



<b>TITLE</b>	<b>The Sentencing Act 2020</b>
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This circular is for:	Lord Chief Justice, Justices of the Supreme Court, Master of the Rolls, President of the Queen's Bench Division, President of the Family Division, Chancellor of the High Court, Senior Presiding Judge, Lords Justices of Appeal, High Court Judges, Circuit Judges, Deputy Circuit Judges, Recorders, District Judges (Magistrates' Courts), Bench Chairmen, Clerks to the Justices, Chief Crown Prosecutors.  Judicial College, Sentencing Council, Council of Circuit Judges, Magistrates' Association, Justices' Clerks' Society, Registrar of Criminal Appeals, HMCTS Delivery Directors, Crown Court Managers, National Police Chiefs' Council, The Law Society, The Bar Council, The Criminal Bar Association.

# SENTENCING ACT 2020

## **Introduction**

The Sentencing Act 2020 will come into force on 1 December 2020. The Act creates the **Sentencing Code**, which brings together the legislative provisions which courts refer to when sentencing offenders. Its scope covers adult and youth sentencing. The Sentencing Code does not cover release / recall provisions.

The Sentencing Code aims to assist judges and legal professionals in identifying and applying the law, reduce the risk of error and enhance the transparency of the sentencing process for the general public. It is the culmination of the Law Commission's Sentencing Code project, part of the Law Commission's 12th Programme of Law Reform.

This circular is to provide information on the creation and coming into force of the Sentencing Code. It should not be regarded as providing legal advice. Legal advice should be sought if there is any doubt as to the application or interpretation of the legislation.

## **Summary**

### Overview of the Sentencing Code

Parts 2 to 13 of the Act together make up the Sentencing Code. It is organised in a way which follows the chronology of a sentencing hearing and covers the following matters:

#### *Before sentencing*

- Part 2 is about powers exercisable by a court before passing sentence.

#### *Sentencing*

- Part 3 is about court procedure when sentencing.
- Part 4 is about the discretion a court has when sentencing.

#### *Sentences*

- Part 5 is about absolute and conditional discharges.
- Part 6 is about orders relating to conduct.
- Part 7 is about fines and other orders relating to property.
- Part 8 is about disqualification.
- Part 9 is about community sentences.
- Part 10 is about custodial sentences.
- Part 11 is about behaviour orders.

#### *General*

- Part 12 contains miscellaneous and general provision about sentencing.
- Part 13 deals with interpretation.

### Cases that the Sentencing Code will apply to

Anyone convicted of an offence *on or after* 1 December 2020 will be sentenced under the Sentencing Code, regardless of when they committed their offence.

Anyone convicted of an offence *before* 1 December 2020 will be sentenced under the pre-Code law (e.g. Powers of Criminal Courts (Sentencing) Act 2000, Criminal Justice Act 2003, Criminal Justice and Immigration Act 2008), even if sentencing takes place on or after that date.

Schedule 27 to the Act (transitional provisions and savings) provides for continuity of the law if a Court faces pre-Code and Sentencing Code matters.

### Re-sentencing of offenders

The Sentencing Code *does not* apply to the re-sentencing of offenders in the case of appeals and 'slip rule' hearings where the conviction pre-dates 1 December 2020, nor does it apply where a court is dealing with an offender for breach of an order imposed under the pre-Code law.

By virtue of section 402 of the Sentencing Code, where a court *does* have the power to re-sentence an offender for an offence under the Sentencing Code (i.e. where the offender was originally sentenced for the offence under the Sentencing Code), the re-sentencing court will have the same powers available to it as those that would be available if it had just convicted the offender of the offence. In a case where the offender was aged under 18 when convicted, the court must treat the offender as if they were the same age as when they were originally convicted.

### Other matters to be aware of

Where relevant, the Sentencing Code splits sentences by age of the offender and sets out in full the position for 18 to 20-year olds. For example, the sentence for certain offenders of particular concern (currently available under section 236A of the Criminal Justice Act 2003 for offenders aged 18 or over) can be found at sections 265 (offenders aged 18 – 20) and 278 (offenders aged 21 and over) of the Sentencing Code.

Certain provisions in the Sentencing Code provide tables for users to follow (see, for example, the community order requirements table at section 201 of the Sentencing Code). Signposting provisions are also used throughout, to alert users to the existence of other relevant provisions, located within the Sentencing Code or elsewhere.

The Act re-enacts certain pre-existing provisions which have not yet been commenced. These will remain uncommenced for the time being and are contained in Schedule 22 to the Act, separate from the main body of the Sentencing Code.

## **Background**

The law of sentencing applies to over a million individual cases every year but is currently incredibly complex and disparate. Over 1,300 pages of law is in force, spread out across numerous pieces of primary and secondary legislation.

The Sentencing Code aims to ensure that sentencing procedural law is readily comprehensible and operates within a clear framework as efficiently as possible. It only includes the most up to date sentencing procedural law, meaning courts will no longer have to identify and apply historic versions of the law, dependent on when the offence

was committed, but will instead consult the Sentencing Code. For convictions on and after 1 December 2020, the Sentencing Code should set out the position on its face and there should be no need to refer to separate commencement and transitional provisions.

The Sentencing (Pre-consolidation Amendments) Act 2020 made technical amendments to existing sentencing legislation to facilitate the consolidation of sentencing procedural law in the Sentencing Code. That Act also gave effect to a 'clean sweep' of sentencing law, which removed historic versions of sentencing law for cases where conviction occurs after the Sentencing Code comes into force. The clean sweep is subject to certain exceptions (which are specified on the face of the Sentencing Code) to protect the fundamental rights of offenders. The clean sweep allowed the Sentencing Code to set out the applicable law without requiring courts to refer to separate commencement and transitional provisions and, in some cases, old sentencing law when dealing with offenders for convictions on or after 1 December 2020.

Neither the Sentencing (Pre-consolidation Amendments) Act 2020 nor the Sentencing Act 2020 introduce any new sentencing law, nor do they alter the maximum penalties available for an offence or increase the scope of minimum sentencing provisions.

### **Useful links**

Sentencing Act 2020:

<https://www.legislation.gov.uk/ukpga/2020/17/contents/enacted>

Table of Origins (shows the origins of the provisions of the Sentencing Act 2020):

[https://www.legislation.gov.uk/ukpga/2020/17/pdfs/ukpgatoo\\_20200017\\_en.pdf](https://www.legislation.gov.uk/ukpga/2020/17/pdfs/ukpgatoo_20200017_en.pdf)

Table of Destinations (shows how enactments proposed to be repealed are dealt with by the Sentencing Act 2020):

[https://www.legislation.gov.uk/ukpga/2020/17/pdfs/ukpgatod\\_20200017\\_en.pdf](https://www.legislation.gov.uk/ukpga/2020/17/pdfs/ukpgatod_20200017_en.pdf)

The Sentencing Act 2020 (Commencement No. 1) Regulations 2020:

<https://www.legislation.gov.uk/uksi/2020/1236/contents/made>

Sentencing (Pre-consolidation Amendments) Act 2020:

<https://www.legislation.gov.uk/ukpga/2020/9/contents/enacted>

The Law Commission's Sentencing Code Project:

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