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Justice Committee Comataidh a' Cheartais

Legislative Consent Memorandums: the Sentencing (Pre-consolidation Amendments) Bill & the Domestic Abuse Bill



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Contents

Introduction	1
Consideration by the Committee and recommendation	3

Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

Sentencing (Pre-consolidation Amendments) Bill

1. The [Sentencing \(Pre-consolidation Amendments\) Bill](#) is a UK Government Bill introduced in the House of Lords on 22 May 2019. At the end of the 2017-2019 UK Parliamentary session, the Bill was carried over into the next session. The third reading of the Bill is expected to take place in the House of Lords on the 30 October 2019. The Bill could complete its passage through the House of Commons by the end of November 2019. **As such, the Scottish Parliament needs to take a view on legislative consent before the Bill has reached in last amending stage.**
2. In 2014, the UK Government agreed that the Law Commission should undertake a project to consolidate the law on sentencing. In November 2018, the Law Commission published its draft Sentencing Bill which would give effect to a new consolidated Sentencing Code. In order to pave the way for this Sentencing Code, the Sentencing (Pre-consolidation Amendments) Bill makes a number of mostly technical amendments to the law on sentencing. The Bill removes historic and redundant layers of legislation, which would mean that offenders convicted after the Code comes into force would be sentenced according to the most up-to-date law regardless of when the offence was committed (with certain exceptions).
3. Neither the Sentencing Code nor the Bill make any changes to existing offences and penalties, nor do they introduce any new substantive law or sentencing disposals.
4. On 25 July 2019, the Scottish Government lodged an [LCM](#) in relation to this Bill. The LCM sets out that the Sentencing Code will apply largely to England and Wales only. However, there are a small number of provisions in the Sentencing (Pre-consolidation Amendments) Bill relating to the transfer of orders between UK jurisdictions, two of which extend and apply to Scotland. These are intended to clarify the law as it relates to the operation of community sentences and suspended sentences imposed by courts in England and Wales on offenders who move to Scotland.
5. The Scottish Government considers that it preferable to legislate through one Bill so that users of the legislation in this area can refer to a single Act. This will also ensure that the required changes are made timeously.

Domestic Abuse Bill

6. The [Domestic Abuse Bill](#) is a UK Government Bill introduced in the House of Commons on 16 July 2019. At the end of the 2017-2019 UK Parliamentary session, the Bill was carried over into the next session. The final stages of the Bill could be completed over a very short period in late October/early November 2019. **As such, the Scottish Parliament needs to take a view on legislative consent without delay.**
7. On 22 August 2019, the Scottish Government lodged an [LCM](#) in relation to this Bill. The Bill would, if agreed, introduce a new definition of domestic abuse to the law of England and Wales. It also provides for extra-territorial jurisdiction over certain types of offences against the person committed by UK nationals (or those habitually

resident in the UK) outside the UK. It is these provisions that would extend to Scotland and it is these provisions that the Scottish Parliament is being asked for its consent.

Consideration by the Committee and recommendation

8. The Committee considered both of the LCMs at its meeting on 29 October 2019. The Committee raised no issues of concern.

9. The Committee agreed with the recommendation of the Scottish Government that the Scottish Parliament should give its consent to the relevant provisions in the Sentencing (Pre-consolidation Amendments) Bill.

10. The Committee also agreed with the recommendation of the Scottish Government that the Scottish Parliament should give its consent to the relevant provisions in the Domestic Abuse Bill.

