

White paper launch—a smarter approach to sentencing

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Corporate Crime analysis: Lord Chancellor, Robert Buckland QC, has published a white paper proposing changes to sentencing laws. William Glover, barrister at 3 Temple Gardens, discusses the proposals.

Original news

Lord Chancellor Robert Buckland addresses new sentencing white paper in speech, [LNB News 16/09/2020 76](#)

The Ministry of Justice has published a speech by Lord Chancellor Robert Buckland on the subject of the white paper 'A Smarter Approach to Sentencing'. In his speech, the Lord Chancellor sets out what he sees as current problems with sentencing, and goes on to discuss changes for those who have committed serious crimes, including violent and sexual crimes. Under the new legislation, 'offenders who have committed serious crimes and who are assessed to be dangerous at the point of being sentenced can receive either a life sentence or an Extended Determinate term. This means there is no automatic release and these cases go to the Parole Board to assess whether it would be safe to release offenders'. The Lord Chancellor also discussed extended sentence lengths for the most serious of crimes, supervising offenders in the community and reducing reoffending.

Briefly, what are the aims of the white paper?

The paper aims to bring about a sentencing regime that will deliver on the Conservative manifesto pledges. It also briefly touches on the ongoing work on a sentencing code, which will consolidate and change sentencing procedure. It feels like its emphasis, however, is primarily focused on imposing tougher sentences for the most dangerous offenders. It also aims to make more of alternative types of sentences and promote better rehabilitation of offenders.

The three key overarching aims are:

- automatic release (to be curtailed in serious cases)
- improving confidence (in non-custodial) sentencing options, and
- addressing the causes of offending (particularly low-level offending caused by drug and alcohol abuse)

On the final aim, a remarkable but unfortunately unsurprising statistic is that in 2018–2019, 28% of men and 42% of women entering prison reported having a drug problem. Practitioners will know that these people often need help, not custody.

What is the background to these proposed reforms?

The government is concerned that dangerous individuals are released when they still pose a risk to the public. They cite the troubling recent tragedies at Fishmonger's Hall and in Streatham. The government's proposed remedy is to keep people locked up for longer. The other clear backdrop to the document is the government's frustration with low-level offenders taking up time and resources through repeated low-level offending.

What changes to practice is this likely to herald for those at the coalface?

For criminal practitioners this will mean that careful consideration will be required when clients face certain specified violent and sexual offences. The right to release at the half-way point was recently slipped through under the cloak of the coronavirus (COVID-19) pandemic. In April 2020, the Release of Prisoners (Alteration

of Relevant Proportion of Sentence) Order 2020, [SI 2020/158](#), moved the automatic release point for certain violent and sexual offenders, receiving a sentence of seven years or more, from the halfway point of their sentence to two-thirds. In addition to some other matters aimed at 'tougher sentencing', this white paper seeks to extend that rule for certain stated offences where the length of sentence is between only four and seven years. It is difficult to see where all of the extra capacity will come from in our already overcrowded prison estate.

One of the clear curiosities set out in the paper is that the government says they will make greater use of community sentence treatment requirements. The types of sentences described in the paper already exist in the form of Rehabilitation Activity Requirements, Programme Requirements, Mental Health Treatment Requirements, Alcohol Treatment Requirements and Drug Rehabilitation Requirements. The real issue is in a lack of central funding both for the nationwide availability of these programmes, but also and crucially, for more and well-trained assessors for suitability for these programmes. Otherwise such assessments are often unavailable or adjourned with defendants sometimes spending weeks or even months in custody waiting to be seen.

There is a proposal to introduce 'Problem Solving Courts'. They sound useful if they really do seek to properly address the underlying causes of criminality. This will depend on well aligned Crown Prosecution Service policy. If so, they may represent a more progressive approach to disposal for low-level offences.

How does this feed into wider criminal justice initiatives/policies?

This white paper unashamedly declares that it is intended to bring about the Conservatives' manifesto pledges:

'[It is] about fulfilling our manifesto commitments to the British people—to bring in tougher sentencing for the worst offenders, more tagging, tighter community curfews, better treatment to break the cycle of crime, improved employment opportunities for offenders, and a root-and-branch review of the parole system.'

The paper mentions the ongoing process of introducing a Sentencing Code, through the Sentencing Bill, which reached the Report Stage in the House of Commons on 30 September 2020. The remaining stages are third reading, consideration of amendments and Royal Assent. The Sentencing Code seeks to clarify sentencing procedure by putting into place the work done by the Law Commission to amend sentencing procedure so that it is consolidated in a single document.

Interviewed by Pietra Asprou.