

Sentencing Bill

Notes about proposed amendments for Joint Committee

Introduction

- 1 The Joint Committee will be asked to approve the amendments to the Sentencing Bill shown on the attached list.
- 2 Some are required because of recent developments, and the others are the result of further careful checking of the Bill.
- 3 The amendments fall into the following categories –
 - Amendments to change the commencement date
 - Amendments to the Code to make corrections
 - Amendments to the Bill to improve the drafting
 - Amendments resulting from recent legislation
 - Other amendments to the Bill to make corrections, including additional consequential amendments.
- 4 This note describes briefly the amendments in each of those categories.

Commencement

- 5 Clause 416(1) provides for the Sentencing Bill to come into force on 1 October 2020. Progress through Parliament has been slow as a result of the coronavirus pandemic, which began to have significant effects on public life in the United Kingdom just after the Bill was introduced. Amendment 14 therefore changes the fixed date of 1 October to a date to be specified by the Secretary of State.
- 6 By virtue of Amendment 15, a single date must be specified. The commencement power will therefore be narrower than for a normal Bill. Taken together, Amendments 14 and 15 would not allow different parts of the Sentencing Code to be brought into force at different times. This is because section 1 of the Sentencing (Pre-consolidation Amendments) Act 2020 (the “clean sweep”) depends on the consolidation being brought into force on a single date (except where it consolidates legislation not in force).
- 7 Amendments 16 and 17 will allow the regulations specifying the commencement date (and other regulations under the Bill) to be made before the commencement date. Amendment 19 removes the corresponding power in clause 417 that currently allows regulations to bring amendments of the Code in Schedule 22 of the Bill into force before the

commencement date. Amendment 25 is consequential on the change from a fixed commencement date to an appointed day.

8 There are a large number of references in the Bill to 1 October 2020, each of which needs to be replaced with a reference to the commencement date. That accounts for Amendments 1, 3 to 7, 18, 22 to 24, 62, 129 and 140 to 150.

9 The Code refers to 1 October 2020 where that is more helpful to the reader than use of a defined term such as “the commencement date”. On the other hand, where that date is immaterial, for example a reference to a sentence “whether passed before or after this Code comes into force”, the date on which the Code comes into force does not matter and a reference to 1 October 2020 would add confusion.

10 Section 104 of the Deregulation Act 2015 will allow commencement regulations under clause 416(1) made by virtue of Amendment 14 to substitute the actual date on which the Bill comes into force for “the commencement date”, where appropriate - namely where references to “the commencement date” are being substituted for 1 October 2020 now.

Amendments to the Code to make corrections

11 Several corrections of the Sentencing Code have come to light from checking the Bill since introduction.

Amendment 2: magistrates’ courts’ power to fine

12 This amendment is needed to restate section 34(3) of the Magistrates’ Courts Act 1980 correctly. No provision to which this amendment could apply has come to light, although the possibility cannot be ruled out.

Amendments 8 and 132: term of detention in a young offender institution

13 Under section 97 of the Powers of Criminal Courts (Sentencing) Act 2000, the maximum term of detention that a magistrates’ court can impose is the same as the maximum term of imprisonment *that it can impose* for the same offence. This amendment is needed so that the Bill reflects the italic words. There is a consequential change for the Armed Forces Act 2006 at Amendment 132.

Amendment 9: minimum sentence: age of offender

14 Minimum sentences under section 51A of the Firearms Act 1968 for offences involving certain firearms depend on the offender’s age at the time of the offence, but the minimum sentence for the offence under section 28 of the Violent Crime Reduction Act 2006 of using someone to mind a firearm depends on the offender’s age at conviction. Clause 311 restates both together, but in doing so makes the minimum sentence in both cases depend on age at the time of the offence. This amendment corrects that.

Amendment 12: definition of “the appropriate officer of the court”

15 The definition of “the appropriate officer of the court” in section 305 of the Criminal Justice Act 2003 was amended by paragraph 37 of the Schedule to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018, which came into force on 6 April 2020.

Amendment 12 makes the corresponding change to the Bill.

Amendment 13: extent

16 Paragraph 12(3) of Schedule 12 to the Criminal Justice Act 2003 requires a court in Scotland or Northern Ireland to notify a court in England and Wales if it convicts an offender who is already subject to a suspended sentence of a further offence. It extends to Scotland and Northern Ireland, under section 337 of that Act. Amendment 13 is needed in order to reflect that.

Amendment 26: breach of requirements of referral order

17 This amendment corrects a mistake; the court can revoke a referral order if satisfied in relation to *any* decision of the youth offender panel.

Amendments 27 to 30: related orders revoked by revocation of referral order

18 Paragraph 5(3) of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 provides that revocation of a referral order also revokes any related order under paragraph 9ZD or 10 of that Schedule. Those related orders are orders extending the period of a youth offender contract under the referral order (the original contract period having been specified in the original order). Paragraph 6A of that Schedule added a further power to extend that period, but no consequential amendment was made to paragraph 5(3) until Schedule 2 to the Sentencing (Pre-consolidation Amendments) Act 2020 inserted a reference to paragraph 6A.

19 Paragraph 6A also confers power to fine the offender. In paragraph 9 of Schedule 4 to the Bill, sub-paragraph (2) replaces the power in paragraph 6A to extend the period, and sub-paragraph (3) replaces the power to impose a fine.

20 It is thought that the better reading of “any related order under paragraph 6A” is as referring just to an order extending the contract period under the referral order, for two reasons. First such an order varies the original order, so is clearly “related” to it; a fine is not necessarily related in the same way. Second, in view of the kinds of changes made by Schedule 2 to the Sentencing (Pre-consolidation Amendments) Act 2020, any amendment made by that Act should be read as making a consequential amendment for consistency rather than a substantive change.

21 Amendment 27 gives effect to that reading of the reference to paragraph 6A to be inserted into paragraph 5(3) of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000, by replacing the reference in paragraph 7(2) of Schedule 4 to the Sentencing Code with a reference to just sub-paragraph (2) of paragraph 9 of that Schedule (power to extend the period of a youth offender contract).

22 Amendments 28 to 30 make corresponding amendments to paragraphs 10(4), 11(3) and 17(3) of Schedule 4 to the Bill.

Amendments 32 to 34 and 38 to 40: court to summon offender before exercising power

23 Paragraph 20(1) of Schedule 2 to the Criminal Justice and Immigration Act 2008 (as amended by the Sentencing (Pre-consolidation Amendments) Act 2020) requires the court to summon the offender to appear where it proposes to exercise certain powers in certain circumstances. Paragraph 21(3) of Schedule 7 to the Bill rewrites this as –

“Unless the offender is before it, the convicting court may not deal with the offender under sub-paragraph (2)(b) unless it summons the offender to appear before it.”

24 This would change the position, in that it could be read as restricting the court from exercising the powers in the offender’s absence.

25 Amendment 32 corrects this, and Amendments 33, 34 and 38 to 40 make corresponding changes to similar provisions in the Bill.

Amendment 42: powers of court to impose requirements on breach of suspended sentence order

26 Paragraph 16(2) of Schedule 16 should qualify only the power in paragraph 13(1)(d)(i) to impose requirements because express qualifications of the other powers in paragraph 13(1)(d) already produce the same result. Amendment 42 corrects this.

Amendments to improve the drafting of the Bill

27 The amendments in this category have all resulted from further checking the Bill since introduction. The amendments would improve the Bill, but it is not thought that, without them, it would lead to the wrong outcome.

Amendment 10: appeal against sexual harm prevention order

28 Clause 353(1), which allows for an appeal against a sexual harm prevention order, is not necessary, for the same reason as section 10(5) of the Crime and Disorder Act 1998 is not reproduced (see paragraph 334 of the Notes for the Joint Committee). Amendment 10 removes the provision so as to avoid a contrast with the position for other behaviour orders covered in Part 11.

Amendment 11: binding over order not to be made with hospital or guardianship order

29 Amendment 11 amends clause 376 to insert a signpost to section 37(8) of the Mental Health Act 1983, for consistency with other signposts in the Sentencing Code to that provision.

Amendment 31: definition of “relevant offence”

30 Paragraph 5(4)(b)(ii) of Schedule 5 (breach etc of reparation order) refers to a “relevant offence”. Even though it is not defined, the natural reading is clear in the context. However the absence of a definition contrasts with the corresponding provision for youth rehabilitation orders (paragraph 15(4) of Schedule 7), so Amendment 31 aligns the two.

Amendment 35: disapplication of requirement to comply with condition

31 Paragraph 7(c)(iv) of Schedule 8 (transfer of youth rehabilitation orders to Northern Ireland) disapplies certain conditions relating to drug treatment and testing requirements. Because of the way the provisions are drafted, it would be clearer if the paragraph also disapplied the requirements for those conditions to be met and Amendment 35 makes this change.

Amendment 36: definitions to be read as applying in relation to a youth rehabilitation order

32 This makes a drafting change to paragraph 21(1) of Schedule 8 (interpretation) to express the definitions as applying in relation to a youth rehabilitation order. They make sense only if read in that way, but for most of the definitions that is not made explicit in the Bill.

Amendment 37: each place proposed to be specified for curfew requirement

33 Paragraph 10(1) of Schedule 9 (requirements for community orders and suspended sentence orders) restates section 204(6) of the Criminal Justice Act 2003 by requiring the court to obtain and consider information about “the place proposed to be specified” for a curfew requirement. But a curfew requirement can specify different places for different curfew periods, so section 204(6) must be read as applying to each such place. Amendment 37 gives effect to that reading.

Amendment 41: Schedule 16: clarifying when duty to activate suspended sentence applies

34 Amendment 41 makes a drafting change. Paragraph 14 of Schedule 16, which is about the exercise of powers under paragraph 13, can only apply where the court is dealing with the offender under paragraph 13, but this amendment spells that out.

Amendment 43: reference back to court in England and Wales where order transferred to Scotland or Northern Ireland

35 Paragraph 23(1) of Schedule 17 modifies provisions of paragraph 12 about amending a suspended sentence order. References modified by paragraph (e) would need to be read as further modified by paragraph (b). Amendment 43 produces that result directly.

Amendments 20, 21 and 45 to 50: future amendments of the Sentencing Code for 18 to 20 year olds

36 Schedule 22 restates uncommenced provisions of existing legislation as provisions that will either be added to, or amend other provisions of, the Sentencing Code.

37 Paragraphs 36 to 65 make amendments of the Code relating to the abolition of sentences of detention in a young offender institution and custody for life by the Criminal Justice and Courts Services Act 2000. Almost all either restate consequential amendments made by that Act. or reflect subsequent transitory provision.

38 Because of the drafting approach taken of setting out in full provisions about those sentences, rather than relying on transitory modifications, amendments that restate existing consequential amendments or are derived from transitory provisions are not, by themselves, enough to remove references to those sentences from the Code, and a number of redundant references to those sentences would remain when the amendments in paragraphs 36 to 65 of Schedule 22 come into force.

39 Those redundant references would not have any practical effect if left but it would be good practice for them to be removed at the same time, and the result would be a clearer Code. Amendments 46 to 50 add amendments to Schedule 22 for this purpose (with consequential changes to clause 416 at Amendments 20 and 21).

40 Amendment 45 makes a corresponding change relating to the abolition of detention in

default for those under 21.

Amendments 51 to 53: unnecessary references to amounts having effect by virtue of orders under existing legislation

41 The references in paragraphs 5, 7, and 10 to amounts in the Code that have effect by virtue of orders under existing legislation beat the air (because orders under existing legislation would not have that effect) and Amendments 51 to 53 remove them. See also Amendment 151.

Schedule 26: further amendments relating to the armed forces

42 Amendment 135 removes paragraph 17 of Schedule 26, which means that references to detention in a young offender institution and custody for life will remain in section 228 of the Armed Forces Act 2006 even after they are no longer available sentences. This reflects the approach in the Code, where there is no equivalent prospective amendment of clause 309 to remove those sentences after their repeal.

43 Amendment 136 provides for modifications of clause 329 for the purposes of the Armed Forces Act 2006 to cease to have effect so far as they relate to sentences for offenders aged 18 to 20 when those sentences are abolished by the Criminal Justice and Court Services Act 2000.

Schedule 28: repeals and revocations

44 Amendments 152 and 156 repeal substantive provisions that would otherwise beat the air, and Amendment 161 revokes transitory provisions that relate to provisions that are being repealed.

Amendments arising from recent legislation or amendments that are still uncommenced

Recent legislation

45 Several amendments are needed as a result of legislation that has been passed or made since introduction, or that was passed or made shortly before introduction.

46 Amendments 63 and 64 make consequential amendments of provisions that were inserted into the Criminal Justice Act 2003 by the Terrorist Offenders (Restriction of Early Release) Act 2020.

47 Amendment 72 amends the Coronavirus Act 2020, and Amendment 92 amends rule 5A of the Young Offender Institution Rules 2000, which was inserted by the Prison and Young Offender Institution (Coronavirus) (Amendment) Rules 2020.

48 Amendment 112 amends the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020.

49 Amendment 113 inserts into the list of provisions in which references to section 154(1) of the Criminal Justice Act 2003 are to be substituted a subsection inserted into the Insolvency Act 1986 by the Corporate Insolvency and Governance Act 2020.

50 Amendment 125 omits a reference to a Freezing Order that has expired, and

Amendments 124 and 127 add provisions in, or inserted by, recent regulations to the corresponding list of secondary legislation in which references to section 154 of the Criminal Justice Act 2003 are to be substituted.

Amendments where legislation not yet brought into force

51 Other amendments are needed to accommodate consequential amendments of legislation that has not yet been brought into force.

52 Amendments 54, 55 and 89: In section 5 of the Rehabilitation of Offenders Act 1974, subsections (2) to (11) have been replaced as they extend to England and Wales by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. They remain in their previous form for Scotland (and also need to be amended) until they are replaced by the Management of Offenders (Scotland) Act 2019. Amendment 54 confines the existing amendments of section 5 to England and Wales, and Amendments 55 and 89 insert amendments that, if the Bill comes into force before the relevant provisions of the Management of Offenders (Scotland) Act 2019, will amend section 5 separately for Scotland and also amend the amendments of the 2019 Act so that they will work for section 5 as amended for Scotland by the Bill.

Amendments 114 and 115: amendments of legislation not yet in force

53 Amendments 114 and 115 are needed because two of the provisions in the list of provisions in which the reference to section 154(1) of the Criminal Justice Act 2003 needs to be replaced with a reference to paragraph 24(2) of Schedule 22 to the Bill have not yet been brought into force.

Other corrections

a. Schedule 24: consequential amendments

Amendment 65: commencement of detention and training order: interaction with other orders

54 Section 106A(6) of the Powers of Criminal Courts (Sentencing) Act 2000 is restated not in the Code but by a new section 264AA in the Criminal Justice Act 2003. Amendment 65 replicates the effect of section 213(1) of the Armed Forces Act 2006, which extends certain references to detention and training orders to cover orders under section 211 of that Act, as it applies in relation to section 106A(6) of the Powers of Criminal Courts (Sentencing) Act 2000.

Welsh language amendments

55 Schedule 24 makes consequential amendments of a number of Measures, Acts and Regulations that have English and Welsh texts. The amendments of the Welsh language texts were not included in the Bill on introduction and Amendments 73 to 88, 93, 94, 97, 98, 104 to 111, 116, 118, 119, 121, 123, 126 and 128 add them.

Section 30 of the Counter-Terrorism Act 2008

56 Amendments 56, 57, 59, 60, 63, 66, 69, 70, and 71 add the consequential amendments resulting from the repeal of section 30 of the Counter-Terrorism Act 2008 for England and Wales, and Amendments 130, 131 and 138 are consequential. Amendment 157 adds the repeal

of section 32 of the Counter-Terrorism Act 2008 (armed forces) which is also consequential on the repeal of section 30.

Part 2 of the Sexual Offences Act 2003

57 It emerged in checking that, while almost all references to Part 2 of the Sexual Offences Act 2003 are concerned with notification requirements, a very few refer to sexual harm prevention orders of the kind that are rewritten in the Code and need to be amended. Amendments 67 and 101 deal with this point.

Miscellaneous

58 Amendment 58 is a technical amendment re-inserting an “or” that will be removed by the repeal of paragraphs (c) and (d) of section 8(1) of the Crime and Disorder Act 1998.

59 Amendments 61, 99 and 100 insert references to suspended sentences of detention in a young offender institution alongside references to suspended sentences of imprisonment that are needed because the position for 18 to 20 year olds is set out expressly.

60 Amendment 68 adds a consequential amendment of section 4 of the Offender Management Act 2007. Amendment 139 is consequential.

61 Amendment 90 adds a consequential amendment of the Rehabilitation of Offenders (Northern Ireland) Order 1978.

62 Amendment 91 adds a missing reference to the amendment of the Costs in Criminal Cases (General) Regulations 1986.

63 Amendments 95 and 102 remove amendments of references to section 225 and 226 of the Criminal Justice Act 2003 which relate to sentences for public protection, which are not restated in the Bill.

64 Amendment 103 corrects a cross-reference, and Amendments 117 and 122 correct typographical errors.

65 Amendment 120 adds consequential amendments of two statutory references to section 154 of the Criminal Justice Act 2003 in a form that is not caught by paragraph 428 or 429 of Schedule 24.

b. Miscellaneous corrections

Amendment 44: minor correction to Schedule 22

66 Amendment 44 adds an amendment of Schedule 1 that is consequential on the amendment adding offences under the Space Industry Act 2018 to that Schedule.

Schedule 25: armed forces

67 Amendment 133 changes “service offence” to “offence under section 42” in section 238(6) of the Armed Forces Act 2006. Section 238(6) comes from section 32 of the Counter-Terrorism Act 2008, and the phrase “service offence” in section 32 is defined in section 95(3)(a)

of that Act as an offence under section 42; “service offence” has a different meaning in the Armed Forces Act 2006 (see also Amendment 96).

68 Amendment 134 reproduces the meaning of “corresponding civil offence” in section 95(4)(a) of the Counter-Terrorism Act 2008 as that term is not defined in the Armed Forces Act 2006 (see also Amendment 96).

Schedule 27: transitional provisions

69 Amendment 137 ensures that accreditation of programmes and arrangements with enforcement officers are carried forward.

70 Paragraphs 5, 6, 7, 10, 14 and 17 of Schedule 23 rewrite powers to amend amounts that depend on changes in the value of money since the amounts were last amended. Textual amendments under existing legislation will not of course amend the Code itself so if further orders are made before the Sentencing Code comes into force to amend amounts in existing legislation, then corresponding amendments of the Code should be made by regulations under Schedule 23. Amendment 151 ensures that the regulations would be treated (for the purposes of the next exercise of the power in Schedule 23) as having been made when the corresponding order under existing legislation was made.

71 The list of offences in Schedule 15 of the Criminal Justice Act 2003 will continue to apply for a number of purposes unrelated to the Sentencing Code and Amendment 151 also inserts a new paragraph 22B to avoid any doubt about this when section 224 of that Act, which introduced it but will be redundant, is repealed.

Schedule 28: repeals and revocations

72 Amendment 153 removes the repeal of a transitional provision, and Amendment 155 removes the repeal of section 240A(12) of the Criminal Justice Act 2003, both of which will still be needed. Amendments 154, 158, 159, 160 and 162 remove repeals and revocations of consequential amendments of provisions that will continue to have effect.