

FROM THE OFFICE OF THE JUSTICE MINISTER



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FROM: Departmental Assembly Liaison Officer

DATE: 13 MARCH 2020

TO: CHRISTINE DARRAH

**SENTENCING (PRE-CONSOLIDATION AMENDMENTS) BILL: LEGISLATIVE
CONSENT MEMORANDUM**

SUMMARY

Business Area: Criminal Justice Policy and Legislation Division

Issue: Legislative Consent Memorandum to enable inclusion of amendments in the UK Government's Sentencing (Pre-Consolidation Amendments) Bill. These amendments relate to the transfer of community orders and suspended sentence orders to Northern Ireland from England and Wales.

Action Required: Members are asked to consider the proposal to seek the approval of the Assembly to include the amendments in the Sentencing (Pre-Consolidation Amendments) Bill by means of a Legislative Consent Motion.

Officials attending: N/A. Written briefing only.

Introduction

The Sentencing (Pre-Consolidation Amendments) Bill (the 'PCA Bill'), which started in the House of Lords and was brought to the Commons on 4 March 2020, contains three minor provisions which extend to Northern Ireland and for which the Ministry of Justice has indicated that a Legislative Consent Motion is required. This briefing paper is

offered to the Committee to enable it to reach a view on the laying of a legislative consent memorandum in the Assembly.

Background to the Bill

2. Following a long period of consultation, the Law Commission for England and Wales, in 2018, recommended consolidation of all sentencing law. In response, the UK Government intend to introduce a Sentencing Code which will consolidate the law on sentencing procedure in England and Wales. The overall aim is to ensure that the law is more easily understood and operates more efficiently within a clear framework. The code will re-enact law already in force and will not alter its substance or effect.

3. To facilitate the consolidation in the Code, this Bill makes a number of mainly technical changes ('pre-consolidation amendments') to existing sentencing law, for example, changing language to avoid inconsistency or updating statutory references, such as reflecting the change in Northern Ireland to a single court jurisdiction.

4. The Bill in effect makes a 'clean sweep' of sentencing law in England and Wales. The 'clean sweep' is a technical term which has the effect of removing the need, once the sentencing code is in place, to refer back to previous sentencing legislation. This means that anyone convicted once the Code is in force would automatically be sentenced under the current law with no need to search through a multitude of previous statutes. This would apply for every offence no matter when it was committed, with exceptions to protect the fundamental rights of offenders. These exceptions ensure that no offender is subject to a greater penalty than that available at the time of the offence, or is subject to a minimum or mandatory sentence that did not apply at the time of the offence. Neither the Code nor this Bill make any policy changes to existing offences and penalties.

Provisions which extend and apply to Northern Ireland

5. The Bill will facilitate the application of the new sentencing code in England and Wales. However, there are a small number of provisions relating to the transfer of community orders between UK jurisdictions, three of which extend and apply to

Northern Ireland. The provisions governing the transfer of orders between UK jurisdictions are contained in the Criminal Justice Act 2003 and the Criminal Justice and Immigration Act 2008. The Bill amends these provisions to clarify the law as it relates to the operation of elements of community sentences, suspended sentences and Youth Rehabilitation Orders in order to enable the ‘clean sweep’ approach. The effect of the amendments is detailed at Annex A.

6. While the ability to make these changes is within the legislative competence of the Assembly, the Minister considers it appropriate that these amendments are enacted within the Bill, subject to the views of Committee members, the approval of the Executive and the consent of the Assembly. The amendments are largely technical in nature and their aim is simply to facilitate the law consolidation in England and Wales. The Bill has already been introduced in Parliament and, with the legislative constraints in the current mandate, it would not be possible to bring equivalent provision via an Assembly Bill in the near future, thereby preventing the new arrangements from working seamlessly across jurisdictions. It is also considered preferable to legislate in one Bill so that users of the eventual legislation in this area can refer to a single Act rather than to two Acts operating together.

Other Jurisdictions

7. The Bill contains similar amendments relating to the transfer of community orders and suspended sentence orders from England and Wales to Scotland and which fall within the legislative competence of the Scottish Parliament. The Scottish Justice Committee has agreed that the Scottish Parliament should give its consent to the relevant provisions.

Next Steps

8. The Ministry of Justice estimates that the Bill will reach Report Stage by the beginning of May. They have therefore asked that we try to meet that timeline for approval of the LCM.

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9. Subject to the Committee's views, we aim to table a Legislative Consent Memorandum to be laid before the Assembly, dependent on Executive approval, on 24 March.

Departmental Assembly Liaison Officer

Sentencing (Pre-consolidation Amendments) Bill

Transfer of Community Orders to Scotland or Northern Ireland

Schedule 2 – Paragraph 101(6)

This amends the existing limits on the Northern Ireland Courts to alter the terms of community orders that have been transferred to Northern Ireland from England and Wales. Currently, when a community order has been transferred to Northern Ireland from England and Wales, a court in Northern Ireland, if an offender is before it for re-sentencing in respect of a breach, is bound by the upper limits on unpaid work hours or curfew requirements that were in place in England and Wales at the time that the offender was first convicted. Under the proposed amendment, a court in Northern Ireland would still need to consider the limits on unpaid work or curfew requirements that are in place in England and Wales, but instead the limits applying on the day of re-sentencing.

Transfer of Youth Rehabilitation Orders to Northern Ireland

Schedule 2 – Paragraph 112(9)

This paragraph amends the existing limits on the Northern Ireland Courts to alter the terms of curfew requirements of Youth Rehabilitation Orders that have been transferred to Northern Ireland from England and Wales on the same basis as that outlined above for Community Orders.

Transfer of Suspended Sentence Orders to Scotland or Northern Ireland

Schedule 2 – Paragraph 103(7)

This clause rectifies a technical error in amendments made to the Criminal Justice Act 2003 by the Offender Rehabilitation Act 2014 and is intended to clarify in law the existing process of determining how probation officers in Northern Ireland supervising

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offenders serving transferred suspended sentence orders would refer matters back to the courts in Northern Ireland and, if necessary, back to the courts in England and Wales.

The Bill can be found at

<https://publications.parliament.uk/pa/bills/lbill/58-01/042/5801042.pdf>