I am writing to inform you that the Government has introduced the Sentencing (Pre-consolidation Amendments) (PCA) Bill to the House of Lords.

As you are aware, the PCA Bill paves the way for the Law Commission’s Sentencing Code (the Code), which will consolidate the law governing sentencing procedure in England and Wales into one Act, presenting it in a more logical order and in simpler terms. These improvements will assist legal professionals in identifying and applying the law, and will reduce the risk of error, appeal and delay in the sentencing process. The Code will also enhance the transparency of the process for the general public.

The PCA Bill has two main objectives: to remove historic layers of sentencing legislation; and, as a consolidation must operate on the current law, to make changes to primary legislation that will be included in the Code – the pre-consolidation amendments.

A key cause of the current complexity in sentencing law is the need for sentencing courts to refer to historical sentencing provisions so that a sentence passed is in accordance with the applicable sentencing law at the time of the offence. The “clean sweep” of the law in the PCA Bill attempts to remedy this by removing the need to identify and apply historic versions of the law. The effect of the clean sweep is that wherever an offender is convicted after commencement of the Code, the current law of sentencing procedure as enacted in the Code will apply. This is subject to exceptions to ensure that no offender is subject to a greater penalty than was available, or to a minimum or mandatory sentence that did not apply at the time the offence was committed. These exceptions ensure that the clean sweep does not contravene the general common law presumption against retroactivity, and accords with human rights protections against retroactive criminalisation and retroactive punishment – in particular, those provided by Article 7 of the European Convention on Human Rights.

The pre-consolidation amendments are generally limited to correcting minor errors and streamlining the law. They make amendments to primary legislation that will be included in the Code, and only have effect for the purposes of the consolidation. Such changes are a standard measure which precede consolidation Bills. Importantly, neither the pre-consolidation amendments nor the Code alter the maximum penalties available for an offence or increase the scope of minimum sentencing provisions, nor do they introduce any new substantive law or sentencing dispositions.
Once the Code is enacted the PCA Bill will have served its purpose and will be largely repealed.

I hope you will join me in paying tribute to the work that the Law Commission has undertaken during the lifetime of its Sentencing Code project. I look forward to providing the Committee with a further briefing on the PCA Bill in due course.

Yours ever,

Robert

ROBERT BUCKLAND QC MP