



**Law
Commission**
Reforming the law

Sentencing Law in England and Wales: Legislation Currently in Force

Interim Report

7 October 2016

The Law Commission

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and Wales: Legislation
Currently in Force – Interim
Report**

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The Law Commission

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

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The terms of this report were agreed on 22 September 2016.

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Sentencing Law in England and Wales: Legislation Currently in Force – Interim Report

Chapter 1: Project background and the purpose of this report

INTRODUCTION

- 1.1. On 9 October 2015 we published the second of our consultation documents for the Law Commission’s project to create a New Sentencing Code for England and Wales: Sentencing Law in England and Wales: Legislation Currently in Force¹ (hereafter “the current law document”). This was intended to create a single consolidated and complete statement of the current primary legislation governing sentencing, accompanied by common law extracts, secondary legislation and other guidance where necessary. For the first time that we are aware of, the document provided a comprehensive compilation of the law, thematically arranged to assist readers.
- 1.2. That document allowed us to illustrate the complex, voluminous and disparate nature of the legislation currently governing sentencing. It has been a valuable source in informing the drafting of the New Sentencing Code.
- 1.3. We sought consultees’ views as to whether the document was comprehensive, whether it included any areas unsuitable for codification in the New Sentencing Code, and whether there were any errors in our understanding of the current law.²
- 1.4. This short report summarises the responses we received to that consultation, the corrections to the current law document we have made, and provides an update on how the Sentencing Code project is progressing.

BACKGROUND TO THE SENTENCING CODE PROJECT

- 1.5. The Sentencing Code project is part of the Law Commission’s 12th programme of law reform.³ The project aims to create a single sentencing statute, the New Sentencing

¹ Sentencing Law in England and Wales: Legislation Currently in Force (2015), available as a full electronic .pdf and in individual parts from <http://www.lawcom.gov.uk/project/sentencing-code/>.

² Above pp i-ii.

³ Twelfth Programme of Law Reform (2014) Law Com No 354.

Code, which brings all of the existing legislation governing sentencing into one place. It will also ensure the law is framed in clearer, simpler and more consistent language and has a logical structure, making the law more accessible for its users: the judiciary, practitioners and members of the public.

- 1.6. Beyond simply bringing the law governing sentencing together in one place, the sentencing project will also introduce a novel approach to dealing with changes to the law, which will substantially simplify the sentencing process in practice.⁴
- 1.7. The law in this area, as it currently stands, is overwhelmingly complex, and difficult to identify and understand, even for practitioners and judges. It is contained in numerous separate provisions across a multitude of statutes with no consistent structure to aid navigation. As an illustration, the current law document is over 1300 pages long and contains provisions from acts as varied as the Company Directors Disqualification Act 1986 and the Dangerous Dogs Act 1991. Sentencing law as a whole is even more inaccessible, as the current law document contained only the law relevant to sentencing recent offences - many cases involving historic offences require reference to several different older overlapping, technical and complex sentencing regimes alongside the current law.
- 1.8. It is not surprising that the need for reform of the law of sentencing was endorsed in the strongest of terms when this project was launched in January 2015, by leading figures in the Criminal Justice System including the Lord Chief Justice, the Director of Public Prosecutions and the heads of the solicitors' and barristers' professions.⁵

Changes to the project

- 1.9. The project has advanced significantly since the publication of the current law document in October 2015, almost 12 months ago, as was explained more recently in our final report and recommendations for transition to the New Sentencing Code⁶ (hereinafter "the transition report"). That report recommends radical innovation to ensure that the Code will have the opportunity for maximum impact in the greatest volume of cases from its commencement.
- 1.10. To maximise the prospects of the draft Code we will produce being enacted, we have, after consultation with Parliamentary Counsel and considering the significant pressures currently on parliamentary time, concluded that the vast bulk of the Code should be enacted in the form of a consolidation. This consolidation will be complemented by important and novel pre-consolidation changes discussed below and will allow the (inevitably lengthy) Code to take advantage of the special procedure for consolidation Bills. This procedure takes up minimal time in the debating

⁴ Sentencing Procedure Issues Paper 1: Transition (2015), available at <http://www.lawcom.gov.uk/wp-content/uploads/2015/06/Sentencing-Procedure-Issues-Paper-Transition-online.pdf> and summarised below at 1.11-1.12.

⁵ <http://www.lawcom.gov.uk/project/sentencing-code/>.

⁶ A New Sentencing Code for England and Wales (2016) Law Com No 365, Parts 4-6 and summarised below at 1.11.

chambers of the Houses of Parliament, with parliamentary scrutiny instead provided by an expert committee.⁷

- 1.11. The New Sentencing Code will go beyond mere consolidation by including reforms such as those in the transition report. The conclusion of that report is, in summary, that the Code will apply to all sentencing exercises in which conviction takes place after its commencement. Limited exceptions to this will be created, including for offences where the penalty now would be more severe than the maximum which could have been imposed at the time of the offence, and offences where new laws on prescribed minimum sentencing and recidivist premiums have come into force after the commission of the offence.
- 1.12. From the introduction of the Code, only in exceptional cases will judges and practitioners have to refer to, and decipher, complex historic sentencing regimes, rather than having to do so routinely as is current practice. These significant innovations, which go beyond consolidation of existing primary legislation, will be introduced by two clauses to be included in a programme Bill which precedes the main consolidation. These clauses will implement the recommendations of the transition report, effecting the “clean sweep” approach.
- 1.13. The programme Bill will also include the standard “pre-consolidation amendment powers” necessary to effect any consolidation of the law. These pre-consolidation amendment powers will necessarily be limited in their scope, and will allow us to make minor changes to streamline the law and make it easier to understand. The choice of a consolidation procedure, which we believe maximises our chances of implementation of the Code, also brings limitations on our ability to codify existing common law or amend or move statutory provisions which do not fall within existing ‘core’ sentencing statutes.
- 1.14. We continue actively to explore ways of achieving further reform to the law of sentencing. This might be achieved, for instance, by taking broader powers to change the law in the preceding programme Bill, or through other mechanisms for reform which might run in parallel with, or follow immediately on from, the main consolidation Bill.
- 1.15. When we conduct our main consultation on the draft Bill in 2017, we will invite consultees’ views on broader reforms, and gauge support, so that we can make such recommendations for accompanying potential reform as are appropriate.

⁷ The Joint Committee on Consolidation Bills. For more information, see <http://www.parliament.uk/business/committees/committees-a-z/joint-select/consolidation-committee/> (last visited 27 September 2016).

Chapter 2: Analysis of responses to the current law consultation

CONSULTATION QUESTIONS

- 2.1. In the current law document¹ we sought 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?

RESPONSES

- 2.2. We received responses from all parts of the legal profession including academia, practitioner's bodies and the judiciary. Respondents included the Bar Council, the Chartered Trading Standards Institute, the Council of Her Majesty's Circuit Judges, the Crown Prosecution Service (the CPS), the Law Society, the London Criminal Courts Solicitors' Association, the Ministry of Justice, the Registrar of Criminal Appeals, Professor Andrew Ashworth QC and HHJ Martin Edmunds QC.
- 2.3. Our thanks are owed to all respondents and to the CPS and the Bar Council in particular. The CPS provided the current law compendium to its Crown Advocates for use when preparing sentences for hearing as well as undertaking a detailed review of the work for errors and omissions. Similarly members of the Bar Council provided particularly detailed notes on a significant number of parts of the compendium.
- 2.4. There was a general recognition of the continued importance of the sentencing project.
- 2.5. The Chartered Trading Standards Institute:
- CTSI welcomes the Law Commission's sentencing code project and is supportive of measures to achieve the desired outcomes of streamlining, clarifying, achieving consistency, simplifying, and making improvements. Increased effectiveness, improved efficiency, fewer appeals, and greater timeliness, as well as lower costs, will be better for all concerned.

¹ Sentencing Law in England and Wales: Legislation Currently in Force (2015), available as a full electronic .pdf and in individual parts from <http://www.lawcom.gov.uk/project/sentencing-code/>.

2.6. The Law Society:

The Law Society continues to be very supportive of the sentencing code project. As the vast bulk of the 'Existing Legislation' document so graphically illustrates, sentencing legislation is absurdly voluminous and complicated, and desperately in need of consolidation and rationalisation.

2.7. The Registrar of Criminal Appeals, Master Michael Egan QC:

The Registrar of Criminal Appeals greatly welcomes the Law Commission's project to simplify and codify sentencing procedure. The aims of the project are laudable, and participants within the criminal justice system, including victims of crime, defendants, members of the legal profession the judiciary and the wider public stand to benefit greatly from the structural clarity that a New Sentencing Code will bring.

Consultation question 1: Is the document comprehensive?

- 2.8. Responses were broadly affirmative to this question. The Council of Her Majesty's Circuit Judges in particular noted that they would like "to pay tribute to the very full detailed and comprehensive analysis of the law and practice in the consultation". Similarly the Law Society agreed that "the document is indeed a comprehensive digest of all existing sentencing law currently in force in England and Wales".
- 2.9. All respondents agreed with the decisions made to exclude from scope confiscation and the administration and enforcement of penalties, with the limited exception of certain necessary procedural provisions, including those relating to costs in criminal proceedings. In relation to confiscation the Law Society further agreed "that it would be desirable for this distinct body of law to be consolidated in a separate piece of legislation in future".²
- 2.10. The Council of Her Majesty's Circuit Judges were the only respondents to raise specific areas of concern: they felt that the sections on disparity and assistance to prosecution "would benefit from more detailed exposition".
- 2.11. We are grateful to them for this observation and for drawing to our attention the guidance in *R v P*³ on the discounts available under section 73 of the Serious Organised Crime and Police Act 2005. As explained in paragraphs 1.9 to 1.14 above the codification of this common law guidance will be limited by the scope of the consolidation Bill, unless we are able to secure wider powers to reform the law as part of the pre-consolidation enabling clauses. In the event that this is not possible, we will bear this response in mind when considering our recommendations for further reform in parallel with, or immediately following, the consolidation, which may take the form of further recommendations when we publish our final report and draft Code in 2018.

² The Law Commission has now opened the consultation for our 13th Programme of Law Reform, seeking consultees' views on which areas of law would benefit from reform. As part of this, we have proposed some potential projects of our own, including the reform of confiscation at <http://www.lawcom.gov.uk/13th-programme-potential-projects/>. We would like to hear consultees' views on the feasibility and suitability of such projects. The closing date for suggestions and comments is 31 October 2016.

³ [2007] EWCA Crim 2290, [2008] 2 All ER 684.

- 2.12. The CPS raised questions as to whether judicial review ought to be included in the Code:

We have considered whether there ought to be some reference in “Part 6 Appeals” to judicial review (section 31 of the Senior Courts Act 1981 and Parts 8 and 54 of the Civil Procedure Rules). The procedure runs parallel to the case stated procedure for matters other than those on indictment and is sometimes, though rarely, the more appropriate way to challenge an unlawful sentence; for example, when the case needs to be expedited or there is a factual dispute underlying the matter of law that cannot be accommodated in the case stated procedure. We recognise however that judicial review does not readily fit the defined scope of the project, in that it is plainly not ‘sentencing law’; nor is it restricted to matters of a criminal cause; nor subject to the rules of criminal procedure. We therefore concluded it ought not to be referenced in the New Code.

- 2.13. We agree with this response. The core purpose of the New Sentencing Code is to serve as the sole source of primary legislation to be applied by sentencing tribunals at the sentencing hearing. In achieving this the Code will necessarily have to include, or signpost, certain broader provisions on criminal procedure that apply to sentencing hearings. While judicial review provides an avenue of appeal for sentencing decisions it is not generally a matter that needs to be considered by a sentencing tribunal during the sentencing exercise and thus does not fall within the primary scope of the Code.
- 2.14. Similarly, in relation to appeals, although we intend occasionally to signpost provisions relating to appeal within the Code where this would assist a sentencing tribunal at first instance, we do not generally intend to deal with legislative material on appeals within the Code. Appeals to the Crown Court proceed by way of a re-hearing, and the Court of Appeal’s powers to substitute different sentences on a successful appeal (by either the offender or the Attorney General on behalf of the Crown) are expressed by reference to the powers of the Crown Court. In this way the Code will have direct relevance to sentencing appeals, but it is not intended that the rules and procedures governing appeals by the parties be swept into the Code.
- 2.15. One exception to this approach is provided by the ‘slip rules’: the statutory provisions governing the power to return cases to court to rectify sentencing errors, both in the magistrates’ and Crown Courts, which we do intend to deal with in the Code.⁴
- 2.16. Given the relatively minor and focussed nature of the concerns and omissions identified in response to this first question, we feel confident in saying that the current law document represents a comprehensive statement of the current primary legislation governing sentencing as it stood on 31 August 2015. No respondents felt we had missed any areas of law, types of order or significant groups of provisions, although we note those specific minor omissions which were pointed out to us below at paragraph 2.30.

⁴ Found in Magistrates’ Court Act 1980, s 142 and Powers of Criminal Courts (Sentencing) Act 2000, s 155 respectively.

Consultation question 2: Is the document over-inclusive?

2.17. Consultation responses were to some extent mixed regarding this question. Some, such as the Council of Her Majesty's Circuit Judges, did not consider the document to be over-inclusive and felt that "a sensible line has been drawn"; a view supported by the London Criminal Courts Solicitors' Association who were "in agreement so far as the legislation which has been included is within the scope of the LC project".

2.18. The Law Society provided the only response questioning our inclusion of a substantive area of law as sentencing law: that relating to the administration of bail. While they generally felt that provisions relating to the administration of bail probably ought not to be included in the scope of the Code, they also brought to our attention potential situations in which the law relating to the administration of bail may be relevant to a sentencing tribunal:

From a practical point of view, we [raise] the consequences that may follow depending on the physical presence of the defendant in court, or by way of a video link. Given the way in which modern communications technology is now being used extensively in the courts, such consequences are likely going to become more marked; for example, it may affect where a prisoner is going to be incarcerated.

2.19. We recognise that most of the law relating to the administration of bail is outside of the remit of the New Sentencing Code. It is law that is rarely applied or relevant at the sentencing hearing and is by and large found in the (albeit heavily amended) Bail Act 1976. The removal of clauses from that Act to be placed in the New Sentencing Code would only greater confuse the law rather than providing the enhanced simplicity and accessibility which the Code is designed to bring.

2.20. As illustrated in the response of the Law Society, however, there are some situations where the sentencing tribunal needs to be aware of certain provisions relating to the administration of bail. While the New Sentencing Code will not include these provisions it is likely that it will include 'signposts' (in the form of statutory cross-references) to them to ensure that the Code addresses the problem, and serves as a comprehensive source of guidance for sentencing judges on procedure during the hearing.

2.21. Other consultees had concerns about the inclusion of material not found in primary legislation. Professor Andrew Ashworth QC, noting the inclusion of "elements of Definitive Guidelines, Criminal Practice Directions and case-law" in the consultation document questioned whether these would be included in the code. While he felt the integration of all these would be ideal he questioned whether it was within our remit. Similarly, the Bar Council raised concerns about elevating the case-law in the consultation document to "the status of a provision".

2.22. In light of the decision to secure enactment of the Code by the consolidation procedure, there is now likely to be less scope for codification of common law guidance and other extra-statutory material in the Code. However, we are actively pursuing at least three approaches to make progress in this direction:

- (1) Making use of pre-consolidation powers to implement reforms that will feature in the Bill but which could not be included in a "pure" consolidation exercise. An

illustration of this is our novel approach to dealing with transition within the Code, which goes well beyond typical consolidation, and will necessitate a separate clause in a preceding programme Bill to facilitate it. We are also exploring the possibility of drafting further powers to be contained in preceding legislation which would broaden the scope for the Code to make changes to the law, including codifying non statutory material.

- (2) We are in discussions with The National Archives regarding the way in which the Code can be displayed digitally to users. This could include the use of innovative display tools allowing users to link directly through to relevant guidance and other related documents whilst viewing the primary legislation, as well as specially created guidance notes and diagrams to assist with navigation of the Code itself.
- (3) Insofar as it proves impossible to bring extra-statutory material within the Code on its initial implementation, but where this meets with support from users during the consultation phase on the draft Bill, our final report will contain appropriate recommendations for further amendment of the Code.⁵

2.23. The Registrar of Criminal Appeals drew our attention to the references to law and procedure applicable to conviction, as well as sentence, appeals. He did not believe these to be over-inclusive but identified them as an area that could be narrowed and felt “this may assist if, ultimately, it is decided that it is necessary to narrow the ambit of the Code to incorporate law and procedure related solely to sentencing”.

2.24. Given the intention to secure enactment by the consolidation process the final Code as enacted will be narrower than the current law document as published. We are therefore confident, in light of consultees’ responses to the current law document, that there is little risk of the Code being over-inclusive.

Consultation question 3: Are there any errors in the document?

2.25. While the current law document aimed to provide a comprehensive summary of the current law on sentencing, it was not intended to be a perfect reproduction of the letter of the law. Many sections were re-phrased and summarised, and only the key commencement provisions were included. These steps were a conscious decision, in the interests of keeping the length of the document, and the endeavour itself, manageable.

2.26. The current law document purported to show the sentencing law in force in England and Wales at a fixed point in time, 31 August 2015, with the exception of the inclusion of the Criminal Procedure Rules and Practice Direction’s 2015 which only came into force October 2015 but were publicly available prior to that date. Inevitably, there have been changes to sentencing law since its publication.

2.27. While these changes, and additional detail, will be reflected in our ongoing drafting of the Code, they were not the intended focus of this consultation question. The question

⁵ The Code is being designed to retain its purity and clarity while being frequently amended as explained in paragraph 3.4 below.

instead aimed to identify whether we had made any substantive errors or omissions in our compilation of the law on sentencing.

- 2.28. Given the immense volume and complexity of this area of law and the relatively unprecedented nature of this consolidating endeavour, we thought it likely that errors would exist, and we are grateful to all the respondents who did notice and submit corrections, and in particular the Bar Council who provided us with a detailed list of errors and amendments.
- 2.29. Most of the corrections that were brought to our attention were typographical inconsistencies, such as missing full stops, empty brackets or misspelt words. We are grateful to those who have pointed these out, and if they were capable of leading to a misunderstanding in the meaning of the law these have been published in a list of corrections in Appendix A to this report.
- 2.30. There were a small number of more significant corrections however that were the result of an omission, or misguided inclusion, of a legislative provision; the incorrect summarisation of case law; or a failure to reflect amendments. These have been included in a table below as well as being listed in Appendix A to this report.

CHAPTER	AMENDMENT
1.4.1 General principles relating to secondary custodial sentences	Subsection 153(3) of the Criminal Justice Act 2003 has been included, as have other amendments to section 153 resulting from the Criminal Justice and Courts Act 2015 sch. 5 paragraph 15, commenced on 17 July 2015 by SI 2015/1463.
1.4.2 The custody threshold	Subsection 152(1A) of the Criminal Justice Act 2003 has been included, as have other amendments to section 152 resulting from the Criminal Justice and Courts Act 2015 sch. 5 paragraph 14, commenced on 17 July 2015 by SI 2015/1463.
3.3.1.1.4 Setting the level of the fine	Section 85 of the Magistrates' Court Act 1980, the power to remit fines, has been included.
3.3.1.2.2.9 Breach	Subsection 120(1A) of the Magistrates' Court Act 1980 has been included.
3.3.1.2.2.9 Breach	Subsection 116(3) of the Magistrates' Court Act 1980 has been removed. It was repealed by the Courts Act 2003

	sch.10 paragraph 1, commenced on 1 April 2005 by SI 2005/910.
3.5.1.1.4 Deciding whether or not to make an order	<i>R. v James</i> [2003] EWCA Crim 811; [2003] 2 Cr. App. R. (S.) 97 was incorrectly summarised and has been amended.
3.5.6.1.6 Review of orders	Section 133(3) of the Powers of Criminal Courts (Sentencing) Act 2000 has been amended to reflect amendments from the Modern Slavery Act 2015 sch. 5(2) paragraph 14, commenced on 31 July 2015 by SI 2015/1476.
3.6.4.1 Deprivation and disposal	Section 37 and section 38 of the Animal Welfare Act 2006, destruction in the interests of the animal and destruction of animals involved in fighting offences, have been included.
3.9.1.2.4 For how long do the notification provisions apply?	Subsection 53(4) of the Counter-Terrorism Act 2008 has been included.
4.2.1 Duty to follow sentencing guidelines	Section 125(4) of the Coroners and Justice Act 2009 has been included.
4.2.2 Duty to have regard to sentencing guidelines	Articles 7(3) and (4) of Coroners and Justice Act 2009 (Commencement No. 4, Transitional and Saving Provisions) Order 2010 (SI 2010/816) have been included.
6.2.4 CCRC referrals	Section 16C of the Criminal Appeals Act 1968 has been removed as it does not apply to sentence.

Chapter 3: The next phase of the project

MOVING FORWARD

- 3.1. This report brings phase 1 of the project to a close. The current law document¹ allowed us to illustrate the complex, voluminous and disparate nature of the legislation currently governing sentencing and is already being used to inform the drafting of the New Sentencing Code.
- 3.2. Work on phase 2, the drafting of the Code itself, and the enabling clauses for the preceding programme Bill, is already well under way. We are very grateful to all consultees for the time and effort involved in the submission of their responses to this consultation document. These will be invaluable in the revision and improvement of the drafts, especially in relation to the technical errors pointed out to us. The drafting in this phase will also be accompanied by ongoing informal consultation with sentencers on the most helpful structure for the parts and chapters of the Code to facilitate easy reference, and reduce confusion and consequent error and misunderstanding.
- 3.3. We plan to publish our third and final consultation paper, in the form of a draft of the New Sentencing Code with commentary, in summer 2017. We will seek consultees' views on the Code, and potential accompanying reforms and aim to produce a final report and draft Bill for the New Sentencing Code in 2018.
- 3.4. The publication of this final consultation paper and draft Bill will be accompanied by phase 3 - the "embedding phase". Previous attempts at the consolidation of sentencing law, such as the Powers of Criminal Courts (Sentencing) Act 2000, have been frustrated by being rapidly overtaken by other legislation. Our intention is that the draft Code will include some novel legislative mechanisms to enable the easy amendment of the Code. This will encourage the practise of new sentencing legislation taking effect by way of amendment to the Code. That in turn will ensure that the new approach to transition² is not frustrated. Options under consideration include the moving of all uncommenced amendments and provisions to a dedicated schedule to the Code so as to remove clutter and confusion from the face of the Code. We are also exploring the possibility of a power to reflect on the face of the Code important commencement information, which can be hard to discover under the current law, such as the dates from which amendments to the Code take effect.
- 3.5. Phase 3 will involve engaging with Parliamentary stakeholders, and those responsible for the drafting of legislation, to ensure that the Code remains the single source of legislative sentencing material, and that amendments are enacted in a way that retains the benefit of our new approach to transitional arrangements.

¹ Sentencing Law in England and Wales: Legislation Currently in Force (2015), available as a full electronic .pdf and in individual parts from <http://www.lawcom.gov.uk/project/sentencing-code/>.

² As recommended in A New Sentencing Code for England and Wales (2016) Law Com No 365 and summarised above at 1.11.

- 3.6. More generally we wish to encourage a culture of drafting where, insofar as possible, amendments to the Code are commenced on fixed commencement days, perhaps twice a year, a practice which has found favour in other contexts,³ but has hitherto been resisted in the criminal sphere as a result of a perceived need to retain flexibility to respond to sudden emergencies. Our provisional view is that whilst sudden modifications to the substantive criminal law may on occasion be necessary (e.g. to respond to a sudden outbreak of fatal overdoses caused by use of a previously unregulated drug) it will be rare indeed that changes to sentencing procedure will need to be rushed through.
- 3.7. Common commencement dates would greatly assist in the exercise of keeping the Code up to date and comprehensive and such dates could be designed to coincide with the re-issuing of the Criminal Procedure Rules and Criminal Practice Directions. This would assist commercial providers, those involved in training of the legal profession and judges, and the publishers of practitioner materials. It would make the law more accessible for lawyers and members of the public by reassuring them that they would only generally have to be alert to changes on predictable and relatively rare occasions.
- 3.8. We will also be working with other key stakeholders to ensure that the Code is understood and well presented. It must work efficiently alongside the Sentencing Council Guidelines and the Criminal Procedure Rules. We will be working closely with The National Archives to ensure that the Code is digitally displayed in an appropriate manner that reflects and complements its novel structure. This may involve the use of innovative display tools allowing users to view complementary external material.
- 3.9. During the consultation on the draft Bill, we will be conducting further research into how best to enable users to navigate and use the Code itself. We will also be working with the Judicial College and the representative professional bodies to ensure that training is in place to familiarise the judiciary and practitioners with the new Code.

(signed) David Bean, Chairman
Nick Hopkins
Stephen Lewis
David Ormerod
Nicholas Paines

Phil Golding, Chief Executive

22 September 2016

³ Such as in the practice of common commencement dates for domestic regulation of business: See eg Statutory Instrument Practice (4th edition) at para 2.5.11, available at <http://www.opsi.gov.uk/si/si-practice.doc> (last accessed at 27 September 2016).

Appendix 1: Sentencing law in England and Wales – Corrections

1.3.2 Racial/religious aggravation

Delete the open square brackets in s. 28(1) CDA 1998.

1.4.1 General principles relating to secondary custodial sentences

Delete CJA 2003 s. 153 and substitute:

s.153 (1) this section applies where a court passes a custodial sentence other than one fixed by law or imposed under section 224A, 225 or 226

s.153 (2) subject to the provisions listed in subsection (3), the custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

s. 153 (3) the provisions referred to in subsection (2) are –

- (a) sections 1(2B) and 1A(5) of the Prevention of Crime Act 1953;
- (b) section 51A(2) of the Firearms Act 1968;
- (c) sections 139(6B), 139A(5B) and 139AA(7) of the Criminal Justice Act 1988;
- (d) sections 110(2) and 111(2) of the Sentencing Act;
- (e) sections 226A(4) and 226B(2) of this Act;
- (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.

1.4.2 The custody threshold

Delete CJA 2003 s. 152(1) and substitute:

s.152 (1) this section applies where a person is convicted of an offence punishable with a custodial sentence other than one—

- (a) fixed by law, or
- (b) falling to be imposed under a provision mentioned in subsection (1A).

s.152 (1A) the provisions referred to in subsection (1)(b) are—

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
- (b) section 51A(2) of the Firearms Act 1968;

(c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988;

(d) section 110(2) or 111(2) of the Sentencing Act;

(e) section 224A, 225(2) or 226(2) of this Act;

(f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.

1.8.1 Formal agreements

The correct reference for R. v A and B is [1999] 1 Cr App R (S) 52.

1.11 The age of the offender

The correct reference for CYPA 1964 s.29 is CYPA 1963 s.29. The commencing SI is Commencement: 1 February 1964, SI 1963/2056 art. 1 and Sch. 1 para. 1.

3.3.1.1.4 Setting the level of the fine

Insert MCA 1980 s. 85.

MCA 1980 s.85: Power to remit fine¹

s.85 (1) where a fine has been imposed on conviction of an offender by a magistrates' court, the court may at any time remit the whole or any part of the fine, but only if it thinks it just to do so having regard to a change of circumstances which has occurred—

(a) where the court is considering whether to issue a warrant of commitment after the issue of such a warrant in respect of the fine has been postponed under subsection (2) of section 77 above, since the relevant time as defined in subsection (4) of that section; and

(b) in any other case, since the date of the conviction.

s.85 (2) where the court remits the whole or part of the fine after a term of imprisonment has been fixed, it shall also reduce the term by an amount which bears the same proportion to the whole term as the amount remitted bears to the whole or, as the case may be, shall remit the whole term.

s.85 (2A) where the court remits the whole or part of the fine after an order has been made under section 35(2)(a) or (b) of the Crime (Sentences) Act 1997, it shall also reduce the total number of hours or days to which the order relates by a number which bears the same proportion as the amount remitted bears to the whole sum or, as the case may be, shall revoke the order.

s.85 (2B) where the court remits the whole or part of the fine after a work order has been made under Schedule 6 to the Courts Act 2003 (discharge of fines by unpaid work), it shall also reduce the number of hours specified in the order

¹ Commencement: 6 July 1981, SI 1981/457 art.2.

by a number which bears the same proportion as the amount remitted bears to the whole sum or, as the case may be, shall revoke the order.

s.85 (3) in calculating any reduction required by subsection (2), (2A) or (2B) above any fraction of a day or hour shall be left out of account.

s.85 (3A) where –

(a) the court remits the whole or part of the fine, and

(b) the offender was ordered under section 161A of the Criminal Justice Act 2003 to pay a surcharge the amount of which was set by reference to the amount of the fine,

the court shall determine how much the surcharge would have been if the fine had not included the amount remitted, and remit the balance of the surcharge.

s.85 (4) notwithstanding the definition of “fine” in section 150(1) below, references in this section to a fine do not include any other sum adjudged to be paid on conviction, whether as a pecuniary penalty, forfeiture, compensation or otherwise.

3.3.1.1.6 Prison in default term

Delete PCC(S)A 2000 s. 139(5) and substitute:

s.139 (5) where any person liable for the payment of a fine or a sum due under a recognizance to which this section applies is sentenced by the court to, or is serving or otherwise liable to serve, a term of imprisonment or detention in a young offender institution or a term of detention under section 108 above, the court may order that any term of imprisonment or detention fixed under subsection (2) above shall not begin to run until after the end of the first-mentioned term.

Delete the square brackets in MCA 1980 s.82(5)(b).

3.3.1.2.1.2 Consent

The correct heading for 3.1.2.1.2 Consent is 3.3.1.2.2 Consent.

3.3.1.2.2.9 Breach

Delete MCA 1980 s. 116(3).

Insert MCA 1980 s. 120(1A)

s.120 (1A) if, in the case of a recognizance which is conditioned for the appearance of an accused before a magistrates' court, the accused fails to appear in accordance with the condition, the court shall—

(a) declare the recognizance to be forfeited;

(b) issue a summons directed to each person bound by the recognizance as surety, requiring him to appear before the court on a

date specified in the summons to show cause why he should not be adjudged to pay the sum in which he is bound;

and on that date the court may proceed in the absence of any surety if it is satisfied that he has been served with the summons.

3.3.1.5.1.1 General

Delete the open square brackets in CDA 1998 s. 8(8)(bb).

3.3.1.5.1.2 Determining whether and order can/should be made

Delete CDA 1998 s. 8(3) and substitute:

- s.8 (3) a court shall not make a parenting order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears to the court that the parent resides or will reside and the notice has not been withdrawn.

Delete CDA 1998 s. 8(6)(c) and substitute:

(c) in a case falling within paragraph (d), the commission of any further offence under the Education Act 1996 ss.443 or 444.

3.3.1.5.1.3 Making the order

Delete CDA 1998 s. 9(3)(b) and substitute:

(b) the consequences which may follow (under s.9(7)) if he fails to comply with any of those requirements; and

Delete CDA 1998 s. 8(7A) and substitute:

- s.8 (7A) a counselling or guidance programme which a parent is required to attend under s.8(4)(b) may be or include a residential course but only if the court is satisfied: (a) that the attendance of the parent at a residential course is likely to be more effective than his attendance at a non-residential course in preventing any such repetition/commission of any such further offence, and (b) that any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.

3.3.1.5.2.4 Orders made against local authorities in respect of a child/young person in respect of whom they have responsibility

The correct heading for 3.1.5.2.4 Orders made against local authorities in respect of a child/young person in respect of whom they have responsibility is 3.3.1.5.2.4 Orders made against local authorities in respect of a child/young person in respect of whom they have responsibility.

Delete the square brackets and footnote in PCC(S)A 2000 s. 137(8)(b).

3.3.1.6.1 General

The correct reference for David Thomas' article for Sentencing News is (S. News 2009 4 (Nov), 7).

3.3.2.1.2 Requirements which may be included in a community order

Delete the square brackets and footnote in CJA 2003 s. 210(1)(d).

3.4.1.6 Effect of the order

Delete ASBCPA 2014 s. 25 and substitute:

s.25 (2) if on the day a criminal behaviour order ("the new order") is made the offender is subject to another criminal behaviour order ("the previous order"), the new order may be made so as to take effect on the day on which the previous order ceases to have effect.

3.4.7.7 Interaction with other sentences

Delete R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[13] and substitute:

R. v Smith [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (p.468) para.[13]

"The usual rule ought to be that an indeterminate sentences needs so SOPO, at least unless there is some very unusual feature which means that such an order could add something useful and did not run the risk of undesirably tying the hands of the offender managers later." (Hughes LJ, at [13])

3.4.11 Hygiene Prohibition Orders

The correct reference for Food Hygiene (England) Regulations 2013 (SI 2013/2996) reg.7 is Food Safety and Hygiene (England) Regulations 2013 (SI 2013/2996) reg.7.

3.4.14.1 General

The correct reference for MSA 215 s.15 is MSA 2015 s.15.

3.5.1.1.4 Deciding whether or not to make an order

Delete R. v James [2003] EWCA Crim 811; [2003] 2 Cr. App. R. (S.) 97 (p.574) and substitute:

R. v James [2003] EWCA Crim 811; [2003] 2 Cr. App. R. (S.) 97 (p.574)

The Court concluded that where a court was of the opinion that a complete reconciliation between the parties would present a complex and difficult task, but that the calculation of the minimum loss arising was a comparatively simple task, and it would be in the interest of justice to make a compensation order in the sum representing the minimum loss arising, it should make such an order rather than decline on grounds of complexity.

3.5.1.1.5 Fixing the amount

Delete Magistrates' Courts Sentencing Guidelines, Sentencing Guidelines Council and substitute:

Magistrates' Courts Sentencing Guidelines, Sentencing Guidelines Council

Note: Pages 166 and 167 of the guidelines specify suggested amounts for physical injury. They are taken from the CICS (2001). The CICS table was updated in 2012.

3.5.1.1.7 Interaction with other sentencing orders

Delete the square bracket in POCA 2002 s. 13(3)(a).

Delete CJA 2003 s. 161A(3)(b) and substitute:

(b) that he has insufficient means to pay both the surcharge and appropriate amounts under such of those orders as it would be appropriate to make,

Delete PCC(S)A 2000 s.12(7) and substitute:

s.12 (7) nothing in this section prevents a court from imposing in addition to a discharge: a compensation order.

3.5.1.1.9 Appeals

The correct reference for s.32(1) in subheading PCC(S)A 2000 s.132: Compensation Orders: appeals etc. is s.132(1).

3.5.2.2 Making the order

Delete MSA 2015 s. 10(3) and substitute:

s.10 (3) sections 132 to 134 of the Powers of Criminal Courts (Sentencing) Act 2000 (appeals, review etc of compensation orders) apply to slavery and trafficking reparation orders as if—

(a) references to a compensation order were references to a slavery and trafficking reparation order;

(b) references to the court of trial were references to the court (within the meaning of section 8 above);

(c) references to injury, loss or damage were references to harm;

(d) the reference in section 133(3)(c)(iii) to a slavery and trafficking reparation order under section 8 above were to a compensation order under section 130 of that Act;

(e) in section 134 the references to service compensation orders were omitted.

3.5.3.3.3 Offence (or one of multiple offences) committed after 1 September 2014

The correct heading for 3.5.3.3.3 Offence (or one of multiple offences) committed before 1 September 2014 is 3.5.3.3.3 Offence (or one of multiple offences) committed after 1 September 2014.

3.5.4.1 Introduction

Delete rule.45.1(1) and substitute:

- rule.45.1 (1) this Part applies where the court can make an order about costs under—
- (a) Part II of the Prosecution of Offences Act 1985 and Part II, IIA or IIB of The Costs in Criminal Cases (General) Regulations 1986;
 - (b) section 109 of the Magistrates' Courts Act 1980;
 - (c) section 52 of the Senior Courts Act 1981 and rule 76.6 or rule 76.7;
 - (d) section 8 of the Bankers Books Evidence Act 1879;
 - (e) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965;
 - (f) section 36(5) of the Criminal Justice Act 1972;
 - (g) section 159(5) and Schedule 3, paragraph 11, of the Criminal Justice Act 1988;
 - (h) section 14H(5) of the Football Spectators Act 1989;
 - (i) section 4(7) of the Dangerous Dogs Act 1991;
 - (j) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008; or
 - (k) Part 1 or 2 of the Extradition Act 2003.

Delete Note. A costs order can be made under – and substitute:

*Note.*¹³⁴⁴ *A costs order can be made under –*

- (a) section 16 of the Prosecution of Offences Act 1985 (defence costs), for the payment out of central funds of a defendant's costs (see rule 45.4);
- (b) section 17 of the Prosecution of Offences Act 1985 (prosecution costs), for the payment out of central funds of a private prosecutor's costs (see rule 45.4);
- (c) section 18 of the Prosecution of Offences Act 1985 (award of costs against accused), for the payment by a defendant of another person's costs (see rules 45.5 and 45.6);
- (d) section 19(1) of the Prosecution of Offences Act 1985 and regulation 3 of the Costs in Criminal Cases (General) Regulations

1986, for the payment by a party of another party's costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party (see rule 45.8);

(e) section 19A of the Prosecution of Offences Act 1985 (costs against legal representatives, etc.) –

(i) for the payment by a legal representative of a party's costs incurred as a result of an improper, unreasonable or negligent act or omission by or on behalf of the representative, or

(ii) disallowing the payment to that representative of such costs (see rule 45.9);

(f) section 19B of the Prosecution of Offences Act 1985 (provision for award of costs against third parties) and regulation 3F of the Costs in Criminal Cases (General) Regulations 1986, for the payment by a person who is not a party of a party's costs where there has been serious misconduct by the non-party (see rule 45.10);

(g) section 109 of the Magistrates' Courts Act 1980, section 52 of the Senior Courts Act 1981 and rule 45.6, for the payment by an appellant of a respondent's costs on abandoning an appeal to the Crown Court (see rule 45.6);

(h) section 52 of the Senior Courts Act 1981 and –

(i) rule 45.6, for the payment by a party of another party's costs on an appeal to the Crown Court in any case not covered by (c) or (g),

(ii) rule 45.7, for the payment by a party of another party's costs on an application to the Crown Court about the breach or variation of a deferred prosecution agreement, or on an application to lift the suspension of a prosecution after breach of such an agreement;

(i) section 8 of the Bankers Books Evidence Act 1879, for the payment of costs by a party or by the bank against which an application for an order is made (see rule 45.7);

(j) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965, for the payment by the applicant for a witness summons of the costs of a party who applies successfully under rule 17.7 to have it withdrawn (see rule 45.7);

(k) section 36(5) of the Criminal Justice Act 1972 or Schedule 3, paragraph 11, of the Criminal Justice Act 1988, for the payment out of central funds of a defendant's costs on a reference by the Attorney General of –

(i) a point of law, or

(ii) an unduly lenient sentence (see rule 45.4);

(l) section 159(5) of the Criminal Justice Act 1988, for the payment by a person of another person's costs on an appeal about a reporting or public access restriction (see rule 45.6);

(m) section 14H(5) of the Football Spectators Act 1989, for the payment by a defendant of another person's costs on an application to terminate a football banning order (see rule 45.7);

(n) section 4(7) of the Dangerous Dogs Act 1991, for the payment by a defendant of another person's costs on an application to terminate a disqualification for having custody of a dog (see rule 45.7);

(o) article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(a), corresponding with section 16 of the Prosecution of Offences Act 1985 (see rule 45.4);

(p) article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with section 18 of the Prosecution of Offences Act 1985 (see rule 45.6);

(q) article 16 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19(1) of the 1985 Act (see rule 45.8);

(r) article 17 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19A of the 1985 Act (see rule 45.9);

(s) article 18 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19B of the 1985 Act (see rule 45.10);

(t) section 60 or 133 of the Extradition Act 2003 (costs where extradition ordered) for the payment by a defendant of another person's costs (see rule 45.4); or

(u) section 61 or 134 of the Extradition Act 2003(b) (costs where discharge ordered) for the payment out of central funds of a defendant's costs (see rule 45.4).

3.5.4.2 Criminal Procedure Rules

Delete rule 45.1 – (1) and substitute:

45.1. (1) This Part applies where the court can make an order about costs under –

(a) Part II of the Prosecution of Offences Act 1985 and Part II, IIA or IIB of The Costs in Criminal Cases (General) Regulations 1986;

- (b) section 109 of the Magistrates' Courts Act 1980;
- (c) section 52 of the Senior Courts Act 1981 and rule 76.6 or rule 76.7;
- (d) section 8 of the Bankers Books Evidence Act 1879;
- (e) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965;
- (f) section 36(5) of the Criminal Justice Act 1972;
- (g) section 159(5) and Schedule 3, paragraph 11, of the Criminal Justice Act 1988;
- (h) section 14H(5) of the Football Spectators Act 1989;
- (i) section 4(7) of the Dangerous Dogs Act 1991;
- (j) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008; or
- (k) Part 1 or 2 of the Extradition Act 2003.

Delete rule 45.4. – (6) and substitute:

- (6) If the court makes an order –
 - (a) the court may direct an assessment under, as applicable –
 - (i) Part III of the Costs in Criminal Cases (General) Regulations 1986, or
 - (ii) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008;
 - (b) the court may assess the amount itself in a case in which either –
 - (i) the recipient agrees the amount, or
 - (ii) the court decides to allow a lesser sum than that which is reasonably sufficient to compensate the recipient for expenses properly incurred in the proceedings;
 - (c) an order for the payment of a defendant's costs which includes an amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative, must include a statement to that effect.

Delete rule 45.6. – (1) and substitute:

- (1) This rule –

(a) applies where a magistrates' court, the Crown Court or the Court of Appeal can order a party to pay another person's costs on an appeal, or an application for permission to appeal;

(b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an appeal to that court, except on an appeal under—

(i) section 108 of the Magistrates' Courts Act 1980, or

(ii) section 45 of the Mental Health Act 1983.

Delete rule 45.9.(4) and substitute:

(4) A party who wants the court to make an order must—

(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;

(b) serve the application on—

(i) the court officer (or, in the Court of Appeal, the Registrar),

(ii) the representative responsible,

(iii) each other party, and

(iv) any other person directly affected;

(c) in that application specify—

(i) the representative responsible,

(ii) the relevant act or omission,

(iii) the reasons why that act or omission meets the criteria for making an order,

(iv) the amount claimed, and

(v) those on whom the application has been served.

Delete rule 45.13. – (3) and substitute:

(3) That party must—

(a) appeal to a judge of the High Court attached to the Queen's Bench Division as if it were an appeal from the decision of a master under Part 52 of the Civil Procedure Rules 1998; and

(b) serve the appeal not more than 21 days after service of the costs judge's certificate under paragraph (2).

3.5.4.3 Interaction with other sentencing orders

Delete PCC(S)A 2000 s.12(7) and substitute:

s.12 (8) nothing in this section shall be construed as preventing a court, on discharging an offender absolutely or conditionally in respect of any offence, from making an order for costs against the offender [...]

(b) making an order for costs against the offender.

3.5.4.4.1 General

Delete rule 45.4 – (6)(a) and substitute:

(a) the court may direct an assessment under, as applicable—

(i) Part III of the Costs in Criminal Cases (General) Regulations 1986, or

(ii) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008;

3.5.4.7 Prosecution costs (paid by defendant)

Delete Note. See – and substitute:

*Note.*¹³⁶⁶ See –

(a) rule 45.2;

(b) section 18 of the Prosecution of Offences Act 1985 and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986; and

(c) sections 60 and 133 of the Extradition Act 2003.

Under section 18(4) and (5) of the 1985 Act, if a magistrates' court –

(a) *imposes a fine, a penalty, forfeiture or compensation that does not exceed £5 –*

(i) *the general rule is that the court will not make a costs order against the defendant, but*

(ii) *the court may do so;*

(b) *fines a defendant under 18, no costs order against the defendant may be for more than the fine.*

Part 39 (Appeal to the Court of Appeal about conviction or sentence) contains rules about appeal against a Crown Court costs order to which this rule applies.

3.5.5. Preventive orders (financial reporting orders)

Delete subsection and substitute:

The power to make a financial reporting order was repealed on 3 May 2015 by the Serious Crime Act 2015 s. 50(1)(a), as commenced by SI 2015/820 reg.2(i). The repeal coincided with the insertion of Serious Crime Act 2007 s.5A. An explanatory memorandum to the Serious Crime Act 2015 stated that the effect was to consolidate the financial reporting order into the serious crime prevention order.

3.5.6.1.6 Review of orders

Delete PCC(S)A 2000 s. 133(3) and substitute:

s.133 (3) the appropriate court may exercise a power conferred by subsection (1) above only if it appears to the court—

(a) that the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order; or

(b) in the case of a compensation order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or

(c) that the means of the person against whom the compensation order was made are insufficient to satisfy in full both the order and any or all of the following made against him in the same proceedings –

(i) a confiscation order under Part 6 of the Criminal Justice Act 1988 or Part 2 of the Proceeds of Crime Act 2002;

(ii) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013;

(iii) a slavery and trafficking reparation order under section 8 of the Modern Slavery Act 2015; or

(d) that the person against whom the compensation order was made has suffered a substantial reduction in his means which was unexpected at the time when the order was made, and that his means seem unlikely to increase for a considerable period.

3.6.2.8 Immigration offences

Delete subheading Power to extend to islands.

3.6.4.1 Deprivation and disposal

Insert AWA 2006 s. 37:

AWA 2006 s.37: Destruction in the interests of the animal²

s.37 (1) the court by or before which a person is convicted of an offence under any of sections 4, 5, 6(1) and (2), 7, 8(1) and (2) and 9 may order the destruction

² Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

of an animal in relation to which the offence was committed if it is satisfied, on the basis of evidence given by a veterinary surgeon, that it is appropriate to do so in the interests of the animal.

- s.37 (2) a court may not make an order under subsection (1) unless–
- (a) it has given the owner of the animal an opportunity to be heard, or
 - (b) it is satisfied that it is not reasonably practicable to communicate with the owner.
- s.37 (3) where a court makes an order under subsection (1), it may–
- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
 - (b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;
 - (c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);
 - (d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;
 - (e) order the offender or another person to reimburse the expenses of carrying out the order.
- s.37 (4) where a court makes an order under subsection (1), each of the offender and, if different, the owner of the animal may–
- (a) in the case of an order made by a magistrates' court, appeal against the order to the Crown Court;
 - (b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.
- s.37 (5) subsection (4) does not apply if the court by which the order is made directs that it is appropriate in the interests of the animal that the carrying out of the order should not be delayed.
- s.37 (6) in subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 8(1) or (2), an animal which took part in an animal fight in relation to which the offence was committed.

Insert AWA 2006 s. 38:

AWA 2006 s.38: Destruction of animals involved in fighting offences³

- s.38 (1) the court by or before which a person is convicted of an offence under section 8(1) or (2) may order the destruction of an animal in relation to which the offence was committed on grounds other than the interests of the animal.
- s.38 (2) a court may not make an order under subsection (1) unless–
- (a) it has given the owner of the animal an opportunity to be heard, or
 - (b) it is satisfied that it is not reasonably practicable to communicate with the owner.
- s.38 (3) where a court makes an order under subsection (1), it may–
- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
 - (b) require a person who has possession of the animal to deliver it up to enable the order to be carried out;
 - (c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed);
 - (d) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order;
 - (e) order the offender or another person to reimburse the expenses of carrying out the order.
- s.38 (4) where a court makes an order under subsection (1) in relation to an animal which is owned by a person other than the offender, that person may–
- (a) in the case of an order made by a magistrates' court, appeal against the order to the Crown Court;
 - (b) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal.
- s.38 (5) in subsection (1), the reference to an animal in relation to which the offence was committed includes an animal which took part in an animal fight in relation to which the offence was committed.

3.7.3.4. Extension of disqualification where custodial sentence imposed

The correct reference in footnotes 1533 and 1544 is Commencement: 13 April 2015, as inserted by Coroners and Justice Act 2009 Sch.16 para.2(2), subject to transitional provisions specified in Sch.22 paras.29 and 34, SI 2015/819 art.2(b).

³ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

3.9.1.1.8 Certificates of conviction under Shc 3

Delete the second SOA 2003 s. 92(4) that begins “proceedings for an offence...”

3.9.1.2.4 For how long do the notification provisions apply?

Insert CTA 2008 s. 53(4):

s.53 (4) the period begins with the day on which the person is dealt with for the offence.

Delete CTA 2008 s.53(3)(b)(iii) and substitute:

s.53 (5) if a person who is the subject of a finding within section 45(1)(b)(iii), (2)(b)(iii) or (3)(b)(iii) (finding of disability, etc) is subsequently tried for the offence, the period resulting from that finding ends—

(a) if the person is acquitted, at the conclusion of the trial;

(b) if the person is convicted, when the person is again dealt with in respect of the offence.

4.2.1 Duty to follow sentencing guidelines

Delete CJA 2009 s. 125(2) under the subheading No category suitable and substitute:

s.125 (4) subsection (3)(b) does not apply if the court is of the opinion that, for the purpose of identifying the sentence within the offence range which is the appropriate starting point, none of the categories sufficiently resembles P's case.

4.2.2 Duty to have regard to sentencing guidelines

Insert Coroners and Justice Act 2009 (Commencement No. 4, Transitional and Saving Provisions) Order 2010 (SI 2010/816) art. 7(3) and (4):

art.7 (3) the amendments to section 174 of the Criminal Justice Act 2003 (duty to give reasons for, and explain effect of, sentence), which take effect by virtue of article 2 and paragraph 20(b) of the Schedule, shall have no effect in relation to the sentencing of any offender for an offence committed before 6th April 2010.

art.7 (4) the amendments to Schedule 21 to the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), which take effect by virtue of article 5(f) and (g)(ii), shall have no effect in relation to the sentencing of any offender for an offence of murder committed before 4th October 2010.

6.2.4 CCRC referrals

Delete CAA 1968 s.16C: Power to dismiss certain appeals following references by the CCRC.