



HOUSE OF LORDS

Select Committee on the Constitution

15th Report of Session 2024–26

Sentencing Bill

Ordered to be printed 19 November 2025 and published 21 November 2025

Published by the Authority of the House of Lords

Select Committee on the Constitution

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Declaration of interests

Information about interests of Committee Members can be found in the last Appendix to this report.

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Committee staff

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Fifteenth Report

SENTENCING BILL

Introduction

1. The Sentencing Bill was introduced into the House of Lords on 30 October 2025, and its second reading was on 12 November.
2. The Bill primarily makes provision for the sentencing and management of offenders and will implement several of the recommendations of the Independent Sentencing Review (which was published in May 2025 and led by the former Secretary of State for Justice and Lord Chancellor, the Rt Hon David Gauke).¹

Structure of the Bill

3. The Bill's provisions, in greater part, take the form of amendments to pre-existing legislation concerning sentencing and arrangements for the supervision of offenders (including, in particular, the Sentencing Code² and Criminal Justice Act 2003).
4. This Bill is, on the face of it, difficult to understand and, as such, introduces challenges for scrutiny. In our recent report, *The rule of law: holding the line against tyranny and anarchy*, we emphasised the importance of clear and accessible legislation.³ The approach taken with this Bill will ensure that the main sentencing provisions will remain accessible in a single coherent document, the Sentencing Code.
5. **We welcome the Government's commitment to ensuring that sentencing provisions will remain clear and accessible following this Bill and encourage the Government to adopt this approach with legislation in the future. However, to aid scrutiny, the Government should publish a Keeling Schedule for the Bill.**

Oversight of the Sentencing Council for England and Wales

6. The Sentencing Council for England and Wales is an independent, non-departmental public body, established under the Coroners and Justice Act 2009.⁴ The role of the Sentencing Council is to “promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary.”⁵ As a part of this role, the Sentencing Council has responsibility for developing and monitoring the application of Sentencing Guidelines. Sentencing Guidelines will generally be followed by courts, unless it is in the interests of justice not to do so.⁶
7. The development of guidelines on sentencing has been a feature of the criminal justice landscape since 1998 when the Crime and Disorder Act

1 Independent Sentencing Review, *Final Report and Proposals for Reform*, May 2025

2 Sentencing Act 2020, [Parts 2–13](#)

3 Constitution Committee, *The rule of law: holding the line against tyranny and anarchy*, 20 November 2025

4 Coroners and Justice Act 2009, [s.118](#) and [sched.15](#)

5 Sentencing Council, [About the Sentencing Council](#)

6 Sentencing Council, [About the Sentencing Council](#)

made provision for sentencing guidelines to be drafted and consulted on by the Sentencing Advisory Panel. The Sentencing Advisory Panel proposed guidelines to the Court of Appeal, which was not obliged to accept the recommendations. The Criminal Justice Act 2003 established the Sentencing Guidelines Council, which was to hold responsibility for producing sentencing guidelines following their proposal by the Sentencing Advisory Panel. This was the first time that individuals outside of the judiciary were involved in setting sentencing guidelines.⁷

8. Under the current arrangements—enacted in the Coroners and Justice Act 2009—provision is made for executive and parliamentary engagement in the appointment of members of the Sentencing Council and in the development of Sentencing Guidelines. Under the 2009 Act the members of the Sentencing Council are appointed jointly by the Lord Chancellor and Lord Chief Justice,⁸ and the Lord Chancellor is able to “appoint a person to attend and speak at any meeting of the Council.”⁹ The 2009 Act further provides that the Sentencing Council must report annually to the Lord Chancellor and that copies of that report must be laid before Parliament.¹⁰ In the development of Sentencing Guidelines, the Sentencing Council must consult with the list of consultees specified in the 2009 Act. These include the Lord Chancellor and the House of Commons Justice Select Committee.¹¹ Once issued in final form, the Council’s Guidelines must be followed by the courts unless it is in the interests of justice not to do so.¹²
9. Clause 18 of the Sentencing Bill amends the Coroners and Justice Act 2009 so that, at the beginning of each financial year, the Sentencing Council must submit a business plan to the Lord Chancellor for approval. The business plan must set out the issues on which the Sentencing Council proposes to prepare sentencing guidelines during the coming year, and the other activities that the Council proposes to undertake. If the Lord Chancellor approves the business plan the Sentencing Council must be notified and must publish the plan. The consequences of a failure to secure Lord Chancellor’s approval for the Sentencing Council business plan are unclear and there is no requirement in the Bill that the Lord Chancellor’s reasons for approval, or rejection, of the business plan be published.
10. **It is concerning that this Bill mandates submitting a business plan to the Lord Chancellor for approval without clarity as to the consequences of a failure to obtain this approval. In consequence, it appears that inaction by the Lord Chancellor could render the Sentencing Council unable to perform its function as set out by Parliament in the Coroners and Justice Act 2009. It is constitutionally inappropriate that the Lord Chancellor could frustrate the delivery of statutory responsibilities in this way. *The Government should clarify what would happen in the event that the Lord Chancellor rejects, or fails to approve, a Sentencing Council business plan and ought to set this out on the face of the Bill.***

7 Sentencing Council, *History*

8 Coroners and Justice Act 2009, [Sched.15, para.1](#) (under which 8 members of the Council are appointed by the Lord Chief Justice (with the agreement of the Lord Chancellor) and 6 members of the Council are appointed by the Lord Chancellor (with the agreement of the Lord Chief Justice)).

9 Coroners and Justice Act 2009, [Sched.15, para.6](#)

10 Coroners and Justice Act 2009, [s.119](#)

11 Coroners and Justice Act 2009, [s.120\(6\)](#)

12 Sentencing Council, [About the Sentencing Council](#)

11. **Under the proposals in this Bill, the Lord Chancellor may approve, reject or seek to amend the Sentencing Council’s business plan with no parliamentary oversight. *Clause 18 should be amended to, at a minimum, require the Lord Chancellor’s reasons for approval or rejection of the Sentencing Council’s business plans to be laid before the House.***
12. Clause 19 further amends the 2009 Act to require that the Sentencing Council must seek the approval of the Lord Chief Justice and Lord Chancellor prior to the publication of either sentencing guidelines in final (“definitive”) form or amendments to those guidelines. This requirement to obtain the consent of the Lord Chancellor and Lord Chief Justice in the process of developing Sentencing Guidelines is intended to operate as a potential veto: “[draft guidelines from] the Sentencing Council will require the explicit approval of both. If either oppose the guidance, it will not be issued.”¹³
13. Our report into the Sentencing Guidelines (Pre-Sentence Reports) Bill did not raise concerns relating to the impact of that Bill on the independence of the Sentencing Council.¹⁴ Circumstances leading to the enactment of the Sentencing Guidelines (Pre-Sentence Reports) Act 2025 suggested that political and legislative intervention in the ordinarily consultative development of Sentencing Guidelines would be exceptional. In contrast, the “consent” power contained in clause 19 of the Sentencing Bill raises the prospect that political intervention in the work of the Sentencing Council will become routine.
14. In correspondence with the Lord Chancellor, the Chair of the Joint Committee on Human Rights asked: “[h]ow will the Government ensure that providing you with a veto over sentencing guidelines, and a power of approval or disapproval over ‘the matters about which the Council proposes to prepare sentencing guidelines’ in a business plan, does not risk interference with judicial independence in matters of sentencing?”¹⁵ The response from the Lord Chancellor was that “[n]either [cl.18 or 19] interferes with sentencing decisions (including the application of any relevant sentencing guidelines) in individual cases, which I remain clear is the responsibility of the independent judiciary.”¹⁶ Whilst the Bill’s measures will not impact on the autonomy of individual judges at the point of sentencing, the Council’s Guidelines must be followed by the courts unless it is in the interests of justice not to do so.¹⁷ However, the Bill will impact on the autonomy of the Sentencing Council and—by requiring the approval of a single member of the executive for all new and amended sentencing guidelines—may undermine its objectives of bringing consistency and transparency to sentencing decisions.
15. **Rendering all new Sentencing Guidelines contingent on the approval of the Lord Chancellor diminishes the independence of the Sentencing Council. The powers within these clauses could afford this, or any future, Lord Chancellor the ability to render the Sentencing Council unable to perform its functions. This presents constitutional concerns**

13 Ministry of Justice, Justice Office and The Rt Hon Shabana Mahmood MP, *Justice Secretary introduces democratic lock over Sentencing Council*, 2 September 2025

14 Constitution Committee, *Sentencing Guidelines (Pre-Sentence Reports) Bill* (8th Report, Session 2024–2025, HL Paper 118)

15 Correspondence, *Chair of the Joint Committee on Human Rights to the Lord Chancellor*, 16 October 2025

16 Correspondence, *Lord Chancellor to the Chair of the Joint Committee on Human Rights*, 27 October 2025

17 Sentencing Council, *About the Sentencing Council*

by raising the prospect of routine political interventions in the work of the Sentencing Council.

16. *The House may wish to note that the Lord Chancellor, Lady Chief Justice and House of Commons Justice Committee are already consulted during the development of sentencing guidelines. Members should seek to satisfy themselves that reducing the independence of the Sentencing Council is both necessary and proportionate in these circumstances.*

APPENDIX 1: INTERESTS

1. Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.
2. For the Sentencing Bill report, Members and Legal Advisers declared no interests.