



Justice Committee

**The Right Honourable
Dominic Raab MP
Deputy Prime Minister
Lord Chancellor & Secretary of State for Justice**

By email only

22 March 2023

Dear Dominic,

I am writing regarding the Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2023, which were made and laid before Parliament on 9 March 2023. As you know, the regulations will reduce magistrates' sentencing powers from a maximum of 12 months' imprisonment to a maximum of 6 months from 30 March 2023. The decision to reduce magistrates' sentencing powers comes less than a year after they were increased, and raises some important questions.

The Government has previously described this power as an "off-switch" to allow the sentencing powers of magistrates to be reduced quickly if the circumstances required.¹ When the House was considering the inclusion of this power in the Judicial Review and Courts Bill, James Cartlidge, then Parliamentary Under Secretary of State at the Ministry of Justice, said on 25 January 2022 that the power would be used if "in the event that any unsustainable adverse impacts materialise". The explanatory note accompanying the statutory instrument explains the circumstances that justify this change as:

¹ Ministry of Justice, [Magistrates' Courts given more power to tackle backlog](#), 18 January 2022



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We are currently experiencing downstream pressures in the criminal justice system as, for example, manifested in Operation Safeguard and it is important that the government ensures a cohesive cross-system response to

this growing pressure. Whilst increased MSPs is not the only factor behind this pressure and the data on the impact of MSPs is still limited, it is safest to temporarily reduce MSPs to 6 months so that the Crown Court retains power over decisions in respect of longer sentences, particularly given the Crown Court backlog is again recovering following the impact of the Criminal Bar Association strike action.

This explanation does not provide Parliament or the public with enough information to understand why the Ministry of Justice is making such an important change to the way that our criminal courts operate. At the very least, we would expect some more detailed statistical and contextual information that explains the particular circumstances facing the criminal justice system that justify making this change now.

As I said during the debate in the House when this particular power was being introduced, the Justice Committee has received conflicting accounts, often based on anecdotal assumptions, about the effect that increasing the sentencing powers of magistrates would have on the criminal justice system. The Committee has heard much about the Ministry of Justice's desire to be a department driven by data. We have no doubt that this decision was informed by data on how the increase to magistrates' sentencing powers was affecting the criminal justice system. Accordingly, we would be grateful if you could answer the following questions so that we can have a better understanding of the reasons behind the decision:



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- What evaluation has the Ministry of Justice conducted on the effects of increasing magistrates' sentencing powers to date, and whether it has identified "any unsustainable adverse impacts"?
- How many sentences of over 6 months' custody have been given by magistrates courts since their powers were increased on 2 May 2022?
- What effect has the increase in magistrates' sentencing powers to 12 months had on the prison population?
- What effect has the increase in magistrates' sentencing powers had on the number of outstanding cases in the Crown Court?
- What estimate has the Ministry of Justice made of the likely effect of reducing magistrates' sentencing powers on the number of outstanding cases in the Crown Court?
- What are the implications of the planned change for the likelihood of the Ministry of Justice meeting its target to reduce the backlog in the Crown Court to 53,000 cases by 2025?
- What changes to the prison population or to prison capacity will be needed before the Ministry of Justice considers increasing sentencing powers of magistrates again to 12 months?

More generally, we note that in the recent past the Ministry of Justice had always ensured that it wrote to us when a significant statutory instrument was made by the department. In our report *Covid-19 and the criminal law*, we praised the department for taking this approach and suggested it would be "good practice if all other government departments also undertook to keep their corresponding select committees informed of significant changes to the law made by statutory instrument". We were disappointed not to have received any correspondence regarding the Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2023 and we would hope that in



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the future the Ministry would write to the Committee to inform us about any instrument which would have a material effect on the operation of the justice system.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R Neill', written over a light grey rectangular background.

Sir Robert Neill MP
Chair
Justice Committee