

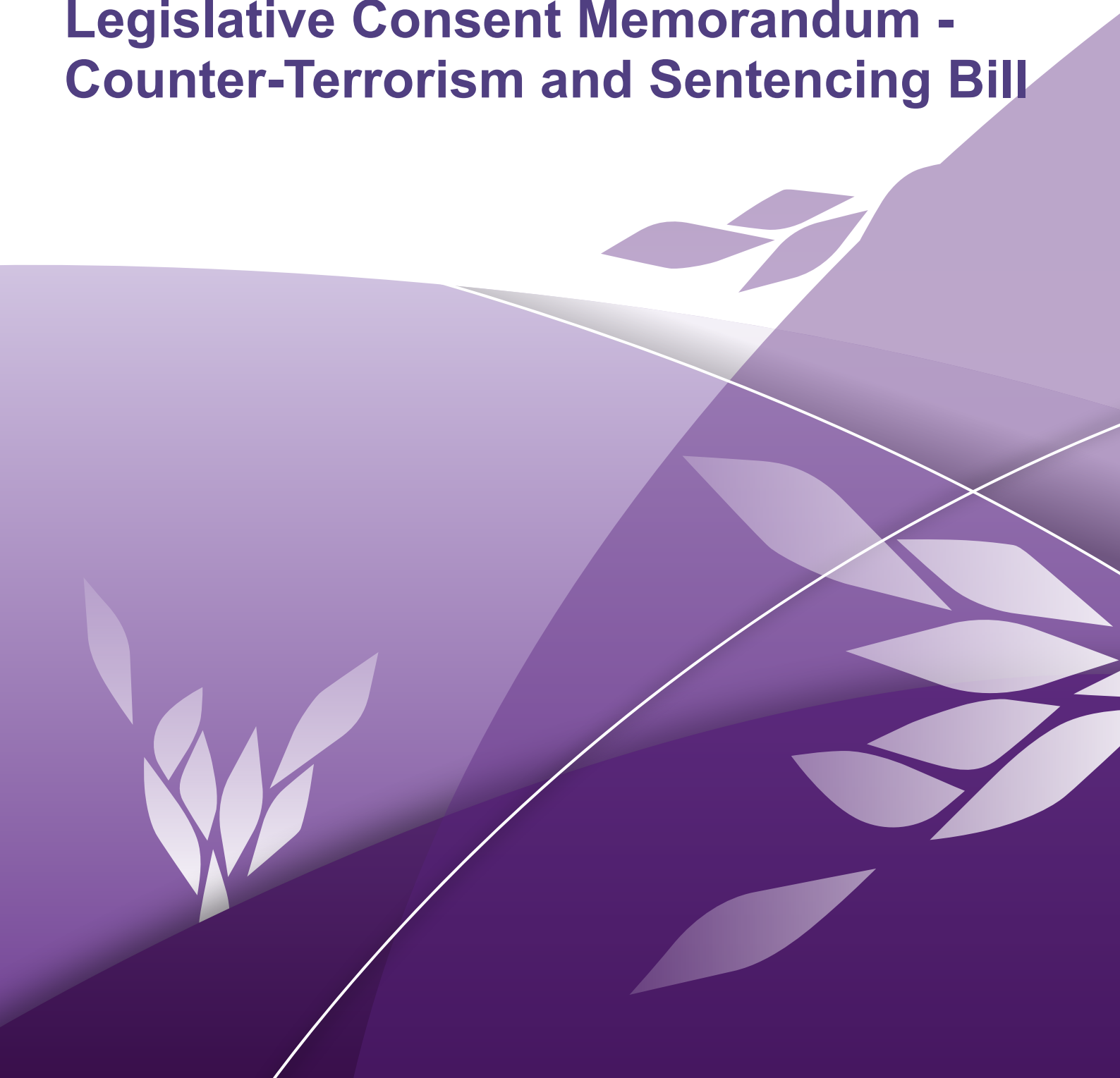


The Scottish Parliament  
Pàrlamaid na h-Alba

Published 25 February 2021  
SP Paper 961  
6th Report, 2021 (Session 5)

## **Justice Committee Comataidh a' Cheartais**

# **Legislative Consent Memorandum - Counter-Terrorism and Sentencing Bill**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

---

All documents are available on the Scottish Parliament website at:  
<http://www.parliament.scot/abouttheparliament/91279.aspx>

For information on the Scottish Parliament contact Public Information on:  
Telephone: 0131 348 5000  
Textphone: 0800 092 7100  
Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

# Contents

Introduction	1
About the Bill	2
Consideration by the Committee and recommendation	4

# 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.



[justicecommittee@parliament.scot](mailto:justicecommittee@parliament.scot)



0131 348 5047

# Committee Membership



**Adam Tomkins**  
Scottish Conservative  
and Unionist Party



**Deputy Convener  
Rona Mackay**  
Scottish National Party



**Annabelle Ewing**  
Scottish National Party



**John Finnie**  
Scottish Green Party



**Rhoda Grant**  
Scottish Labour



**Liam Kerr**  
Scottish Conservative  
and Unionist Party



**Fulton MacGregor**  
Scottish National Party



**Liam McArthur**  
Scottish Liberal  
Democrats



**Shona Robison**  
Scottish National Party

# Introduction

1. [The Counter-Terrorism and Sentencing Bill](#) [HL] 2019-21 is a UK Government Bill introduced in the House of Commons on 20 May 2020. The Bill is currently at Report stage in the House of Lords. This is scheduled to begin on 3 March 2021.

## About the Bill

2. The Bill currently makes provision about the sentencing of offenders convicted of terrorism offences, of offences with a terrorist connection or of certain other offences; to make other provision in relation to terrorism; and for connected purposes.
3. The operation of the Bill is split into England and Wales and separately for Scotland and Northern Ireland. This reflects different law applying in the area of the Bill in these countries. However, the policy intent of the Bill as a whole applies to Scotland as it does in England and Wales and Northern Ireland.
4. The area of law covered by the Bill is a mix of reserved and devolved matters.
5. A [legislative consent memorandum](#) was lodged by Humza Yousaf MSP, Cabinet Secretary for Justice, on 29 January 2021 .
6. One area of the Bill that would have required an LCM were clauses that would introduce a new approach into the Scottish justice system; namely use of polygraph testing as a condition of release from a prison sentence (in this case a terrorist offence prison sentence).
7. The Scottish Government considered that new radical policy approaches for use within the Scottish criminal justice system such as the introduction of polygraph testing should usually only be introduced into Scots law through the normal process of scrutiny of devolved legislation in the Scottish Parliament. This reflects that the operation of the criminal justice system is devolved and so acknowledges that it should be for those with powers in that area to decide whether such measures are introduced into a devolved area.
8. Second and specific to the issue of polygraph testing, the Scottish Government does not consider that the evidence supporting the use of polygraphs justifies the immediate use of polygraph testing in the manner provided for in the Bill.
9. As a result of these concerns, the Scottish Government engaged with the UK Government. Following this, the UK Government agreed to remove these clauses from the Bill at the next amending stage and promotion of this LCM does not include what are currently clauses 33 and 35 as the UK Government has indicated these clauses should not stand part of the Bill at the House of Lords Committee stage.
10. The LCM states that while the Scottish Government is not convinced that changing the law so that terrorist offenders receive longer sentences, spend more of these sentences in custody and are supervised for longer upon release will, in isolation, provide definite answers to the important issue of how to respond to terrorist offending, the Scottish Government is promoting the LCM for these matters which are, to a large extent, consequential to the overall policy intent sought by the UK Government in the area of enforcement of sentencing. Not to do so would likely be counter-productive as it may run the risk of error and confusion in the operation of the relevant law in some areas.
11. The Scottish Government considers that it is preferable in terms of good

governance that to the extent that the relevant provisions that alter Scottish Ministers' functions in relation to the release and management of terrorist offenders, they should be considered by the UK Parliament.

12. The LCM (paragraph 16) sets out the Scottish Government's draft motion, namely:

“That the Parliament agrees that the relevant provisions of the Counter-Terrorism and Sentencing Bill, introduced in the House of Commons on 20 May 2020, relating to Scottish Ministers' executive competence with regard to the release of terrorism offenders from custodial sentences, should be considered by the UK Parliament.”



## Consideration by the Committee and recommendation

13. The Justice Committee considered the LCM at its meeting on 23 February 2021.
14. In response to questions by Members about the use of polygraphs, the Cabinet Secretary advised that the Scottish Government took a very robust approach in opposition to the original proposal from the UK government to extend the use of polygraph testing into the Scottish justice system. As a result, the Lord Chancellor agreed to remove those provisions from the legislation.
15. The Cabinet Secretary also stated that the LCM has been agreed to in a limited way as the Bill potentially affects on the Scottish Government's competence and powers in relation to sentencing but, in that limited way, the Scottish Government are content to give consent. The Committee raised no further issues of concern.
16. **The Committee agreed with the recommendation of the Scottish Government that the Scottish Parliament should give its consent to the relevant provisions in the Counter-Terrorism and Sentencing Bill [HL] 2019-21.**

