



**Law
Commission**
Reforming the law



THE SENTENCING CODE:

Summary of Report

SUMMARY

WHY IS SENTENCING IMPORTANT?

One of the primary functions of a criminal court is sentencing those who have been convicted of, or pleaded guilty to, a criminal offence. Every year roughly 1.2 million people are sentenced for criminal offences in England and Wales. Sentences in criminal cases might include imprisonment, fines or community orders.

Sentencing serves multiple purposes, not just punishing offenders. It protects the public and sends an important wider message that particular behaviour is not acceptable.

The importance of an efficient sentencing system is obvious. It benefits offenders, victims and the public. Where there are errors or delay in sentencing it impacts upon public confidence in the criminal justice system. When the sentencing process is not working well it results in other cases being delayed, witnesses and victims having to wait around at court and there is a drain on scarce public funds.

It is equally important that the law governing how sentences are imposed is transparent and accessible. It is fundamental to the rule of the law that the law of sentencing is sufficiently clear to enable an individual to understand the potential consequences of their future actions, and the penalty to which they may be liable.

THE CURRENT STATE OF SENTENCING LAW

The current law of sentencing is inefficient and lacks transparency. The law is incredibly complex and difficult to understand even for experienced judges and lawyers.

When we compiled all of the current law of sentencing we discovered that it was more than 1300 pages long.

This volume of legislation creates practical difficulties in finding, understanding and navigating the law. The problems are made worse by the fact that the law has no structure and cannot be found in a single place. Our compilation of the law contained provisions from Acts as varied as the Justices of the Peace Act 1361, the Company Directors Disqualification Act 1986 and the Dangerous Dogs Act 1991.

Even our lengthy compilation of the law does not convey the true complexity and inaccessibility of the law. That 1300 pages was only the law the court would have to apply if they were sentencing an offence committed today.

In cases involving offences committed a number of years ago, the courts must also apply historic versions of sentencing law. This historic legislation is often technical and complex and its effect and operation difficult to decipher. Sometimes even the existence of historic versions of the law is not readily apparent.

“I rant in my book about the unnecessary complexity of criminal sentencing ... This Sentencing Code, drawing all the law into a single document, is absolutely vital to making sentencing comprehensible.”

The Secret Barrister -  [@BarristerSecret](https://twitter.com/BarristerSecret)

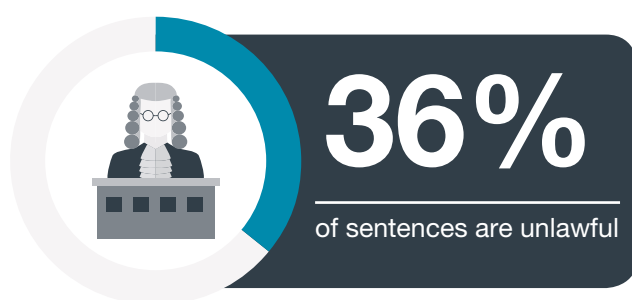
“The present state of sentencing law is a disgrace to our jurisprudence. It is totally unacceptable to have so much complexity and uncertainty that result from layer upon layer of statutes that have been brought into effect in a piecemeal fashion or have never been brought into effect at all”

HHJ Andrew Goymer,
on behalf of the Council of HM Circuit Judges

THE PROBLEMS CAUSED BY THE CURRENT LAW OF SENTENCING

The complexity in the current law leads to significant rates of error and causes delay.

An analysis conducted in 2012 of 262 randomly selected cases in the Court of Appeal (Criminal Division) demonstrated that the complexity of the legislation is resulting in an extraordinary number of sentences that have been wrongfully passed. Of the sample of 262 cases, 36% involved unlawful sentences which the court should not have made.



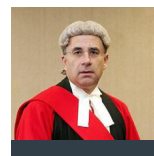
The result of these errors can be serious. It could mean that a minimum sentence is not passed on an offender to whom it applies, or that an offender is subject to a lengthy prison sentence which is not available for their offence.

Even putting aside the human cost of such errors, correcting these unlawful sentences costs money. It requires additional court hearings which also

means delays to other hearings. In some cases, the errors may not be noticed at all and therefore go uncorrected.

Further, the problems with the current law do not merely increase the risk of error. The difficulty of interpreting and applying the law means sentencing hearings are unnecessarily lengthy. This itself causes undue cost and delay in sentencing hearings themselves, and has a knock-on effect on other hearings.

The effect of this is particularly keenly felt in a criminal justice system which is increasingly having to do more with fewer resources. The current delay between an offence being charged and it being disposed of in the Crown Court is 204 days. The average waiting time for an appeal against sentence to the Court of Appeal is 5.5 months.



“The complexity of sentencing legislation is such that errors [in sentencing] are inevitably becoming more frequent as judges and advocates struggle with (and take time to resolve) the multiplicity of disposals and the statutory requirements for each.”

Sir Brian Leveson, Head of Criminal Justice
in *R v Thompson* [2018] EWCA Crim 639, [2018] 2 Cr. App. R. (S.) 19

THE AIM OF THIS PROJECT – TO CREATE A NEW AND EFFICIENT SENTENCING CODE

The purpose of this project is to create a single statute which contains all of the law on sentencing procedure. By bringing together the existing legislation into a single “Sentencing Code”, with a clear and logical structure the law will be made more accessible for the public, the judiciary and practitioners. In doing so it will also ensure the law is framed in clearer, simpler and more consistent language.

The Sentencing Code will not, however, remove any sentencing disposals or introduce new ones. It will not subject the offender to a harsher penalty than was available at the time of the offence. It will not replace sentencing guidelines or the work of the Sentencing Council.

A new Sentencing Code has three key benefits

1

It makes the law simpler and easier to use

2

It increases public confidence in the criminal justice system

3

It increases the efficiency of the sentencing process

BENEFIT ONE: Making the law simpler and easier to use

The introduction of the Sentencing Code will provide a clear and coherent structure to the law governing sentencing procedure, as well as re-stating the law in a more certain and accessible manner. It will simplify the task of a sentencing judge, making it easier to locate and apply their sentencing powers and comply with duties.

It will modernise the language used in the law, removing old and outdated terminology and adopting gender neutral language. It will also allow for provisions to be streamlined and simplified to increase their accessibility and provide greater consistency to the law.

Providing a single solution, irrespective of the date of the offence

The new Sentencing Code will substantially simplify the law of sentencing by removing the need to make reference to historic versions of sentencing legislation when dealing with older offences.

It will instead apply the current law to all offenders whose convictions occur after the Sentencing Code has come into force (subject to limited exceptions necessary to respect the fundamental rights of offenders). We refer to this change as the “clean sweep”.

No longer will courts have to spend time trying to find out if historic legislation applies, and if it does, what its effect is. For all offenders convicted after the commencement of the Sentencing Code the courts will, need to have reference only to the Sentencing Code itself.

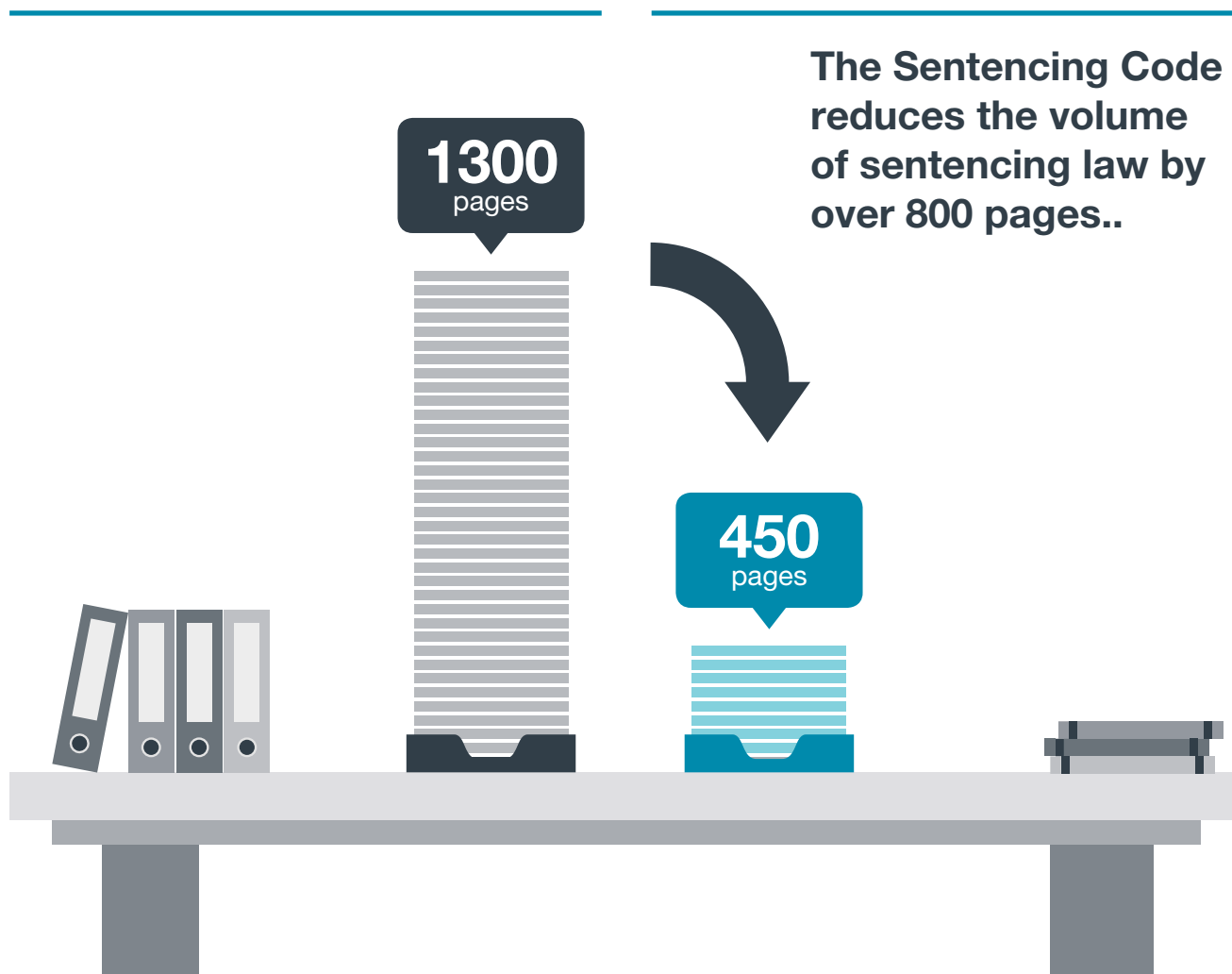
Where exceptions to the clean sweep apply, the Sentencing Code will set out those historic provisions in the Code itself, making clear to which cases they apply. This will significantly reduce the risk of mistakes. The Code will also be a much shorter document than all the law it replaces.

The Sentencing Code has reduced the 1300 pages in our compilation of the current law to only 450 pages.

BENEFIT TWO: Public confidence in the law

Public confidence is harmed when sentencing decisions are routinely unlawful, unduly lenient or otherwise inappropriate because of the incomprehensible nature of the current law. The Sentencing Code would help to reduce these occurrences and thus improve public confidence in the system.

Similarly, public confidence is diminished when the process of sentencing, and the law applicable to it, is inaccessible and incomprehensible. The Sentencing Code will greatly improve the transparency of the law in this area.



“The simplification of the law on sentencing procedure, in terms of structure, language

and source, will be of great benefit to practitioners and will make sentencing more comprehensible to members of the public, children, young persons, their parents, victims and witnesses.”

The Crown Prosecution Service

BENEFIT THREE: Improving efficiency

The Sentencing Code will make the law governing sentencing procedure clearer, easier to navigate, and simpler to apply. This will reduce the risk of error, and therefore the number of appeals necessary to correct such errors. It will also help to reduce the amount of court time necessary for sentencing. This will, in turn, free up court resource for other hearings and help reduce delays currently present in the system.

The current best estimate of the net financial benefit of the enactment of the Sentencing Code is a saving of £256 million over ten years.

WHAT HAPPENS NEXT?

The Law Commission published its Report and the draft Sentencing Code in November 2018. Both documents can be found at www.lawcom.gov.uk. It is now for the Government to decide whether to enact the Code.

Recommendation

The Law Commission has made an official recommendation that the draft Sentencing Code Bill and draft Sentencing (Pre-Consolidation Amendments) Bill be enacted.

Enactment

Given the intense pressures on parliamentary time, the Sentencing Code has been drafted as a consolidation Bill. This is a term used to describe Bills which combine a number of existing Acts of Parliament on the same subject into a single Act so as to improve the clarity and certainty of the law without significantly altering its substance or effect.

Drafting the Sentencing Code as a consolidation Bill allows it to take advantage of the special procedure for such Bills. This procedure takes up minimal time in the debating chambers of the Houses of Parliament, with parliamentary scrutiny instead provided by a Joint Committee of the two Houses. As a consolidation re-enacts law already in force, parliament has already debated the substance of the provisions and therefore this reduced scrutiny is appropriate.

However, before the Sentencing Code can be enacted as a consolidation Bill there is a need for a small number of clauses to be passed in a suitable Public Bill. These clauses are needed to give effect to the “clean sweep” of historic sentencing law; and to make a number of technical legal amendments to the law that are required to enable the consolidation to proceed.

The amendments these clauses make are entirely uncontroversial and have been heavily consulted on. The clean sweep change received unanimous support from consultees, including academics, judges and all strands of the legal profession. The technical changes made are a standard device used in consolidation Bills and are limited to changes which facilitate, or are otherwise desirable in connection with, the consolidation.

Sentencing Council “The Council strongly supports the Sentencing Code and is confident that it will achieve its aims of providing a sentencing procedure which is clear, accessible and coherent. The Council agrees that the Code will provide benefits for all users of the criminal justice system and for the wider public.”

These clauses have been drafted as a stand-alone Bill which accompanies this Report – the Sentencing (Pre-Consolidation Amendments) Bill – but could also be incorporated into any appropriate Public Bill. It is possible they could be introduced through the special parliamentary procedure for Law Commission Bills.

“The Sentencing Code would be one of those rare pieces of law reform that would clearly deliver great benefit.”

Dr Jonathan Bild, University of Cambridge

The future

Many of the problems with the current law arise from the way in which it has been amended. The Sentencing Code is drafted as, and is intended to be, a “living” document which will be amended to reflect changing circumstances and new Government policy decisions.

It is our hope that when future changes are made to the law relating to sentencing procedure, they are made by amendment to the Sentencing Code. Sentencing law should continue to be found in the Sentencing Code, not in separate enactments. Similarly, future amendments to the law should be made in line with the “clean sweep” principle. They

should not create further historic versions of the law to which courts need to have reference. They should come into force for all convictions or after their commencement, subject to limited exceptions.

Such an approach will ensure that the clarity, simplicity and transparency of the law of sentencing procedure brought about by the Sentencing Code will remain, along with the attendant financial benefits.

**I find it difficult to see a
“downside” to [the proposed
Sentencing Code] and I
look forward to the eventual
implementation”**

**Michael Duck QC,
Leader of the Midlands Circuit**

Further recommendations

Beyond the core recommendation of this report – to enact the draft Sentencing Code Bill and draft Sentencing (Pre-Consolidation Amendments) Bill – this Report also makes a number of further recommendations for the reform of sentencing law. These further recommendations for reform have not been reflected in either of the draft Bills and both can be enacted and implemented without the accompanying reforms. The recommendations can be found in the full version of the Report.

The full Report, and draft Sentencing Code and draft Sentencing (Pre-Consolidation) Amendments Bill can be found at www.lawcom.gov.uk

