

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Reading Committee

SENTENCING (PRE-CONSOLIDATION  
AMENDMENTS) BILL [*LORDS*]

*Tuesday 17 March 2020*

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Saturday 21 March 2020**

© Parliamentary Copyright House of Commons 2020

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:***Chair:* DAME ROSIE WINTERTONBaillie, Siobhan (*Stroud*) (Con)† Bowie, Andrew (*West Aberdeenshire and Kincardine*)  
(Con)† Charalambous, Bambos (*Enfield, Southgate*) (Lab)† Courts, Robert (*Witney*) (Con)† Duffield, Rosie (*Canterbury*) (Lab)† Eagle, Maria (*Garston and Halewood*) (Lab)† Eshalomi, Florence (*Vauxhall*) (Lab/Co-op)† Gibson, Peter (*Darlington*) (Con)† Griffith, Andrew (*Arundel and South Downs*) (Con)Hopkins, Rachel (*Luton South*) (Lab)Hussain, Imran (*Bradford East*) (Lab)† Mayhew, Jerome (*Broadland*) (Con)† Philp, Chris (*Parliamentary Under-Secretary of State  
for Justice*)† Pursglove, Tom (*Corby*) (Con)† Randall, Tom (*Gedling*) (Con)† Slaughter, Andy (*Hammersmith*) (Lab)† Wood, Mike (*Dudley South*) (Con)Liam Laurence Smyth, *Committee Clerk*† **attended the Committee**

## Second Reading Committee

Tuesday 17 March 2020

[DAME ROSIE WINTERTON *in the Chair*]

### Sentencing (Pre-consolidation Amendments) Bill [Lords]

2 pm

**The Chair:** Before we begin, I will outline the procedure in Second Reading Committee, as it is an uncommon Committee. This Committee is charged with recommending to the House whether the Sentencing (Pre-consolidation Amendments) [Lords] Bill ought or ought not to be read a Second time. The debate in this Committee replaces a Second Reading debate in the House. After this Committee has made its recommendation, the Question on Second Reading in the House will be decided without further debate. The rules governing a Second Reading debate in the House apply in Second Reading Committees, so that in particular Members may speak more than once only by leave of the Committee, or through interventions. I call the Minister to move the motion.

**The Parliamentary Under-Secretary of State for Justice (Chris Philp):** I beg to move,

That the Committee recommends that the Sentencing (Pre-consolidation Amendments) Bill [Lords] ought to be read a Second time.

As always, Dame Rosie, it is a great pleasure to serve under your chairmanship. The purpose of the Bill is to make amendments to existing sentencing legislation in order to facilitate the enactment of the Law Commission's Sentencing Bill, which will consolidate the law governing sentencing procedure in England and Wales into a single Sentencing Code. Although the may be technical in nature, at its heart this legislation is about legal certainty. Hon. Members will agree that the law must be clear and accessible; unfortunately, it has become difficult to say that with any sincerity about the statute governing sentencing procedure. It is well known and understood in the legal community that this body of law has grown incredibly complex and disparate over the years, even for the most experienced practitioners. Sentencing legislation now runs to over 1,300 pages; judges and barristers alike say it is too complicated and needs to be consolidated. Indeed, it is noticeable in the Court of Appeal that quite a large number of appeals against sentences are successful not on the ground that the sentence is too lenient or too harsh, but on the ground that an error in law has been made, owing, we think, to the complexity of sentencing legislation. This Bill and the sentencing code that will follow it are designed to correct that uncertainty.

The sentencing code will bring together all the procedural provisions on which courts need to rely during the sentencing process, including those detailing the general legislative principles of sentencing and the types of sentence a sentencing court may impose. By bringing these provisions into one place and providing them with a coherent structure, the code will assist judges and legal professionals in identifying and applying sentencing procedural law. That will help to reduce the risk of

error, appeals and delay in the sentencing process and improve the transparency of the process for the general public.

I cannot stress enough the significance of this to practitioners. The Law Commission was asked in 2014 to undertake a review, and the sentencing code, which has just been introduced in the House of Lords and which directly follows this Bill, was developed by the commission in the following years. The commission published its report in November 2018; it included a draft of this Bill and the separate Sentencing Bill, which will create the sentencing code. The main recommendation in the report was to enact both pieces of legislation, but before the Sentencing Bill can be enacted, technical changes to existing legislation are needed to facilitate the consolidation of sentencing procedure, and this Bill will make the necessary changes.

**Robert Courts (Witney) (Con):** I declare an interest: I am one of those barristers who used to practise in the criminal courts and use the sentencing provisions in the statutes the Ministers refers to. I want to put it on the record that this legislation is long overdue and very welcome to judges, barristers and practitioners alike, and I look forward to scrutinising the detail.

**Chris Philp:** I am delighted that my hon. Friend feels that way. As we all know, he has a long and distinguished track record practising in the criminal courts, so he has direct experience of the current complexity. As he says, judges, academics, barristers and many others support the measures in the Bill before the Committee.

**Andy Slaughter (Hammersmith) (Lab):** It is 20 years since I practised criminal law, but it was pretty confusing even then. I am glad it is was not just me who did not understand. I did not realise the scale of the problem until I read in the Library briefing that the survey conducted by the Law Commission found that sentences in 36% of its sample of cases were unlawful, so I agree that this measure is long overdue. Have the Government considered publishing what they regard as common mistakes made? If that is the level of incorrect sentencing that has been going on, there must be many more wrongly decided cases out there.

**Chris Philp:** Like my hon. Friend the Member for Witney, the hon. Member for Hammersmith has had a long and distinguished career as a practitioner of of the law, and we are always interested in what he has to say. The idea of identifying common mistakes and drawing them to the judiciary's attention is a very good one. Perhaps my officials can work with the Judicial College and the Judicial Office to see whether a list of common errors could be compiled and circulated to the judiciary. A couple of studies have been done; the hon. Gentleman referred to one of them, another was done in 2012 looking at Court of Appeal overturns of unlawful sentences, and another by the Criminal Appeal Office in 2018. I am sure we could draw on that work to identify whether there are common themes, and if there are, the idea of drawing them to judges' attention is an extremely good one. We will investigate the hon. Gentleman's idea with a view to taking it further.

There are two substantive clauses in the Bill because the Bill does two things. First, clause 1 provides a “clean sweep”. It takes the existing sentencing procedures and ensures that sentences passed are in accordance with the law applicable at the time of the offence. It is not uncommon for sentencing courts to deal with offenders who committed offences several years previously, when a different sentencing regime applied. There are many examples of when this happens, and if the sentencing provisions have changed between the time of the offence and the time of sentencing, it is not immediately clear which provisions apply. As we have heard from two practitioners on this Committee, it is no wonder that barristers and judges are keen on change.

The so-called clean sweep mechanism provided in clause 1 attempts to remedy the anomaly by removing the need for the sentencing court to identify and apply historical versions of sentencing law. Instead it will apply the sentencing law prevailing at the time of sentence rather than at the time of offence. As a result, when an offender is convicted after the start of the new sentencing code, sentencing procedural law as enacted in the code will apply, regardless of when the offence was committed. However, from a common law and human rights point of view—an article 7 point of view—it is important to provide exceptions, to ensure that offenders sentenced under the sentencing code are not subject to a harsher penalty than they would have been had the sentencing law at the time of the offence applied. Although current sentencing law will apply, there is an exception if the minimum sentence or the maximum sentence has increased, to make sure that a harsher penalty is not applied. That respects an important common law principle, as well as an article 7 human right.

**Maria Eagle** (Garston and Halewood) (Lab): Of course, when there is a moving target or a snap change is made, as the clean sweep does—it says, “Stop that. We start here.”—exceptions have to be made. However, we already have 12 categories of exception set out in the Bill. Will the Minister undertake to ensure that we do not have 50 or 100 categories by the time we reach the end of this process, thus building in complexity again? I understand the importance of the points he makes about the Human Rights Act and not doing rough justice under the common law, but if our aim is to put things right, we should keep it simple.

**Chris Philp**: The hon. Lady makes a good point. The aim is to simplify, yet we have these exceptions. A balance has to be struck. We cannot, as responsible legislators, do anything that violates the long-established common law right she refers to, or breaches human rights. We want to keep it as simple as possible. It is worth bearing in mind that sentencing law sets generally the maximum and in some cases the minimum sentences, but it is always up to the independent judiciary to decide exactly what sentence they hand down. I take the hon. Lady’s point about the exceptions, though. I hope we have enunciated those comprehensively, particularly in schedule 1 to the Bill, and that we will not have to add to them as rightly warns against.

The second substantive provision, clause 2, provides for various pre-consolidation amendments, which are listed in schedule 2. They are almost entirely highly technical in nature. They are explained in detail in

the explanatory notes, but essentially they tidy up and correct small historical anomalies before the sentencing code is enacted. I will give one example to illustrate: references in schedule 9 to the Criminal Justice Act 2003 to now repealed petty sessions districts in Northern Ireland are replaced with references to their replacements, administrative court divisions. That is the sort of technical amendment we are making via schedule 2. There is a list in the explanatory notes that we can examine in more detail during the Committee stage of the Bill, if required.

Let me be clear: everything we are doing, both in this Bill and in the sentencing code that will follow, is essentially about clarifying and simplifying. In none of these provisions are we changing substantive sentencing law. It is a simplification exercise. Nothing is being changed in the way that sentencing policy operates. It is simply a clarification exercise, which is supported by the judiciary, barristers and academics. It has been scrutinised at some length in the other place, which has among its Members some very distinguished former judges, and it is the culmination of four or five years’ work by the Law Commission. I thank the commission for the extraordinary work it has done, especially the outgoing criminal law commissioner, David Ormerod, who led the work.

The Bill has one simple purpose: to pave the way for the sentencing code. That code will make the sentencing process easier, quicker and more transparent. The Sentencing Bill, which creates the code, was introduced in the House of Lords on 5 March under the special procedure reserved for Law Commission consolidation Bills. I commend the Bill to the Committee as an important and, some have said, long overdue step to simplify a very complicated area of law.

**Bambos Charalambous** (Enfield, Southgate) (Lab): It is a pleasure to serve under your chairmanship, Dame Rosie. As the Minister set out, this is a largely technical and, as such, uncontroversial Bill to bring to fruition the Law Commission’s four years long project on consolidating sentencing legislation. The Opposition fully support the Government’s intention to conclude the commission’s work and will not oppose the motion. I too take this opportunity to thank the Law Commission for its work drafting the sentencing code, and the many others who fed into the process through the consultation and outreach work.

We all agree that sentencing legislation is overlong, complex and obscure, even to experienced legal professional and judges. It is clear that urgent change is needed. As the Law Commission pointed out, current sentencing legislation, with its sources in numerous places in legislation, runs to well over 1,300 pages and creates immense difficulties in understanding and access the relevant law. It is also widely disparate in the way in which it can be amended, as the Minister described. Some changes can be made by amending previous enactments, others by introducing their own enactments, and there are even some that modify the effects of other enactments without actually amending the wording of the provisions. The way these amendments are brought into force is just as inconsistent.

The Law Commission also highlighted the number of times that Parliament has amended sentencing legislation and the erratic way in which it has done it, which just compounds existing problems with the complexity of

[*Bambos Charalambous*]

sentencing legislation. As the volume of changes and the pace at which they are made increase, it becomes ever more difficult first to locate the law and then to fully understand it. In fact, I think the only people who oppose the Bill are law librarians, who have the knack of identifying sources of legislation in obscure places.

The result of all this can quite simply be described as a near-dysfunctional mess that is a considerable problem for our legal system. It puts burdens on lawyers and judges, results in wrong sentencing decisions that subsequently need to be appealed, and requires additional court hearings which have a knock-on effect of delaying other hearings. That clogs up a system already straining under nearly a decade of cuts to courts and legal services.

Although those from a legal background who have wrestled with sentencing legislation and its many complexities will probably welcome these long overdue measures, the sentencing code offers substantially greater benefits than just making the lives of lawyers easier—although that is also to be commended. Consolidating legislation in a sentencing code could give the public confidence in sentencing procedure. We accept that it is not possible for the legal system to be infallible all the time; that is why the appeals process exists. But when it is found that more than one in three of the cases assessed by the Law Commission in the criminal division of the Court of Appeal in 2012 involved sentences that the court simply should not have made, it is inevitable that public confidence takes a knock.

The public must feel secure in the belief that sentencing decisions are the correct decisions as often as possible. By addressing the immense complexity and inconsistencies with sentencing legislation, the sentencing code can give them that confidence, but if the public are to properly have confidence in sentencing, they must also have confidence in those handing down the sentences, so the Government must not repeat their reckless encouragement of partisan attacks on our independent judiciary.

Although we accept the need for the sentencing code set out by the Law Commission and we support the Government in bringing it to this House, we are concerned about the time that it has taken to reach us—a point raised by the aptly named Lord Judge, a former Lord Chief Justice who expressed disappointment on its slow

progress. The Law Commission published its report on the sentencing code project in November 2018 and the draft Bills that they included are innocuous and uncontroversial pieces of legislation. As a consolidating measure, procedures available allow this Bill to be heard in a Second Reading Committee, as we are doing today, with time not needing to be made available in the Main Chamber. Will the Minister tell us what caused the delay in enacting the Law Commission's sentencing code? How many offenders since November 2018 have handed sentences that were unlawful, too short or too long as a result of the complexities of the current sentencing legislation?

Broadly speaking, however, we support the Government in bringing forward both this Bill and the Sentencing Bill that will fully enact the sentencing code, which is awaiting its Second Reading in the other place. We also support any measures that will simplify our sentencing system and will benefit the legal process, legal professionals, the judiciary, and ultimately, the public. We support this Bill being given a Second Reading.

**Chris Philp:** With the permission of the Committee, Dame Rosie, I thank the hon. Member for Enfield, Southgate for his considered support for the Bill. It is very welcome indeed, and I am glad that we can work together in a spirit of co-operation to get it through the House. He mentioned a delay. He is right that the Law Commission report was published in November 2018. In fairness to my predecessors, I should say that 2018 was a rather eventful year in Parliament, with quite a lot going on, including a change of Prime Minister and a general election, along with various other things. As a result, matters progressed through Parliament a little more slowly than they might otherwise have done. The Bill was introduced in May 2019, carried over and then had to be reintroduced after Dissolution. It has suffered from the political turbulence of the past 12 months, but we are here now and want to get it passed as quickly as possible. I am grateful for the Opposition's support for the Bill and look forward to working with them to get it on to the statute book quickly.

*Question put and agreed to.*

2.20 pm

*Committee rose.*



