

Criminal Justice Committee
Wednesday 17 December 2025
35th Meeting, 2025 (Session 6)

Legislative consent memorandum on the Sentencing Bill (UK Parliament legislation)

Note by the Clerk

1. Legislative Consent Memorandum (LCM) LCM-S6-67 was lodged by Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, on 26 November 2025 and has been referred to the Criminal Justice Committee for scrutiny.
2. The LCM is available on the [Scottish Parliament website](#).
3. It relates to proposed UK Government legislation – the Sentencing Bill – currently being considered by the UK Parliament.
4. The Scottish Government has engaged with Parole Board Scotland and the Scottish Prison Service and both have confirmed that the proposed changes will have little to no impact operationally due to the minimal number of prisoners with the type of sentence relevant to these proposed changes currently held in Scottish prisons. As of 10 November 2025, there were no prisoners with these relevant offences in SPS custody.

Sentencing Bill

5. The Sentencing Bill was introduced by the UK Government in the House of Commons on 2 September 2025. Amendments tabled on 14 October 2025 have initiated the requirement for legislative consent.
6. The Bill and associated documents can be viewed on the [UK Parliament website](#).
7. The Bill makes provision about the sentencing, release and management after sentencing of offenders, bail, the removal from the UK of foreign criminals, and for connected purposes.
8. The Bill introduces the following measures with regard to sentencing:
 - Introducing a presumption to suspend short custodial sentences of 12 months or less, excluding offenders who have breached a court order, where there is significant risk of harm to an individual, or in exceptional circumstances.
 - Extending powers to suspend custodial sentences of up to 3 years (but ensuring that extended determinate sentences and sentences for offenders of particular concern cannot be suspended in any circumstances).

- Giving a power to create a new income reduction order can be made by a judge at sentencing to an offender serving a Suspended Sentence Order and who is deemed likely to generate a significant income.
- Amendment of the statutory purposes of sentencing to emphasise the importance of protecting victims and of public protection.
- Extending the maximum period that a sentence can be deferred by the court from 6 months to 12 months.
- Introducing a judicial finding of domestic abuse (to facilitate better tracking of offences related to domestic abuse).
- Provisions made with regard to offenders of particular concern to ensure that offences involving or connected with a threat to national security become eligible for Sentences for Offenders of Particular Concern (SOPC)
- Changes to rehabilitation requirements, to allow probation practitioners to decide the volume of rehabilitation activity that an individual sentenced to a probation requirement should complete (as opposed to the sentencing court).
- Adding new community requirements to community and suspended sentence orders to prohibit offenders from driving, entering pubs, bars and clubs, attending sports and public events and to impose restriction zones, alongside a power to add or amend requirements via secondary legislation.
- Introducing a new requirement for Sentencing Council guidelines to be agreed by both the Lord Chancellor and the Lady Chief Justice before they are issued

9. The Bill also introduces the following measures with regards to management of offenders after sentencing:

- Changes to be made to release points for prisoners serving adult standard determinate sentences, reducing many from 50% or 40% down to 30% of sentence (with variations for sentences with other specified release points), dependent on the prisoner complying with the prison regime.
- Changes to the conditions for post-release supervision on release from determinate sentences, typically for the individual to be supervised for one third of sentence after release.
- Changes to enable a new set of restrictive licence conditions for offenders released on licence from prison such as expansion of drug testing requirements, prohibition of driving, imposition of restriction zones, public events bans and prohibition of entering drinking establishments.

- Provisions to allow foreign nationals who are serving determinate sentences of imprisonment to be removed earlier in their sentence for removal or deportation from the UK, after they have served a minimum pre-removal custodial period.
- Changes affecting community payback orders to simplify applications for extensions and reduction in sentenced unpaid work in cases where an offender demonstrates compliance with their unpaid work requirement, as well as introduction of new processes to end community orders and supervision of suspended sentence orders in certain circumstances.
- Changes to regulations on recall to custody where an individual breaks the conditions of their probation – removing standard recall processes for most standard determinate sentences, but also changing the minimum recall period to 56 days (subject to exceptions).
- Changes in release points for offenders who are convicted of murder overseas, to ensure a statutory release point of two thirds rather than one third.

10. On 14 October 2025, the UK Government tabled amendments to the Bill, some of which apply to Scotland. These amendments make various changes, which seek to extend the sentencing and release arrangements which currently apply to individuals sentenced for terrorist offences to those sentenced for a national security offence.

11. In particular, the amendments made to the release of these types of prisoners as set out in the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”).

12. The key provisions which extend to Scotland are found in Schedule 2 of the Bill and, as noted above, are considered to have minimal impact.

13. The Bill is currently progressing through the UK Parliament and is at Report stage in the House of Lords, having completed its passage in the Commons. The Bill’s final amending stage is anticipated to take place in early January 2026.

Provisions which require the consent of the Scottish Parliament

14. The Scottish Government is of the view that certain provisions found in Clause 8 and Schedule 2 of the Bill require the consent of the Scottish Parliament.

15. Clause 8 of the Bill makes amendments to section 205ZC of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) which provides for a custodial sentence with a fixed licence period for certain serious offences. Clause 8 extends the scope of this provision beyond terrorism offences to include national-security.

16. Schedule 2 of the Bill makes amendment to enactments to ensure that sentences imposed under section 205ZC for national security-related offences are treated consistently with the existing sentencing regimes. Paragraph 3 of

Part 1 of Schedule 2 makes a number of amendments to the 1993 Act, set out below.

17. Paragraph 3(2) amends section 1(9) of the 1993 Act to disapply the existing provisions in section 1 regarding release to those serving a sentence for a national security offence. Section 1(1) of the 1993 Act (as amended by the Prisoners (Early Release (Scotland) Act 2025) provides that the Scottish Ministers must release a short-term prisoner after serving 40% of their sentence.
18. The provisions of the proposed Bill will remove Scottish Ministers' function with regard to the automatic release of short-term national security offence prisoners, as they will no longer be automatically released after serving 40% of their sentence.
19. Section 1(3) of the 1993 Act provides that after a long-term prisoner has served one half of their sentence, Scottish Ministers must release that prisoner on licence if recommended to do so by the Parole Board. This amendment removes that function.
20. Paragraph 3(3) of Part 1 of Schedule 2 amends section 1AB of the 1993 Act. Section 1AB provides for the restricted eligibility for release on licence of prisoners serving a custodial sentence for a terrorism offence. Sub-paragraph (3) therefore amends section 1AB to extend those provisions to national security prisoners which require Scottish Ministers instead to refer such prisoners to the Parole Board for Scotland after serving two thirds of their sentence (as is currently the case with terrorist prisoners). This provision thereby confers a new function on the Scottish Ministers in respect of such prisoners.
21. Sub-paragraph (6) amends section 3A of the 1993 Act. Section 3A makes provision requiring Scottish Ministers to refer certain prisoners (serving terrorism or extended sentences) where their case has previously been referred, not less than one year following the Board's disposal. This amendment will extend that requirement of Scottish Ministers to refer prisoners serving custodial sentences for a national security offence to the Parole Board in the same way.
22. Sub-paragraph (7) amends section 3C of the 1993 Act, which grants Scottish Ministers the power to release certain groups of prisoners early under emergency circumstances via secondary legislation, so as to exclude prisoners serving a sentence for a national security offence from any potential emergency release. This amendment therefore removes the Scottish Ministers' function to release such prisoners under emergency release regulations under that provision.
23. Sub-paragraph (10) amends section 27 of the 1993 Act so as to prevent a sentence for a "national security-related offence" from being treated as part of a single term with other sentences being served consecutively or concurrently by an offender.

Legislative consent procedure

24. Under the Sewel Convention, the UK Parliament does not normally legislate on devolved matters, or to alter the legislative competence of the Parliament or the executive competence of the Scottish Government, without the consent of the Scottish Parliament. Consent is given by means of a resolution of the Parliament in the chamber.
25. Under Chapter 9B of the Standing Orders, the Scottish Government must lodge a legislative consent memorandum (LCM) in relation to each UK Parliament Bill that contains a provision (“relevant provision”) that would require the Parliament’s consent under the Convention. Sometimes the Scottish Government may be required to lodge one or more supplementary LCMs during the passage of a Bill. It is also possible for an LCM to be lodged by an individual MSP.
26. Every LCM lodged is referred to a lead committee for scrutiny, and may also be referred to other committees. If the Bill confers power on the Scottish Ministers to make subordinate legislation, the Delegated Powers and Law Reform Committee (DPLRC) must also consider the LCM and may report on it to the lead committee.
27. Once the lead committee has reported, the Scottish Government normally lodges a motion on legislative consent for consideration in the Chamber. Such a motion may give consent to relevant provision in the Bill, refuse consent to such provision, or a mixture of the two. A draft of the motion is normally included in the LCM.

The Scottish Government’s LCM

28. In its [LCM](#), the Scottish Government recommends that the Scottish Parliament consent to the following:
 - amendments to clause 8 of the Bill, which extend the scope of section 205ZC of the Criminal Procedure (Scotland) Act 1995 Act beyond terrorism offences to include national security-related offences
 - amendments made in schedule 2 of the Bill (outlined above), which ensure that sentences imposed under section 205ZC for national security-related offences are treated consistently with the existing sentencing regime for terrorism offences
29. The Scottish Government’s reasons for recommending consent to the above provisions is set out in **paragraphs 27 to 29** and **31 to 33** of the LCM.
30. Consent is recommended on the basis that consenting to these would ensure that Scotland is aligned with the rest of the UK, and that there is consistency in approach with regard to these kinds of offenders, whilst noting that in practice the proposed changes will have minimal impact in Scotland due to very low numbers of prisoners convicted of national security offences in Scottish prisons (currently none).

31. The draft motion on legislative consent is as follows:

“That the Parliament agrees that the relevant provisions of the Sentencing Bill, introduced in the House of Commons on 2 September 2025, and subsequently amended, affecting changes which align the treatment of national security offenders with terrorist offenders under the Criminal Procedure (Scotland) Act 1995 and the Prisoners and Criminal Proceedings (Scotland) Act 1993, so far as these matters alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Scrutiny by DPLR Committee

32. At its meeting on 9 December 2025, the Delegated Powers and Law Reform Committee (DPLRC) agreed not to consider the LCM.
33. Section 3c of the Prisoners and Criminal Proceedings (Scotland) Act 1993 makes a minor change to an existing delegated power held by the Scottish Ministers. However, under Standing Orders the DPLRC isn't obliged to consider the change to that existing power - it is not a power of UK Ministers to make provision within legislative competence of the Scottish Parliament.
34. It is also not making a significant change to a delegated power already held by the Scottish Ministers, instead it is a minor change to bring the treatment of national security offenders into line with that of terrorism offenders.

Evidence session

35. At this meeting, the Committee will take evidence on the LCM from the Cabinet Secretary for Justice and Home Affairs and her officials.

Decision

36. After hearing from the Cabinet Secretary, the Committee will be invited to decide what recommendation to make to the Parliament – in particular, whether to recommend agreement to the Scottish Government's draft motion.

Report

37. The Committee is required to report to the Parliament on the LCM. **As the Bill's final amending stage is anticipated to take place directly after Christmas recess, the Committee is asked to delegate to the Convener authority to approve a short, factual report to be published shortly after the Committee meeting to allow the legislative consent process to be completed before recess.**

Clerks to the Committee
December 2025