

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT SENTENCING (PRE-CONSOLIDATION  
AMENDMENTS) ACT 2020 (EXCEPTION)  
REGULATIONS 2020

*Wednesday 9 September 2020*

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**Sunday 13 September 2020**

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**The Committee consisted of the following Members:**

*Chair:* DAVID MUNDELL

† Bristow, Paul ( <i>Peterborough</i> ) (Con)	† Kruger, Danny ( <i>Devizes</i> ) (Con)
Burton, Richard ( <i>Leeds East</i> ) (Lab)	† Miller, Mrs Maria ( <i>Basingstoke</i> ) (Con)
Butler, Dawn ( <i>Brent Central</i> ) (Lab)	Moore, Damien ( <i>Southport</i> ) (Con)
Cadbury, Ruth ( <i>Brentford and Isleworth</i> ) (Lab)	† O'Brien, Neil ( <i>Harborough</i> ) (Con)
† Charalambous, Bambos ( <i>Enfield, Southgate</i> ) (Lab)	† Philp, Chris ( <i>Parliamentary Under-Secretary of State for the Home Department</i> )
† Cunningham, Alex ( <i>Stockton North</i> ) (Lab)	† Pursglove, Tom ( <i>Corby</i> ) (Con)
† Grundy, James ( <i>Leigh</i> ) (Con)	† Trott, Laura ( <i>Sevenoaks</i> ) (Con)
Hamilton, Fabian ( <i>Leeds North East</i> ) (Lab)	Bradley Albrow, <i>Committee Clerk</i>
Harman, Ms Harriet ( <i>Camberwell and Peckham</i> ) (Lab)	† <b>attended the Committee</b>
Jones, Fay ( <i>Brecon and Radnorshire</i> ) (Con)	

## Eighth Delegated Legislation Committee

Wednesday 9 September 2020

[DAVID MUNDELL *in the Chair*]

### Draft Sentencing (Pre-consolidation Amendments) Act 2020 (Exception) Regulations 2020

2.30 pm

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

That the Committee has considered the Draft Sentencing (Pre-consolidation Amendments) Act 2020 (Exception) Regulations 2020.

It is a great pleasure to serve under your chairmanship, Mr Mundell; I think it is for the first time, and I hope that it will be the first of many such happy occasions.

I will be extremely brief. The purpose of this instrument is very straightforward. Colleagues will recall that a few months ago we passed the Sentencing (Pre-consolidation Amendments) Act 2020, which is a precursor to the introduction of a sentencing code. One of the things that Act does is a so-called clean sweep, which consolidates all previous sentencing legislation into a single code, for the ease and convenience of both the judiciary and the public.

However, certain important exceptions to that clean sweep have been made to ensure that no offender who committed an offence previously—that is, before the consolidation—is exposed to a more serious or heavier penalty than would have been the case without the consolidation. That is just a matter of fundamental natural justice. A change has been made recently—in April—to the victim surcharge, which has been increased by 5%. As a matter of fairness, any offence committed before the change to the victim surcharge should be charged at the old rate. It would be unfair if someone was charged at the higher rate even though the offence had been committed previously.

The purpose of the instrument the Committee is considering is to make an exception to the clean sweep, adding to the other exceptions that we put in the Act, to make sure that, for offences committed before the change made to the victim surcharge in April, the old surcharge applies and not the new one. Colleagues, including the shadow Minister, the hon. Member for Stockton North, will recall that we debated this provision at some length in Committee, and it is doing exactly what we said we would do to ensure that fairness applies. On that basis, I commend the regulations to the Committee.

2.32 pm

**Alex Cunningham** (Stockton North) (Lab): It is also my pleasure to serve under you for the first time, Mr Mundell. I hope I can make it a happy occasion by being relatively brief, although I have a number of points to make and a couple of challenges for the Minister.

It was, of course, a Labour Government that introduced victim surcharges, in 2007, to ensure that all offenders bore some responsibility towards the cost of supporting the victims of their crimes. It was also a Labour Government that enshrined into UK law the rights and freedoms contained in the United Nations convention on human rights, with the introduction of the Human Rights Act 1998—a feat that Labour Members are enormously and rightly proud of.

Article 7 of the Human Rights Act specifically protects individuals from being punished for something that was not against the law at the time the offender committed the act. It also means that if someone is found guilty of an offence, the penalty cannot be more severe than it was at the time the crime was committed. That is a critical safeguard for the rights of defendants and is crucial in upholding natural justice and public confidence in our justice system. So it is surely clear why today's measure, which ensures that offenders do not pay higher victim surcharges than would have been applicable at the time of their offences, is in line with article 7, and it has the support of Labour Members.

Safeguarding these protections is always important, but never more so than now. The court backlog continues to grow at an alarming rate, because of court closures and the impact of the pandemic. Unconvicted people are spending longer and longer in prison before trial. Just this week, a statutory instrument extended the custody time limit prior to trial by a third, from six months to eight months. I am grateful to the Minister for briefing me on that particular SI last Friday evening. Sadly, however, the Government tried to slip that major change under the radar, by opting to publish it as a negative SI. Given that the instrument can lead to the incarceration of people without trial for an extended period, the Government ought to have announced their intentions in the form of a statement so that these issues can be debated.

We already know that some members of the judiciary are far from happy with the Government's proposals and, worse still, do not think they will help solve the crisis in our courts and the administration of justice. Ruling just yesterday, His Honour Judge Raynor, in being asked to extend the custody period of a person who would not be subject to the new arrangements, discussed the issue. I will quote from that judgment, as it illustrates the anxieties of judges and others about the Government's shortcomings in administering justice, which is highly relevant to the SI before us this afternoon.

His Honour Judge Raynor discussed the relevant issues and responses, including new legislation:

"What is the immediate impact of the new legislation expected to come into force on 28th September 2020, which will, for a 9-month period, extend the custody time limit from 182 days to 238 days? The extension will apply to new CTLs that begin during the temporary 9 month period for which time the amended Regulations will apply."

He accepted that the new regulations did not apply to the case he was hearing, but he went on:

"Mr T has been remanded in custody for 321 days. He is innocent until proven guilty. That is at the forefront of my mind. He has been held for 139 days beyond the CTL which applies to him and 83 days beyond the new CTL which would apply to a defendant remanded into custody under the new proposed law. b. Article 6(1) and 5(3) of The European Convention on Human Rights."

Judge Raynor continued:

“Has the State failed to organise its legal systems so as to allow the courts to comply with the requirements of Article 6(1) to ensure trials within a reasonable time of unconvicted defendants remanded into custody, whether the appropriate test is ‘regardless of cost’ or even a lesser requirement of ‘high cost’ or ‘cost proportionate to the exceptional situation?’”

He said yes.

Judge Raynor talked about the exceptional situation. He asked:

“Does the current coronavirus situation still amount to an exceptional situation?”

Yes, ruled the judge. He talked about exceptional and routine cases:

“Does the coronavirus itself turn every routine case into an exceptional case?”

No, said the judge. On good and sufficient cause, which may be the crux of the matter, he asked:

“Does the evidence now available to me indicate a lack of funding by The Ministry of Justice/Her Majesty’s Court Service?”

The judge ruled yes. That is a very significant point. He continued:

“Do the new proposed measures announced in the press release dated 6th September 2020 and in The Criminal Courts Recovery Plan (CCRP 1) have a realistic prospect of success in the sense that they will significantly reduce the backlog of outstanding trials for those in custody?”

The judge concluded that no, they do not.

Confidence in the Ministry of Justice’s ability to deal with the crisis is clearly at an all-time low. I invite the Minister to tell us how he can reassure the country that the issues we currently face will be sorted out, and sorted out soon. We are witnessing the delay and denial of justice for thousands upon thousands of victims and defendants and, while we have not opposed the extension, on the basis that it is for a limited time, we believe that the Government should have been more open about it. The Minister may like to take this opportunity to confirm that the Government will not seek to have these powers extended beyond the nine-month period and outline what he sees as the impact on our already overcrowded prisons.

This SI at least ensures that the delays do not have any further unfair consequences for defendants in relation to victim surcharges. It would be against the principle of natural justice if anyone awaiting trial due to a court backlog of the Government’s own making were forced to pay an increased victim surcharge due to the extended length of time taken to appear before a court. It is only fair that the surcharge is representative of sentencing provisions at the time the offence was committed.

Ultimately, this SI ensures that when a court deals with an offender for an offence committed before 14 April 2020, the amount payable will be the same as it would have been at the time the offence was committed. It maintains that safeguard for fair sentencing, which is a principle that is unreservedly supported by those of us on the Labour Benches—all two of us. We welcome the amendment and look forward to working with the Government to defend human rights and uphold the law.

2.39 pm

**Chris Philp:** I will reply briefly to the shadow Minister’s comments. First, I welcome his support for this measure.

I lament the absence of his colleagues—it is a shame they are not here with him to debate this important matter.

The hon. Gentleman raised a couple of points. Let me start by addressing the number of cases waiting to be heard before the courts. Obviously, coronavirus has enormously disrupted the operation of the courts because of social distancing and so on, but in the magistrates courts, for the last few weeks, disposals have exceeded receipts. We have been dealing with more cases than have been received and therefore the outstanding case load has begun to decline. That is an important, seminal moment in our recovery plan.

In relation to the Crown court, which the shadow Minister talked about, and jury trials, he will be aware that the Lord Chief Justice completely suspended jury trials in late March, and they did not recommence until May. Inevitably, if jury trials are suspended for health and safety reasons—for covid reasons—cases will back up. Since then, we have got Crown court jury trials up and running across the country, but in a way that is safe, so that jurors do not get contaminated by one another or by anyone else. That has necessarily limited the number of court rooms available, but we are now back to about 110 operable Crown court jury rooms as of today, and the intention is to reach 250 by the end of October. That will enable us to hear 333 Crown court jury trials per week by the end of October, which is back up to the pre-coronavirus level. That will be done in a safe way through a variety of measures to do with social distancing, perspex screens and separate jury retiring rooms. *[Interruption.]* I can see the shadow Minister is twitching eagerly, so I will give way.

**Alex Cunningham:** I am keen to understand whether the Minister will start bringing his Nightingale courts in as part of that. He must accept that, even before the coronavirus crisis, there was a crisis in the courts, with 1 million cases in magistrates and Crown courts, and tribunals outstanding at the end of last year.

**Chris Philp:** The number of Crown court cases outstanding at the beginning of this year was lower than it was in 2010. A great deal of progress had been made, and the Lord Chancellor had authorised, prior to coronavirus, additional Crown court sitting days that would have enabled further progress to be made.

In relation to Nightingale courts, all 10 announced in July are now up and running operationally. Further Nightingale courts are being announced, and we have secured further Treasury funding to the tune of £83 million to expedite the recovery of the court system after coronavirus. On the comments about funding that I heard quoted—I was surprised to hear such comments made by a judge in a judgment—the issues around funding have been and are being addressed.

On custody time limits, there is a short-term, nine-month extension because the hiatus caused by coronavirus means we need to extend those custody time limits temporarily. The shadow Minister accused us of trying to slip that past Parliament and the Opposition, but he also acknowledged that I phoned him personally to flag the changes. If I was trying to slip it past him, I would hardly have picked up the phone and telephoned him. That would have been an ineffective method of subterfuge, even by my standards.

**Alex Cunningham:** I did make the point that the Minister was kind enough to inform me, but the whole of Parliament learned of this in a written instrument—a negative SI—which is not really the way to do business.

**Chris Philp:** We did telephone everybody with an interest. I made phone calls, so I do not think that an allegation of subterfuge is one that I would accept. I am

happy to phone anybody who wants a phone call on a Friday evening. It is a free service courtesy of the Ministry of Justice.

We have strayed a little beyond the strict terms of this instrument, so perhaps I should sit down. I commend the instrument to the Committee.

*Question put and agreed to.*

2.43 pm

*Committee rose.*



