LEGISLATIVE CONSENT MEMORANDUM

SENTENCING (PRE-CONSOLIDATION AMENDMENTS) BILL

Background

1. 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 22 May 2019. The Bill can be found at:

   https://services.parliament.uk/bills/201719/sentencingpreconsolidationamendments.html

Content of the Sentencing (Pre-consolidation Amendments) Bill

2. 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. In addition, the Commission published a draft Sentencing (Pre-consolidation Amendments) Bill which is intended to remove any inconsistencies and defects in existing law prior to consolidation and codification taking place.

3. The UK Government has decided to progress the Law Commission’s recommendations in this area. The draft Sentencing Code Bill (published in the Law Commission’s report but not yet introduced in the Houses of Parliament), seeks to consolidate 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 to pave the way for the Sentencing Code Bill at some future date so that it can 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).

4. 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

5. 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.
6. A summary of the clauses in the Bill that require a Legislative Consent Motion (LCM) is as follows (clause numbers relate to the print of the Bill as introduced in the House of Lords):

Transfer of community orders to Scotland or Northern Ireland

- **Schedule 2 – Paragraph 90(6)**
  - This paragraph 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 92(7)**
  - This paragraph 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 lodging a legislative consent motion

7. The Bill applies largely to England and Wales. However, it makes a small number of minor changes 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. The Bill is accordingly a “relevant Bill” for the purposes of Chapter 9B.3(b)(i) of the Standing Orders of the Scottish Parliament, in that it makes provision applying to Scotland for a purpose within the legislative competence of the Parliament. Although it would be possible to legislate for the devolved areas through a Bill introduced in the Scottish Parliament, the Scottish Government considers it preferable to legislate through one Bill so that users of the legislation in this area can refer to a single Act, rather than have to refer to two Acts operating together.

Consultation

8. The Law Commission’s consultation on the Sentencing Code and associated documents can be found at: [https://www.lawcom.gov.uk/project/sentencing-code/](https://www.lawcom.gov.uk/project/sentencing-code/).

Financial Implications

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

Conclusion

11. 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

12. 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 22 May 2019, 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
July 2019
This Legislative Consent Memorandum relates to the Sentencing (Pre-consolidation Amendments) Bill (UK legislation) and was lodged with the Scottish Parliament on 25 July 2019

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