

## Introduction

The Sentencing Act 2020 “the Act” which comes into force on the 1<sup>st</sup> December 2020, is an attempt to provide a single reference point for the law on sentencing. The Act consolidates all sentencing procedural law into a single ‘Sentencing Code’. This helpfully joins all the provisions courts utilise and rely upon during the sentencing process. The Act covers all adult and youth sentencing within England and Wales, in addition to sentencing for the armed forces.

The Sentencing Code only applies to Defendants who are **CONVICTED** after the 1st of December 2020. If a Defendant is convicted of an offence before that date, it is the ‘old’ sentencing provisions to which reference should be made.

## What is the Sentencing Code?

Parts 2 to 13 of the Act are referred to as ‘the Sentencing Code’. These parts logically follow the chronological structure of the sentencing process, and deal with matters as follows:

**Part 2:** Powers exercisable by a court before passing sentence, including deferring sentence, committing sentence to the Crown Court, and remitting cases back to the Youth Court from the Crown Court.

**Part 3:** General Procedure, including Pre-Sentence Reports, the Victim Surcharge, Derogatory Assertions and Duties to explain or give reasons.

**Part 4:** Exercise of Discretion of the Sentencing Court, including Purposes of Punishment, the Sentencing Guidelines and Determining the Seriousness of Sentence

Parts 5-11 refer to discrete areas of sentencing as follows:

**Part 5:** Absolute and Conditional Discharges

**Part 6:** Orders relating to Conduct, including Youth Referral Orders and Reparation Orders

**Part 7:** Financial penalties, including Fines, Compensation Orders, Restitution and Forfeiture & Deprivation Orders.

**Part 8:** Disqualification

**Part 9:** Community Sentences, including Youth Rehabilitation Orders and Community Orders

**Part 10:** Custodial Sentences, including Youth Detention and Training Orders, Suspended Sentences, Extended Sentences, Dangerous Offenders, Minimum Sentences for specific offences, Life Sentences & Time on Curfew/Remand

**Part 11:** Ancillary Behavioural Orders, including Criminal Behaviour Orders, Sexual Harm Prevention Orders, Restraining Orders, Parenting Orders & Bind Overs.

Finally, Part 12-13 then deals with general and miscellaneous provisions, including costs & interpretation.

### The Three Key Intentions

The Sentencing Act 2020 was created with the intention of fulfilling the three following aims:

- To help and support legal professionals in identifying and applying the law.
- To increase efficiency by reducing the risk of error, appeal, and delay currently within the sentencing process.
- To enhance the transparency of the process for the public to subsequently increase public confidence in the Criminal Justice System.

### Why do we need it?

The need for reform on sentencing law has been long overdue and long-requested. Prior to the Act, the law regarding sentencing was spread out over 65 different Acts of Parliament, without coherent structure or a uniform approach to drafting. This made sentencing law challenging for advocates and tribunals, as correctly identifying and applying the relevant law was not a straightforward task.

Understandably, this scattergun approach led to mistakes, delay and, most importantly, incorrect, and unjust outcomes for offenders.

A study from 2017 found over a third of sentences that were considered by the Court of Appeal involved an unlawful sentence of some kind. Moreover, the Law Commission Report on the Sentencing Code revealed there was a disproportionate number of legal errors and unlawful sentences being imposed by judges. A concerning statistic from 2013 showed that 95 of 262 randomly sampled cases before the Criminal Division of the Court of Appeal involved an unlawful sentence. These issues have stemmed from the overarching problem that the law was too complex.

The Sentencing Act 2020 proposes to be the practical solution to this ongoing problem. The Act is purported to be able to save £256 million by 2030 by reducing delays that clog up the court system, and by avoiding unnecessary appeals by helping all parties in identifying and applying the correct law first time. The Act will tackle the complexity of the law in two ways, namely:

- i) **Improved Accessibility:** The new Act has been drafted with clarity and transparency in mind, and in consequence includes modernised language in

place of outdated terminology and gender-neutral terms which increases relevancy to 21<sup>st</sup>-century users.

- ii) **Improved Efficiency:** The unnecessary layers of historic legislation are removed leaving a new clearer framework of sentencing law. The Act's sensible layout makes sentencing provisions easier to navigate and reduce both errors and the appeals to correct them. The Act makes it much simpler for a sentencing judge to locate and apply their sentencing powers and duties making their role more straightforward.

Together, these improvements will have the integral effect of increasing public confidence. Not only will people be able to see improvement in the amount of errors and delays at the sentencing stage, but non-lawyers will also be able to better understand the sentencing process.

### What does the Act change?

Substantively, the Act coming into force changes little. The Sentencing (Pre-consolidation Amendments) Act 2020 makes some cosmetic changes, removing unnecessary words of some provisions prior to the Sentencing Code coming into force.

In terms of structure and placement, the Act changes the location of the relevant provisions. It is not the case that every section under the old sentencing law is copied into its own single section of the Act. Some provisions which were previously single sections covering multiple classes of Defendant are separated for ease of understanding.

Part 10 of the Act, which deals with custodial sentences, is an example of this. There are separate chapters within Part which deal with custodial sentences for offenders under the age of 18, offenders between 18 and 21, and offenders over 21. Thus, the provisions that relate to extended sentences are separated for the purpose of easy navigation of the Act.

### What is not changing?

Matters which are not changing include the following:

1. The maximum sentence available in respect of any offence.
2. The tests applied in passing any type of sentence.
3. The Sentencing Guidelines in respect of any offence.
4. The application of previous case law to sentencing of any offence.
5. The location of sentencing provisions relating to driving license endorsement & 'totting' disqualifications under the Road Traffic Offenders Act 1988
6. The law as it relates to confiscation orders pursuant to the Proceeds of Crime Act 2002.

As stated above, substantive sentencing law is not being changed. In some circumstances, the Sentencing Code will refer readers to the substantive law as contained within a previous Act of Parliament, rather than simply reiterate it.

### What is the benefit of the Act?

Given that little of substance will be changed by the bringing into force of the Sentencing Code, it is fair to ask what benefit there is to undertaking the task. Although there may be some initial confusion as practitioners work out which set of sentencing provisions apply to their particular case, in time it is hoped that the Act provides a 'one-stop shop' for both advocates and the judiciary at the point of sentence.

The benefit of having a single coherent Code for sentencing legislation is the same as well-structured submissions - it sets out the relevant tests for judges to apply and makes sure that important matters are not missed. Further, having the provisions contained in one place prevents all parties from making or allowing mistakes to happen in the sentencing process. Given the particular importance of maximising the Court's time during the ongoing public health crisis, the benefit of getting things right the first time cannot be overstated. In our view, the Sentencing Code will assist with that.

### How to navigate the Act:

There are two important documents which will help users navigate the new act. A table of origins and a table of destinations. The table of origins will provide a view of all the original sources for the law in the table. The opposite applies for the table of destinations.

When looking at a law within the Sentencing Act 2020 within the table of origins, you can see the original source for that law in the table. The opposite applies for the table of destinations where you can look at a sentencing law you were already familiar with and see where it is found within the Sentencing Act 2020.

Table of Origins: <https://publications.parliament.uk/pa/bills/lbill/58-01/127/5801127tableoforigins.pdf>

Table of Destinations: <https://publications.parliament.uk/pa/bills/lbill/58-01/127/5801127tableofdestinations.pdf>

### What do Practitioners need to do?

Of course, it is the duty of the advocates in any sentencing hearing to make the sentencing judge aware of his duties and powers at the sentencing hearing. Thus, familiarising oneself with the location and structure of the Act is essential.

Further, there will be a significant number of sentences which will relate to Defendants convicted on or before 30th November 2020. In those cases, the old law will apply. Identifying those cases is as important as identifying those to which the new Act applies.

The Archbold 2021 edition contains separate chapters for sentencing under the old and new law, 5A and 5ASC respectively. It may be helpful to retain a copy of this year's edition going forward to ensure your ability to navigate both sets of sentencing law.

*Whilst every effort has been taken to ensure these notes are as correct, they are intended to give a general overview of the law. Delegates are respectfully reminded that they are not intended to be a substitute for specific legal advice. No liability is accepted for an error or omission contained herein.*



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