



**Law
Commission**
Reforming the law

Sentencing law in England and Wales Legislation currently in force

9 October 2015

The Law Commission

Sentencing law in England and Wales

Legislation currently in force



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The Law Commission – How We Consult

About the Law Commission: The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are: The Rt Hon Lord Justice Bean, *Chairman*, Professor Nicholas Hopkins, Stephen Lewis, Professor David Ormerod QC and Nicholas Paines QC. The Chief Executive is Elaine Lorimer.

Topic of this consultation: Sentencing law. This is a collection of the current legislation, and we ask consultees:

- have we missed any of the current legislation; and
- is the scope of our exercise correctly defined?

Geographical scope: This consultation paper applies to the law of England and Wales.

Availability of materials: The consultation paper is available on our website at <http://www.lawcom.gov.uk/project/sentencing-procedure/>.

Duration of the consultation: We invite responses from 9 October 2015 to 9 April 2016.

Comments may be sent:

By email to sentencing@lawcommission.gsi.gov.uk

OR

By post to Paul Humpherson, Law Commission of England & Wales,
Post Point 1.54, 52 Queen Anne's Gate, London, SW1H 9AG.

Tel: 020 3334 5713 / Fax: 020 3334 0201

If you send your comments by post, it would be helpful if, whenever possible, you could also send them electronically (for example, on CD or by email to the above address, in any commonly used format).

After the consultation: In the light of the responses we receive, we will decide on our final recommendations and present them to Government.

Consultation Principles: The Law Commission follows the Consultation Principles set out by the Cabinet Office, which provide guidance on type and scale of consultation, duration, timing, accessibility and transparency. The Principles are available on the Cabinet Office website at: <https://www.gov.uk/government/publications/consultation-principles-guidance>.

Information provided to the Law Commission: We may publish or disclose information you provide us in response to this consultation, including personal information. For example, we may publish an extract of your response in Law Commission publications, or publish the response in its entirety. We may also be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. If you want information that you provide to be treated as confidential please contact us first, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not be regarded as binding on the Law Commission. The Law Commission will process your personal data in accordance with the Data Protection Act 1998.

Introduction

This is the second of a number of publications seeking consultees' views on aspects of the Law Commission's project to create a New Sentencing Code for England and Wales. The first consultation document explained our provisional proposals relating to transition to the New Sentencing Code, and was published on 1st Jul 2015 (<http://www.lawcom.gov.uk/project/sentencing-procedure/>).

We received a healthy crop of responses to that first consultation, which we are in the process of analysing. The general tenor of these responses is extremely supportive. We will summarise those responses alongside the publication of our next issues paper which we aim to publish in the spring of 2016. That paper will address a number of discrete policy issues which we believe may require resolution as part of our task to consolidate and rationalise the law of sentencing.

Unlike the first issues paper in July, or the upcoming issues paper in spring 2016, this document does not directly address questions of policy to inform our recommendations (and shape the draft bill). Rather, this document is intended to be a complete statement of the current primary legislation governing sentencing, with short extracts from some common law and other guidance (guidelines, practice directions etc.) where these are central to the law in a particular area.

Those with knowledge of the current law of sentencing will be unsurprised to learn that the document runs to in excess of a thousand pages. The material is presented thematically rather than in chronological statute order.

The purpose of the publication of this document at this stage, in addition to illustrating the problematic volume of the current law on this topic, is to receive consultees' views on three key questions:

- (1) Is the document comprehensive? In other words, have we missed any statutory provisions, or are there entire areas, types of sentencing order etc. which are not reflected in the document but which consultees believe should properly fall within the remit of the New Sentencing Code?**
- (2) Is the document over-inclusive? In other words, are there provisions included in the document that deal with an area of law that consultees consider should properly fall outside the scope of the New Sentencing Code?**
- (3) Are there errors in the document, for instance provisions which have been repealed or amended?**

Given the length of the document, it is not envisaged that many consultees will have time to engage in detail with it in its entirety. However, we encourage all with a particular interest in the law and practice of sentencing to, first, look over the index to the document (which is fully electronically navigable) and, second, to look in detail at any sections in which they have a particular interest or expertise with the above questions in mind. Readers should note that this is a statement of the present law – it is certainly not intended that the New Sentencing Code will be as complex or difficult to navigate!

When considering questions (1) and (2) in particular, we would ask consultees to bear in mind the following decisions which have been made about the scope of the project. As a starting point, the New Sentencing Code would ideally contain all of the primary legislative material with which a court might possibly be concerned during the sentencing process, in addition to as much legal guidance from other sources (common law, practice directions, statutory instruments etc.) as proves practical and desirable. This aim is subject to the following qualifications:

- (1) We are not addressing the law on confiscation of the proceeds of crime. Whilst we recognise that this is closely related to issues of sentencing law, the sheer volume of the modern law of confiscation means it is not possible for us to include it within the New Sentencing Code. It may be possible for a future codification of confiscation law to take place. Further, given that in the vast majority of cases contested confiscation proceedings are adjourned to be dealt with on a separate occasion from the sentencing hearing, and a separate timetable is set for the confiscation proceedings, we believe that in practice it is possible without great difficulty to separate confiscation from sentencing. That is not to say the New Sentencing Code will contain no reference to confiscation whatsoever. It may do so where that would assist the sentencing court in keeping in mind all of its duties and powers at the sentencing hearing, perhaps by prompting sentencing courts to remember to address confiscation and set a timetable where relevant. However the main body of confiscation law will continue to rest, at least for now, in the Proceeds of Crime Act 2002, and related legislation.
- (2) Our provisional view is that it is necessary to include some provisions dealing with the administration of sentences. For instance there are some sections dealing with release from custody which we have included in the document. This is to enable a sentencing court to understand the effect of the sentence it is seeking to impose, and assist it with its obligation to explain the effect of any sentence imposed to the offender. However, it is not our intention to provide a comprehensive source of guidance for those whose role is the administration of sentences handed down by the courts (prison authorities, probation trusts etc.). For instance, the Code would not necessarily assist a prison governor when considering the (often difficult) question of when to release a prisoner serving a sentence handed down under some previous sentencing regime no longer in force. Again, to include all relevant material would be an enormous task in itself, and would not be something we could include in this project with the resources available.
- (3) At present we have included provisions and guidance relating to costs in criminal proceedings, as these would often be dealt with at the sentencing stage. We welcome consultees' views on whether these have been properly included.
- (4) However, at present, we have not included provisions relating to the administration or enforcement of financial penalties. This is because such provisions are not typically used at a sentencing hearing, since they relate to separate processes that are merely triggered by the imposition of a sentence, like confiscation (see above). We welcome consultees' views on whether these have been properly excluded.

Limitations of this publication

We have endeavoured to collect together all of the law on sentencing currently in force, and to display it in an accurate and up to date manner. Some illustration of the difficulty in identifying the present law with accuracy is demonstrated by the fact that this document was created over several months with the assistance of an expert consultant, Lyndon Harris,¹ with access to all the legal databases – legislation.gov.uk, LexisNexis, Westlaw, Lawtel and so on. For a lay person to discover the law would be practically impossible. However, given the sheer volume and complexity of the law in this area, the many different sources in which it is now contained and the frequency with which it is amended and added to, we acknowledge the likelihood that there will be some error or omission in our initial efforts.

It is in the nature of this publication, as a consultation document, that we recognise that it would benefit from the input and expertise of other legal professionals engaged in the theory and practice of sentencing. This document should therefore not be used as an authoritative statement of the current law, nor relied on in its current form in practice.

¹ Our sincere thanks to Lyndon for his work on this project, and to the providers of those databases.

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