing sentencing procedure, meaning that inefficiencies in the sentencing process will remain as sentencers and legal advisers spend time navigating several different pieces of legislation, as well as trying to establish clearly which law applied when the offence took place.
 - b) Option 1: **Introduce the Code, with pre-consolidation amendments**. The Code is a consolidation of the law on sentencing procedure which aims to ensure that the law in this area is readily comprehensible and operates within a clear framework as efficiently as possible. It will assist judges and legal professionals in identifying and applying the law, reduce the risk of error, appeals and delay in the sentencing process, and enhance the transparency of the process for the general public.
15. Option 1 is the preferred option as it best meets the policy objectives.

E. Cost and Benefit Analysis

16. This Impact Assessment (IA) follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
17. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
18. The costs and benefits of each proposal are compared to option 0, the counterfactual or “do nothing” scenario, where the current level of the JIDR remains unchanged. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present social value (NPSV).
19. There are no monetised impacts associated with the provisions in the Bill as a consolidation of sentencing procedural law – in practice, the Code – needs to be enacted separately for the clean sweep and pre-consolidation amendments in the Bill to come into force.

Option 1: Introduce the Sentencing Code, with pre-consolidation amendments

Costs of Option 1

Monetised costs

20. There are no monetised costs associated with the Bill itself.

Non-monetised costs

21. The costs of developing the Bill and the Code have been absorbed in the Law Commission's budget. There will be some indirect costs of the Code in terms of judicial training, but these are expected to be absorbed within the Judicial College's budget. There may also be small costs associated with providing guidance materials and information to the public online.

Benefits of Option 1

Monetised benefits

22. There are no direct monetised benefits associated with the Bill.

Non-monetised benefits

23. Indirectly, there will be efficiencies associated with the introduction of the Code which will bring much needed clarity to the law, reducing errors, delays and making sentencing hearings more efficient. The Code will improve certainty, transparency and confidence in the criminal justice system, reducing the number of unlawful sentences imposed as a result of complexity in the legal framework.

F. Risks & Assumptions

24. We assume that the clean sweep and pre-consolidation amendments will operate momentarily ahead of consolidation and then most of the pre-consolidation amendments will be repealed once the consolidation has taken place.

25. We assume that judges and practitioners will not need to consider the operation of the clean sweep beyond understanding that it means that the Code represents the source of sentencing procedural law, and that therefore no specialist training costs will be incurred.

26. We also assume that all necessary exemptions to the clean sweep have been identified, and that they will be encompassed either by Schedule 1 to the Bill, any regulations made for the purpose by the Secretary of State, or by the provision for maximum penalties in clause 1(4).

G. Implementation & Monitoring

27. The powers in the Bill will come into force upon Royal Assent, allowing the Secretary of State to make provision for further exemptions to the clean sweep and to make further pre-consolidation amendments, would they be needed, by the procedure for affirmative statutory instruments.

28. A legal fiction is created whereby the clean sweep and pre-consolidation amendments will come into effect momentarily before the commencement of the Code.

Evaluation

29. Once the Sentencing Code Bill is enacted the Sentencing (Pre-consolidation Amendments) Bill will have served its core purpose and will largely be repealed. It will continue to exist only so far as the savings in it affect people convicted before the date on which the Code comes into force, or where it makes corrections in other legislation.

H. Wider Impacts

30. In light of our obligations under the public sector equality duty in section 149 of the Equality Act 2010, an Equalities Statement is also published alongside this Impact Assessment. This considers the potential effects of the proposals according to the protected characteristics for which we have data: age, race and sex.