

Appendix 6: Children and Young Person’s Consultation Analysis

INTRODUCTION

- 6.1 This document analyses the responses of consultees to “the consultation on children and young persons”.¹
- 6.2 It is designed to be read in conjunction with the Law Commission’s final report on this project² which accompanies publication of the draft Sentencing Code, as well as the analysis of responses to the “main consultation”³ in this project, which immediately preceded this further consultation.
- 6.3 The main consultation in this project had excluded consideration of sentencing disposals relating exclusively to children and young persons, for a number of reasons, including that reform of this area was being actively considered by the government at the time of the drafting and publication of the main consultation paper.⁴ Once it became apparent that no imminent or wholesale reform of this area was in serious contemplation, we conducted this further separate consultation on the discrete topic of youth sentencing disposals, to inform our drafting of this part of the Sentencing Code in the final report and draft Bill.
- 6.4 The consultation on children and young persons was published on 23 March 2018, and the consultation ran until 27 April 2018. This short consultation period was necessitated by the advanced nature of the project, and reflective of the limited material on which we were seeking consultees views, and the limited nature of the policy change involved in the new drafting. We received written responses from the following:
- (1) Professor Andrew Ashworth QC;
 - (2) The Bar Council of England and Wales;
 - (3) The Crown Prosecution Service;
 - (4) Joint Response from The Howard League for Penal Reform and Just for Kids Law / Youth Justice Legal Centre;
 - (5) Her Majesty’s Council of Circuit Judges (Criminal Sub-Committee);

¹ The Sentencing Code: Disposals relating to children and young persons (2018) Law Commission Consultation Paper No 234.

² The Sentencing Code: Volume 1 (2018) Law Com No 382.

³ The Sentencing Code (2017) Law Commission Consultation Paper No 232.

⁴ See further, The Sentencing Code (2017) Law Commission Consultation Paper No 232, paras 2.92 to 2.96.

- (6) The Magistrates' Association;
- (7) The Legal Committee of Her Majesty's District Judges (Magistrates' Courts);
- (8) The Law Society of England and Wales;
- (9) The Sentencing Council;
- (10) The Ministry of Justice;
- (11) Mr Justice William Davis;
- (12) District Judge (Magistrates' Court) Tan Ikram;
- (13) Messrs GT Stewart (Solicitors);
- (14) Dr Jonathan Bild (Cambridge University);
- (15) Mr Paul Bunting; and
- (16) Mr Ian Cassidy

6.5 A number of consultees made general comments in addition to responding specifically to the consultation questions posed in the consultation on children and young persons

6.6 Some of these were general statements of continuing support. Dr Jonathan Bild (University of Cambridge), for example, stated:

I would also like to avail myself of this opportunity to express my unequivocal support for the Law Commission's work in producing the Sentencing Code. The hitherto organic development of sentencing law has created a state of affairs that is not only unnecessarily complicated for those who must grapple with it in their daily professional lives but it is almost completely inaccessible and incomprehensible to the public. Imposing punishment on its citizens is one of the state's foremost powers and therefore every effort must be made to ensure that the framework under which punishment is imposed is as accessible as possible. The implementation of the Sentencing Code would make a valuable contribution in this direction.

Whilst the minutiae of sentencing law will inevitably involve a significant degree of complexity, this issue is greatly exacerbated by the innumerable statutory sources (some in force, some partly in force, some no longer in force, some never brought into force, etc.) that has left this area of the law often confusing even to those academics primarily engaged in sentencing-related research. It is little wonder that so many unlawful sentences are imposed by the courts each year.

The Sentencing Code would be one of those rare pieces of law reform that would clearly deliver great benefit without a single obvious potential downside. I sincerely hope that the enormous amount of time that has been devoted to producing the Sentencing Code will be rewarded by the Code's eventual implementation. By implementing the Code, sentencing would become more accessible to anyone who wishes to engage with this complicated but important field.

6.7 Similarly, the Crown Prosecution Service wrote:

We fully support this proposal in principle and commend you on it, both conceptually and in its careful execution. We have no reservations about the implementation of the Sentencing Code. The simplification of the law on sentencing procedure, in terms of structure, language and source, will be of great benefit to practitioners and will make sentencing more comprehensible to members of the public, children, young persons, their parents, victims and witnesses.

6.8 Others were suggestions about further reforms, such as the reform of guilty plea credit for referral orders advocated by Mr Ian Cassidy, and a general suggestion from Mr Paul Bunting that sentencing for teenagers should include an element of education.

6.9 The Joint Response from The Howard League for Penal Reform and Just for Kids Law/the Youth Justice Legal Centre made a number of general points. They began by observing that children and the adults supporting them consistently tell them that they find the sentencing process “frightening, inconsistent and confusing”. They said:

We therefore consider that the codification of sentencing disposals for children will have huge potential benefits for children. Creating a more structured, transparent and accessible sentencing framework can only help to ensure lawful sentences are passed. This is especially important in the context of the concerns about the disproportionate rates of prison sentences for of Black and Minority Ethnic children recognised by David Lammy. The Code will enhance a sense of procedural fairness which is widely recognised as particularly important to children. Furthermore, children’s perceptions of the legitimacy are a key determinant of future adherence to the law.

6.10 In this vein they particularly welcomed the accessibility of the Code and the opportunities to make the language of sentencing legislation far more accessible and straightforward.

6.11 The Joint Response then addressed a number of more general matters.

6.12 First, the Howard League and Just for Kids Law/the Youth Justice Legal Centre encouraged the Code to adopt a definition of child that related to all persons under the age of 18. They argued that the distinction between “children” and “young people” created by the Children and Young Persons Act 1933 was an outdated one, and was not in line with the general definition of children in the United Nations Convention on the Rights of the Child.

6.13 Secondly, the Howard League and Just for Kids Law/the Youth Justice Legal Centre raised concerns about the use of the word “offender” in relation to those convicted under aged 18. They stated:

Labelling children as “offenders” entrenches their identity as offenders, which in turn undermines the aim of preventing reoffending, which is the principle aim of the justice system for children (s37, Crime and Disorder Act 1998).

6.14 They pointed to academic research which states that the use of the language of “offenders” reinforces a feeling of exclusion, and is unnecessary and unhelpful. They

proposed that those convicted under age 18 be referred to as children throughout the Sentencing Code.

- 6.15 Finally, the Howard League and Just for Kids Law/the Youth Justice Legal Centre raised a general concern about the sentencing of young adults. They noted the neurological and psychological evidence that development of the frontal lobes of the brain does not cease until around 25 years old, and argued that there should be a general change in the approach to sentencing young adults in the future. They asked us to consider the provisions relating to young adults with this in mind. Making changes to the general policy of sentencing of young adults is of course outside the scope of this project.

Overview of main points arising from the responses

- 6.16 The nature of this short further consultation, and indeed this project, was a consolidation and streamlining of the existing law. The bulk of the consultation questions therefore related to questions of structure, drafting and presentation, with the minority relating to minor substantive changes to sentencing law necessitated or strongly suggested by the act of consolidating separate sources of law which were contradictory or did not sit easily together.
- 6.17 Many of the consultation questions asked whether consultees considered the re-drafted streamlined provisions to be an improvement on the current law and also sought feedback on how they might be improved.
- 6.18 In the vast majority of cases, as will be seen below, the unanimous or near-unanimous opinion of consultees was that the re-drafts constituted an improvement, albeit that additional helpful feedback was often forthcoming, excerpts of which are summarised in this document.
- 6.19 This further consultation, and the inclusion of youth sentencing provisions in the Code itself, is in no small part a result of the strong support expressed by consultees representing the professions and the judiciary, amongst others, for that outcome, and the importance of keeping youth sentencing in step with adult sentencing.
- 6.20 Where there was a strong majority opinion expressed against the making of a change by consultees (as in the responses to question 11 below) we have declined to make such a change in the Code.

Structure and context of this document

- 6.21 This short document analyses the responses to the questions in the consultation on children and young persons, taking each question in turn in the order in which they appeared in the that consultation paper. It is divided into thematic sections, each of which contains analysis of the responses to one or more questions. It is designed to be read alongside the longer analysis of responses which analyses consultees' responses to the main consultation paper in this project.⁵ Unsurprisingly, the majority of those consultees who responded to the consultation on children and young persons

⁵ The Sentencing Code: Volume 1 (2018) Law Com No 382, Appendix 5.

also responded to the main consultation, and responses should be read together for their full context.

PART 1 – GENERAL FEEDBACK ON THE ACCURACY OF THE DRAFT PROVISIONS

6.22 Throughout this project, from our initial publication of a compilation of the current law of sentencing,⁶ through the main consultation and in the consultation on children and young persons, we have, in addition to asking more specific questions, sought general feedback on whether the provisions of the Sentencing Code are a faithful, accurate and comprehensive reflection of the existing law.⁷

6.23 This was the purpose of the first consultation question in the consultation on children and young persons, which asked:

Do consultees agree that the draft provisions in Appendix 2 reflect the current law in relation to sentencing orders concerning the sentencing of children and young persons, bearing in mind the pre-consolidation amendments that have been proposed, and the effect of the clean sweep?

6.24 Her Majesty's Council of Circuit Judges, The Legal Committee of Her Majesty's District Judges (Magistrates' Court) and DJ Tam Ikram all considered that the draft provisions did reflect the current law, with DJ Ikram also helpfully bringing our attention to the provisions of the Offensive Weapons Bill 2018.

6.25 Other consultees who responded to this general question were also supportive, but somewhat more caveated their responses. For instance, the Bar Council stated:

We have not, given the necessarily limited time available to respond to this consultation, been able to devote sufficient time to answer this question. However, the relatively limited occurrence of errors, omissions and duplication which we identified in our response to the second consultation provides reassurance that the contents are likely to be both comprehensive and accurate.

6.26 The Crown Prosecution Service agreed that the provisions reflected the current law in relation to the sentencing of children and young people and endorsed the consolidation and clarification of the law that this represents, before going on:

We note that this proposal will sit alongside:

a. Article 7 of the European Convention on Human Rights (no punishment without law i.e. no retrospective punishment) and section 6 of the Human Rights Act 1998 (duty of public authorities not to act in a way which is incompatible with a convention right);

⁶ 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/>.

⁷ Except insofar as we are making intentional changes to the form of the law (i.e. streamlining) or, rarely, the substance of the law, in which case we have asked drawn consultees' attention directly to such changes and asked whether it is agreed that they constitute an improvement.

b. Section 44 of the Children and Young Persons Act 1933 (requirement on courts to have regard to the welfare of a young person);

c. The Code for Crown Prosecutors and the CPS Legal Guidance on Youth Offenders which emphasise the importance of the best interests and welfare of a child or young person.

We consider that the draft provisions are consistent with (a) to (c) above, and that at any rate they will be understood within the context of a youth justice system which continues to abide by these principles. Any application of these draft provisions (other than in respect of pre-consolidation amendments or in respect of the clean sweep) other than in reflecting current law and practice would continue to be subject to (a) to (c) above.

6.27 The Law Society described the provisions as “a comprehensive clean sweep, albeit in the time available it has not been possible to check each and every individual enactment from its statutory origin. Generally, this appears to be an excellent attempt to codify the existing law.” The Law Society went onto make two “small points”:

Para 2.33 of the consultation - in our experience practitioners and courts have read the words ‘convicted of’ as wide and referring to any previous conviction which would include those leading to the order which is subject to the breach proceedings. Breach proceedings can either be adjourned or the offender subjected to a remand which, if not on bail, would be subject to s91 of LASPO, but the additional clarification in s362 of the Code would do no harm. s127 of the Code - though we would note that it is preceded by a section referring specifically to ‘fines for under 18s’, could s127 be misread as applying to under 18 year olds?

6.28 Mr Justice William Davis (the judicial lead for youth justice in England and Wales) believed:

Insofar as the provisions relate to youth rehabilitation orders and to sentences involving custody they appear to reflect the current law in relation to sentencing.

6.29 The Sentencing Council clearly endorsed the provisions of the Sentencing Code in this area, including the main changes in the form of the ‘clean sweep’, stating:

The Council agrees with the draft provisions in Appendix 2. The Council considers that there are clear benefits in applying the clean sweep policy to these provisions as it will assist sentencers, helping them to ensure the sentence imposed is lawful, and should achieve greater consistency in sentencing. The Council will need to amend our Overarching Principles guideline for Sentencing Children and Young People to reflect this change.

6.30 Finally, the Ministry of Justice also welcomed the consolidation of these provisions, confirming the accuracy of the draft Sentencing Code.

PART 2 – REFERRAL ORDERS

6.31 Question 2 in the consultation on children and young persons related to the re-drafted provisions on referral orders. It asked whether consultees agreed with the proposed

structure of the clauses relating to referral orders (clauses 80 to 105 and Schedules 3 and 4 of the Sentencing Code).

6.32 Her Majesty's Council of Circuit Judges, The Legal Committee of Her Majesty's District Judges (Magistrates' Court), the Crown Prosecution Service and the Law Society all expressed agreement.

6.33 The Magistrates' Association made a number of helpful specific points around this area, in particular in relation to out of court disposals, for which we are grateful.

6.34 The Bar Council also agreed with the proposed re-draft, subject to 2 observations:

First, re: clause 115(1), as suggested in our third response, we consider that this might be more simply drafted as follows: "If the relevant offence provision provides that a person convicted of that offence is liable to a fine, a magistrates' court dealing with an offender for that offence may impose a fine of a particular amount."

Secondly, we wonder whether the provisions dealing with youth rehabilitation orders might be better re-ordered in the following sequence: 164, 168, 165, 166, 169, 167.

6.35 Mr Justice William Davis agreed with the general structure of the provisions, but noted

...an issue in relation to the jurisdiction of a Crown Court. Clause 81 indicates that a referral order is available where the court is a youth court or other magistrates' court. On the face of it that means that a Crown Court cannot impose a referral order. If a child or young person is before the Crown Court alone it is unlikely that a referral order will be a realistic option. The defendant will only be before the Crown Court because s/he has committed a grave crime. However, a child or young person may be before the Crown Court with an adult as a result of the interests of justice test at allocation. S/he may not have committed a serious offence. I believe that some Crown Court judges consider that they can overcome the issue of availability of a referral order by exercising their power under Section 66 of the Courts Act 2003. Arguably this is not a proper use of the power. It would be helpful for the relevant clause to make it clear one way or the other.

PART 3 – PARENTAL ORDERS

6.36 Questions 3, 4 and 5 in the consultation on children and young persons all related to youth sentencing disposals aimed at regulating the conduct of the parents or guardians of the child or young person before the court.

6.37 Question 3 asked whether consultees thought that the substantial re-drafting of sections 137 and 138 of the Powers of Criminal Courts (Sentencing) Act 2000 (relating to parental payment orders) made the effect of the law clearer.

6.38 All those who responded specifically to this question were supportive of the re-drafting.

6.39 Her Majesty's Council of Circuit Judges, The Legal Committee of Her Majesty's District Judges (Magistrates' Court), DJ Tam Ikram, the Law Society, the Crown Prosecution Service and the Bar Council all thought the re-draft was clearer, with the

Bar Council further suggesting that the Sentencing Code might provide a statutory signpost⁸ to civil parenting orders.

6.40 The Ministry of Justice stated that:

We agree that the redrafting of the provisions has the same effect as the current arrangements under the Powers of Criminal Courts (Sentencing) Act 2000.

6.41 Question 4 asked whether consultees agreed with the decision to re-draft the provisions relating to parenting orders made under section 8(1)(c) and (d) of the Crime and Disorder Act 1998 in the Sentencing Code, rather than to signpost them?

6.42 Her Majesty's Council of Circuit Judges, The Legal Committee of Her Majesty's District Judges (Magistrates' Court), DJ Tam Ikram, the Law Society, the Crown Prosecution Service and the Bar Council all agreed with this decision.

6.43 The Crown Prosecution Service further noted that:

The Bill intends to make sentencing law more understandable and accessible. It is particularly important that it does so in an area which directly affects not only the court and the parties but the obligations to be placed upon the parents and guardians of young offenders.

6.44 Dr Jonathan Bild (University of Cambridge) stated he was:

broadly in favour of the Sentencing Code containing as much of the relevant law as possible directly within the Code rather than signposted from the Code as this appears more in keeping with the ideals of the consolidation exercise. Therefore, I agree with the decision to re-draft these provisions in the Sentencing Code.

6.45 The Magistrates' Association stated that it agreed:

that it is sensible to include the provisions relating to parenting orders in the Bill rather than signposting them... In relation to Clause 346, the MA is not aware of any area in which a parenting order is not available, and would be concerned if provision was lost.

6.46 Finally, the Ministry of Justice also agreed "that it would be more helpful for courts to have the provisions in the Sentencing Code rather than merely to signpost them."

6.47 Question 5 asked the specific question of whether consultees agreed that parenting orders made by virtue of section 8(1)(d) of the Crime and Disorder Act 1998 constitute sentences for the purposes of section 108 of the Magistrates' Courts Act 1980 and section 9 of the Criminal Appeal Act 1968?

⁸ A signpost is a provision which simply alerts the reader of the legislation to the existence of another provision, either located in that legislation, or another enactment. A signpost has itself no legal effect. For more information, see [\[signpost to discussion in Report\]](#).

6.48 Her Majesty's Council of Circuit Judges, The Legal Committee of Her Majesty's District Judges (Magistrates' Court), DJ Tam Ikram and the Law Society all answered this question in the affirmative.

6.49 The Crown Prosecution Service were of the same opinion that:

notwithstanding section 10(5) Crime and Disorder Act 1998 that parenting orders made by virtue of section 8(1)(d) constitute sentences, given that they are passed following conviction of a person and their nature (not the removal of a permission but the imposition of a requirement) as provided for by section 8(4).

6.50 The Bar Council also agreed, and set out fuller reasons:

Parenting orders are plainly neither an order for the payment of costs (section 108(3)(b)) nor an order imposed under the Animal Welfare Act 2006 (section 108(3)(c)). Furthermore, the discretion that a sentencing court has to impose a parenting order ("if in the proceedings the court is satisfied that the relevant condition is fulfilled, it may make a parenting order") means that section 108(3)(d) Magistrates' Court Act 1980 does not bite, either. On this basis, parenting orders are "sentences" for the purposes of section 108 Magistrates' Court Act 1980, and are therefore appealable to the Crown Court under that section.

Parenting orders are also seemingly sentences for the purposes of the appeal provisions contained in section 9 Criminal Appeals Act 1968, by virtue of the definition of "sentence" provided by section 50 of the same legislation; they are plainly an order "imposed by a sentencing court when dealing with an offender". Although they are not included in specific statutory examples, there does not appear to be any basis for distinguishing them from the examples given. Furthermore, the analogy drawn by the Law Commission to the now-repealed ASBOs and financial orders seems a reasonable one.

6.51 Finally, the Ministry of Justice stated:

We are happy for the Law Commission to clarify the court to which a parenting order can be appealed, in the case where a parenting order has been given for non-attendance at school (s443 or s444 Education Act 1996). We would want to stress that the parenting order outside of this offence, is not a criminal sentence, particularly as it is not attached to any crime that the parent has committed. The clarification in this legislation should not apply to any other parenting orders.

PART 4 – REPARATION ORDERS

6.52 Question 6 related to reparation orders. It asked simply whether consultees had any comments on the re-structuring of the provisions relating to reparation orders. Only some consultees had comments, and all were supportive.

6.53 Her Majesty's Council of Circuit Judges and the Crown Prosecution Service welcomed the effect of the clean sweep in this area.

6.54 The Legal Committee of Her Majesty's District Judges (Magistrates' Courts) thought the restructuring of the provisions relating to reparation orders was helpful, and the

Law Society that the re-draft was “a more sensible approach in that it allows for sentence in accordance with law at date of re-sentence, but restricts it to the age of the offender at date of offence”.

6.55 The Magistrates’ Association similarly welcomed:

... the clarity around when reparation orders are available to sentencers in the Youth Court. The draft section clearly sets out that they are a stand-alone order that can only be used where other sentences such as referral orders, Youth Rehabilitation Orders or Detention and Training Orders are not given.

6.56 The Ministry of Justice broadly agreed with the restructuring of provisions for the purposes of streamlining cases and allowing courts to sentence an offender according to the age at which they were originally convicted.

PART 5 – YOUTH REHABILITATION ORDERS

6.57 Questions 7, 8 and 9 in the consultation on children and young persons related to Youth Rehabilitation Orders (YROs).

Structure

6.58 Question 7 asked the overarching general question of whether consultees had any comments on the structure of the re-drafted provisions relating to YROs.

6.59 Many consultees stated they simply supported the re-draft, or had no specific comments.

6.60 Her Majesty’s Council of Circuit Judges stated:

We welcome these provisions. In our experience these are sentences we encounter in the Crown Court. The re-arrangement of the structure in a logical fashion is particularly welcome.

6.61 The Magistrates’ Association were of the view that “legislation would not be the primary resource for magistrates, but ... this section on YROs is clear” whilst the Legal Committee of Her Majesty’s District Judges (Magistrates’ Courts) believed that “the restructuring of the provisions relating to youth rehabilitation orders is helpful, logical and brings clarity to the provisions.”

6.62 Mr Justice William Davis helpfully observed that:

Clause 185 of the Code deals with the as yet dormant power of the court to review Youth Rehabilitation Orders. It is in the same terms as the relevant paragraph of the Schedule to the Criminal Justice Act 2003. My comment is not that this is inappropriate. Rather, when the Code is being introduced the opportunity should be taken to introduce the power by regulation as has been argued for by all sides in the youth justice system for some time.

6.63 Finally on specific responses to this question, the Ministry of Justice “broadly agree[d] that it would be sensible to have all provisions relating to the imposition, breach, revocation and amendment in one place.”

Re-drafting

6.64 Question 8 asked whether consultees had any views as to the re-drafting of the provisions concerning the requirements capable of being imposed under a youth rehabilitation order.

6.65 Again, many consultees had no specific comments, or expressed simply broad support.

6.66 Dr Jonathan Bild (University of Cambridge) stated that:

This appears to be a sensible re-drafting of these provisions and, as with much else of the Code, brings greater clarity to the relevant provisions.

6.67 The Magistrates' Association, in common with their response to question 7, were of the view that "although legislation would not be the primary resource for magistrates, the MA believes the re-drafting setting out the requirements under a YRO is very clear."

6.68 The Legal Committee of Her Majesty's District Judges (Magistrates' Courts) stated:

The redrafting of the provisions relating to the youth rehabilitation requirements brings a helpful clarity and ease of use.

6.69 The Ministry of Justice responded that:

We agree that by streamlining orders and making consistency changes would help navigate the legislative requirements relating to youth rehabilitation orders, provided that no changes are made to the details contained within requirements.

Fines on breach

6.70 Question 9 asked consultees whether they agreed with the decision to amend paragraph 10(4) of the Criminal Justice and Immigration Act 2008 so that any subsequent amendments to the level of fine that can be imposed for a breach of a youth rehabilitation order may have effect in relation to any conviction on or after that amendment.

6.71 Again several consultees had no particular comment on this issue. A couple of consultees expressed disagreement. District Judge (Magistrates' Court) Tan Ikram disagreed with the decision, but provided no detailed reasons, as did the Law Society.

6.72 The Magistrates Association stated:

Although the MA support the decision in relation to imposing a clean sweep, we feel this may be one situation where it would not work. Although in principle it would make the process of sentencing following a breach easier, the MA is concerned it could result in more punitive responses where there have been increases in the level of fines between the time of the conviction and the re-sentencing.

6.73 Conversely, in support of the decision, the Bar Council responded that:

We agree that where a conviction for a breach of a youth rehabilitation order takes place before the date of the increase in fine level but the sentence is imposed after that date, the lower maximum should be applicable. We note with approval the change that this will effect from the position that presently pertains under s.84 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

6.74 The Crown Prosecution Service “agree[d] that this simplifies the law in a way which is fair and Article 7 compliant.”

6.75 The Legal Committee of Her Majesty’s District Judges (Magistrates’ Courts) stated that:

The revised structure of the provisions relating to detention and training orders is helpful, logical and brings clarity to the provisions.

6.76 The Ministry of Justice responded:

We agree that it would be easier for courts to have all custodial sentencing options available for under-18’s in one place and that all sentences – including custodial sentences for defendants aged under 18 years, should appear separately from adult sentences to reflect the different sentencing framework applicable to young defendants.

PART 6 – DETENTION AND TRAINING ORDERS

6.77 The final three questions in the consultation on children and young persons, questions 10-12, concerned detention and training orders.

Structure

6.78 Question 10 was another general overarching question, asking simply whether consultees had any comments on the revised structure of the provisions concerning detention and training orders.

6.79 Again only some consultees had specific comments. Her Majesty’s Council of Circuit Judges simply “welcome[d] the clarity of these proposals.”

6.80 In a similar vein to its responses to the other overarching enquiries, the Magistrates’ Association responded that “legislation will not be the primary resource for magistrates but the MA supports the revisions as clear and well-structured.”

6.81 The Ministry of Justice agreed:

... that it would be easier for courts to have all custodial sentencing options available for under-18’s in one place and that all sentences – including custodial sentences for defendants aged under 18 years, should appear separately from adult sentences to reflect the different sentencing framework applicable to young defendants.

6.82 The Bar Council stated:

While we understand the logic of the present structure of the Third Group of Parts, we suggest that it might be more user-friendly to adopt a more age-centric model, as

set out in broad terms in para. 67 & 68 of our response to the previous consultation. Each court sentencing a particular defendant will of course only be concerned with the provisions applicable to that defendant, and it would therefore make sense to keep all sentences which are only available for defendants in a particular age bracket together.

Section 101 of the Powers of Criminal Courts (Sentencing) Act 2000

- 6.83 Question 11 asked whether consultees considered that section 101(4) of the Powers of Criminal Courts (Sentencing) Act 2000 a useful purpose in light of section 101(5) of that Act (both concerning the maximum term of consecutive detention and training orders) or whether they thought the former should be repealed.
- 6.84 The clear majority of consultees expressed support for retaining both sections, broadly for the reasons canvassed in the consultation on children and young persons. The feeling of the majority of consultees, was that the clarification of the maximum sentence was important, and that the imposition of a sentence that would be administratively remitted was undesirable.
- 6.85 Only the Magistrates' Association were in favour of repealing section 101(4). They felt that it would be particularly useful for future cases for the court to be able to mark accurately the seriousness of the offence they are sentencing.
- 6.86 The Bar Council and the Crown Prosecution Service, in contrast, advocated instead for the removal of section 101(4), arguing that section 101(5) was a far more essential provision.

Post-sentence supervision

- 6.87 Question 12 asked whether consultees agreed with the decision to disapply the clean sweep in relation to clause 240(1) of the Code (with the effect that a DTO of less than 24 months imposed in respect of an offence committed before 1 February 2015 will not receive further post-sentence supervision).
- 6.88 All consultees who responded to this question agreed with the decision.
- 6.89 The Bar Council responded:
- Yes. First, we agree with the inclusion of this provision in the Sentencing Code, for the reasons given in para. 2.94 of the consultation paper. Secondly, and in answer to the specific question asked, we also agree with the decision to disapply the clean sweep, for the reasons given by the Law Commission in 2.95, and in line with our position on retroactivity.
- 6.90 The Crown Prosecution Service “agree[d] both with the analysis that this would amount to punishment without law, and at any rate the exercise of caution where on any view this might be the case.”
- 6.91 The Magistrates' Association similarly “support[ed] the proposal to disapply the clean sweep in this situation as to allow a longer post sentence supervision to be imposed if it was not a power at the time of the offence would be allowing a more punitive response than appropriate.”

6.92 The Legal Committee of Her Majesty’s District Judges (Magistrates’ Courts) stated:

We agree with the decision that the ‘clean sweep’ should not be applied to s240(1) as the offender should not be subject to a more severe penalty than was available at the time of the commission of the offence.

6.93 In the same vein the Sentencing Council “agree[d] with the proposal to disapply the clean sweep policy in relation to clause 240(1) so that offenders are not subject to a more severe penalty than was available at the time of the commission of the offence.”

6.94 Finally, and also in agreement, the Ministry of Justice agreed with the disapplication of the clean sweep here.

Provisions relating to breach

6.95 The final question in the consultation on children and young persons, on the structure and drafting of the Code on DTOs, asked whether consultees agreed with the decision to re-draft sections 104, 104A, 104B and 105 of the Powers of Criminal Courts (Sentencing) Act 2000 in a Schedule to the Sentencing Code, in line with the approach taken to other provisions relating to breaches of orders.

6.96 All consultees agreed with this approach, giving either no reasons or expressing brief support for the approach on the basis of accessibility and consistency across the Code.