



The Scottish Parliament
Pàrlamaid na h-Alba

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Justice Committee Comataidh a' Cheartais

Legislative Consent Memorandum - Sentencing Bill [HL] 2019-21



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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 Bill \[HL\] 2019-21](#) is a UK Government Bill introduced in the House of Lords on 5 March 2020. The Bill's 2nd Reading in the House of Commons is due to take place on 30 September 2020.

About the Bill

2. The Bill is a consolidation of legislation governing sentencing procedures in England and Wales with the purpose of ensuring that the law in this area is comprehensible and operates within a clear framework. As a consolidation, the Bill does not make any changes to existing offences and penalties, nor does it introduce any new substantive law or sentencing disposals.
3. The Sentencing Bill applies largely to England and Wales only. However, and as with the previous Sentencing (Pre-Consolidation Amendments) Bill for which an LCM was promotedⁱ, there are a small number of provisions in the Bill which extend and apply to Scotland which trigger the requirement for an LCM.
4. The UK Government does not consider that any provisions in the Sentencing Bill trigger a requirement for seeking the consent of the Scottish Parliament. That view appears to be on the basis that the Bill is consolidatory in nature and does not in itself make substantive changes to Scots law, or which alter the legislative competence of the Parliament or the executive competence of the Scottish Ministers. However, the Scottish Government is acting on the basis of its own interpretation of Rule 9B of Standing Orders under which there is no exception for provision that is classed as consolidatory in nature.
5. A [legislative consent memorandum](#) was lodged by Humza Yousaf MSP, Cabinet Secretary for Justice, on 22 September 2020.
6. In considering whether to support the Bill the Scottish Government reached the following conclusion:

“The Bill applies almost entirely to England and Wales only. Although it would be possible to legislate for the devolved areas through a Bill in the Scottish Parliament, the amendments made in this Bill are very minor technical amendments to allow for the consolidation of existing law on sentencing procedure in England and Wales. The Scottish Government considers it preferable to legislate in one overall Bill so as to eliminate the need to identify a Scottish legislative vehicle at a time of particular pressure on the justice legislative programme especially when there are no policy issues arising”
7. The LCM (paragraph 12) sets out the Scottish Government’s draft motion, namely:

“That the Parliament agrees that the relevant provisions of the Sentencing Bill, introduced in the House of Lords on 3 March 2020, relating to transfer of community orders to Scotland or Northern Ireland, transfer to Scotland or Northern Ireland of suspended sentence orders which impose community requirements, making of sexual harm prevention order: effect on other orders and offences, effect of derogatory assertion orders, effect of order for absolute discharge and order for conditional discharge, execution of process between England and Wales and Scotland and consequential, repeal and revocations so far as these matters fall

ⁱ <https://digitalpublications.parliament.scot/Committees/Report/J/2020/3/5/Legislative-Consent-Memorandum---Sentencing--Pre-consolidation-Amendments--Bill#Introduction>

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

Consideration by the Committee and recommendation

8. The Justice Committee considered the LCM at its meeting on 29 September 2020. 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 Bill [HL] 2019-21.**

