

Justice Committee

26<sup>th</sup> Meeting, 2019 (Session 5), Tuesday 29 October 2019

Legislative Consent Memorandums

Note by the clerk

Introduction

1. This paper invites the Committee to consider Legislative Consent Memorandums in relation to the following UK Government Bills:
  - the [Sentencing \(Pre-consolidation Amendments\) Bill](#); and
  - the [Domestic Abuse Bill](#).
2. The [Sentencing \(Pre-consolidation Amendments\) Bill](#) is a UK Government Bill introduced in the House of Lords on 22 May 2019. At the end of the 2017-2019 UK Parliamentary session the Bill was carried over into the next session. The third reading of the Bill is expected to take place in the House of Lords on the 30 October 2019. The Bill could complete its passage through the House of Commons by the end of November 2019. **As such, the Scottish Parliament needs to take a view on legislative consent before the Bill has reached in last amending stage.**
3. In 2014, the UK Government agreed that the Law Commission should undertake a project to consolidate the law on sentencing. In November 2018, the Law Commission published its draft Sentencing Bill which would give effect to a new consolidated Sentencing Code. In order to pave the way for this Sentencing Code, the Sentencing (Pre-consolidation Amendments) Bill makes a number of mostly technical amendments to the law on sentencing. The Bill removes historic and redundant layers of legislation, which would mean that offenders convicted after the Code comes into force would be sentenced according to the most up-to-date law regardless of when the offence was committed (with certain exceptions).
4. Neither the Sentencing Code nor the Bill make any changes to existing offences and penalties, nor do they introduce any new substantive law or sentencing disposals.
5. The [Domestic Abuse Bill](#) is a UK Government Bill introduced on 16 July 2019. At the end of the 2017-19 UK Parliamentary session the Bill was carried over into the next session. It is now possible that consideration of the relevant provisions of the Bill will be concluded as early as Friday 1 November. **The UK and Scottish Governments have therefore requested that the Committee bring forward its consideration of the Legislative Consent Memorandum for this Bill.**
6. The Domestic Abuse Bill introduces a new definition of domestic abuse to the law of England and Wales. It also provides for extra-territorial jurisdiction over certain types of offences against the person committed by UK nationals (or those

habitually resident in the UK) outside the UK. It is these provisions that would extend to Scotland.

### **Legislative consent process**

7. The process for considering consent to the relevant provisions in a UK Bill essentially commences with the publication, normally by the Scottish Government, of a Legislative Consent Memorandum (LCM). These LCMs relate to Bills under consideration in the UK Parliament which contain what are known as “relevant provisions”. These provisions could:
  - change the law on a “devolved matter” (an area of policy which the UK Parliament devolved to the Scottish Parliament in the Scotland Act 1998); or
  - alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).
8. Under an agreement formerly known as the “Sewel Convention”, the UK Parliament will not normally pass Bills that contain relevant provisions without first obtaining the consent of the Scottish Parliament. The consent itself is given through a motion (a Legislative Consent Motion) which is taken in the Chamber – but the detailed scrutiny is undertaken by a Scottish Parliament committee on the basis of a memorandum. The motion must normally be decided on before the Bill reaches its final amending stage at the UK Parliament in the House in which it was first introduced (although this can be as late as the last amending stage in the second house). On occasion, a memorandum is lodged which invites the Parliament to note that the Scottish Government does not intend to lodge a legislative consent motion on a particular bill.
9. The detailed procedure for scrutiny of Legislative Consent Memorandums and Motions is set out in [Chapter 9B](#) of the Parliament’s Standing Orders.

### **Sentencing (Pre-consolidation Amendments) Bill – LCM**

10. On 25 July 2019, the Scottish Government lodged an LCM in relation to the Sentencing (Pre-consolidation Amendments) Bill. The LCM can be accessed here: [https://www.parliament.scot/S5\\_Standards/SPLCM-S05-26.pdf](https://www.parliament.scot/S5_Standards/SPLCM-S05-26.pdf)
11. The LCM sets out that 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. These 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.

12. The Scottish Government considers that it preferable to legislate through one Bill so that users of the legislation in this area can refer to a single Act. This will also ensure that the required changes are made timeously.

### **Domestic Abuse Bill – LCM**

13. On 22 August 2019, the Scottish Government lodged an LCM in relation to the Domestic Abuse Bill. The LCM can be accessed here:  
<https://www.parliament.scot/S5ChamberOffice/SPLCM-S05-27.pdf>
14. The LCM sets out that, while the Bill largely applies to England and Wales, it makes provision for the whole of the UK, including Scotland, for extra-territorial jurisdiction over relevant offences, as required by the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). The UK become a signatory to the Convention on 8 June 2012, however, formal ratification remains pending. The measures in the UK Domestic Abuse Bill would allow for formal ratification by providing for extra-territorial jurisdiction over the offences covered by the Convention.
15. Giving effect to the extra-territorial jurisdiction requirements of the Convention will allow relevant offending behaviour to be prosecuted in Scottish courts when the behaviour occurs wholly or partly outside of the UK and when the offender is habitually resident in Scotland or is a UK national.
16. The Scottish Government considers that it is preferable to legislate for extra-territorial jurisdiction through the UK Bill to ensure that the UK is in a position to formally ratify the Istanbul Convention quickly.

### **Action**

- 17. Members are invited to consider whether to agree with the recommendation of the Scottish Government that the Scottish Parliament should give its consent to the relevant provisions in (1) the Sentencing (Pre-consolidation Amendments) Bill and (2) the Domestic Abuse Bill. Should this be the case, the Convener will arrange for the publication of a short, factual report to this effect.**