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Justice Committee Comataidh a' Cheartais

Legislative Consent Memorandum - Sentencing (Pre-consolidation Amendments) Bill



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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

1. The [Sentencing \(Pre-consolidation Amendments\) Bill](#) is a UK Government Bill introduced in the House of Lords on 21 January 2020. The Bill is currently nearing Report stage in that House. As such, the Scottish Parliament needs to take a view on legislative consent before the Bill has reached its last amending stage.
2. 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. A summary of the clauses in the Bill that require a legislative consent memorandum (LCM) is as follows (clause numbers relate to the print of the Bill on introduction):

Transfer of community orders to Scotland or Northern Ireland

Schedule 2 – Paragraph 101(6)

This clause amends the existing limits on the Scottish courts to alter the terms of community orders that have been transferred to Scotland from England and Wales. It means that a court in Scotland would need to consider the limits on unpaid work that are in place in England and Wales on the day of re-sentencing.

Transfer of suspended sentence orders to Scotland or Northern Ireland

Schedule 2 – Paragraph 103(7)

This clause is intended to clarify the existing process determining how local authority officers in Scotland supervising offenders serving transferred suspended sentence orders would refer matters back to the courts in Scotland and, if necessary, back to the courts in England and Wales. In particular, it addresses the fact that the Offender Rehabilitation Act 2014, read across to the Criminal Justice Act 2003, would appear, on a literal reading, to prevent the English and Welsh courts taking an offender back for re-sentencing following a breach in Scotland.

3. On that basis legislative consent of the Scottish Parliament is being sought, and a [legislative consent memorandum](#) was lodged by Humza Yousaf MSP, Cabinet Secretary for Justice, on 5 February 2020 (see Annex).
4. The LCM states that it is the view of the Scottish Government that it is preferable in terms of good governance that the relevant provisions which fall within the legislative competence of the Scottish Parliament should be considered by the UK Parliament in order to ensure that required changes to clarify and simplify how suspended sentences and community orders imposed by courts in England and Wales operate where an offender transfers to Scotland are made timeously. The LCM (Annex, paragraph 11) sets out the Scottish Government's draft motion.

Consideration by the Committee and recommendation

5. The Committee considered the LCM at its meeting on 3 March 2020. The Committee raised no issues of concern.

6. 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.

Annex

LEGISLATIVE CONSENT MEMORANDUM

SENTENCING (PRE-CONSOLIDATION AMENDMENTS) BILL

Background

This memorandum has been lodged by Humza Yousaf MSP, Cabinet Secretary for Justice, under Rule 9.B.3.1(a) of the Parliament's standing orders. The Sentencing (Pre-Consolidation Amendments) Bill was introduced in the House of Lords on 21 January 2020. The Bill can be found at:

<https://publications.parliament.uk/pa/bills/lbill/58-01/042/5801042.pdf>

Content of the Sentencing (Pre-consolidation Amendments) Bill

In 2014, as part of its 12th Programme of Law Reform, the Law Commission for England and Wales undertook a project designed to consolidate and codify the law relating to sentencing procedures. The Commission published its final report on 22 November 2018 alongside a draft Sentencing Code Bill and a draft of the Sentencing (Pre-consolidation Amendments) Bill.

The Sentencing Code is a consolidation of legislation governing sentencing procedures in England and Wales which aims to ensure that the law in this area is comprehensible and operates within a clear framework. In order for the Sentencing Code to operate as intended, the Sentencing (Pre-consolidation Amendments) Bill makes a number of mostly technical changes to the existing legislative framework and makes provision to remove the need for sentencing courts to refer to different historical versions of sentencing procedure law, depending on the specific commencement criteria for the sentence in question (i.e. the date of the commission of the offence, the date of charge, or the date on appearance in court).

Neither the Sentencing Code nor the Sentencing (Pre-consolidation Amendments) Bill make any changes to existing offences and penalties, nor do they introduce any new substantive law or sentencing disposals.

Provisions Which Relate to Scotland

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.

A summary of the clauses in the Bill that require an LCM is as follows (clause numbers relate to the print of the Bill on introduction):

Transfer of community orders to Scotland or Northern Ireland

Schedule 2 – Paragraph 101(6)

This clause amends the existing limits on the Scottish courts to alter the terms of community orders that have been transferred to Scotland from England and Wales. It

means that a court in Scotland would need to consider the limits on unpaid work that are in place in England and Wales on the day of re-sentencing.

Transfer of suspended sentence orders to Scotland or Northern Ireland

Schedule 2 – Paragraph 103(7)

This clause is intended to clarify the existing process determining how local authority officers in Scotland supervising offenders serving transferred suspended sentence orders would refer matters back to the courts in Scotland and, if necessary, back to the courts in England and Wales. In particular, it addresses the fact that the Offender Rehabilitation Act 2014, read across to the Criminal Justice Act 2003, would appear, on a literal reading, to prevent the English and Welsh courts taking an offender back for re-sentencing following a breach in Scotland.

Reasons for seeking a legislative consent motion

The Bill applies largely to England and Wales. However, it makes a small number of minor changes to devolved law which 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. Although it would be technically possible to legislate for the devolved areas through a Bill in the Scottish Parliament, we consider it preferable to legislate in one Bill so that users of the eventual legislation in this area can refer to a single Act, rather than to two Acts operating together.

Consultation

The Law Commission's consultation on the Sentencing Code and associated documents can be found at:

<https://www.lawcom.gov.uk/project/sentencing-code/>

Financial Implications

The provisions of the Bill which extend to Scotland have no significant financial implications.

Conclusion

It is the view of the Scottish Government that it is preferable in terms of good governance that the relevant provisions which fall within the legislative competence of the Scottish Parliament should be considered by the UK Parliament in order to ensure that required changes to clarify and simplify how suspended sentences and community orders imposed by courts in England and Wales operate where an offender transfers to Scotland are made timeously.

Draft Legislative Consent Motion

The draft motion, which will be lodged by the Cabinet Secretary for Justice, is:

“That the Parliament agrees that the relevant provisions of the Sentencing (Pre Consolidation Amendments) Bill, introduced in the House of Lords on 21 January 2020, relating to the transfer of community orders and suspended sentence orders imposed by courts in England and Wales to Scotland, so far as these matters fall

within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

SCOTTISH GOVERNMENT

February 2020

