

LEGISLATIVE CONSENT MEMORANDUM
SENTENCING (PRE-CONSOLIDATION AMENDMENTS)
BILL

Draft legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Justice, is:

“That this Assembly endorses the principle of the extension to Northern Ireland of the relevant provisions of the Sentencing (Pre-Consolidation Amendments) Bill, introduced in the House of Lords on 21 January 2020, relating to the transfer of community orders, youth rehabilitation orders and suspended sentence orders imposed by the courts in England and Wales to Northern Ireland, so far as these matters fall within the legislative competence of the Assembly.”

Background

2. This memorandum has been laid before the Assembly by the Minister of Justice under Standing Order 42A(2). The Sentencing (Pre-Consolidation Amendments) Bill (“the Bill”) was introduced in the House of Lords on 21 January 2020. The Bill can be found at:

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

Summary of the Bill and its policy objectives

3. In 2014, as part of its Programme of Law Reform, the Law Commission for England and Wales undertook a project designed to consolidate and codify the law relating to sentencing procedure in England and Wales. The Commission published its final report on 22 November 2018 alongside a draft Sentencing Code Bill and a draft of the Sentencing (Pre-Consolidation Amendments) Bill. The purpose of the Bill is to make a number of necessary advance, mainly technical, amendments (“pre-consolidation amendments”) to the existing legislative framework and to remove the need, once the Sentencing Code (“the Code”) is in place, to refer back to historical layers of sentencing procedure law. The Bill will facilitate the enactment and operation of the Code which the UK Government intend to introduce. The Code is a consolidation of legislation governing sentencing procedure in England and Wales which aims to ensure that the law relating to sentencing procedure is more readily

comprehensible and operates within a clear framework, as efficiently as possible. Neither the Bill nor the Code make any changes to existing offences and penalties, nor do they introduce any new policy on sentencing law.

Provisions which deal with a Devolution Matter and reasons for making the Provisions

4. The Bill will facilitate the application of the Sentencing Code in England and Wales. However, there are a small number of provisions in the Bill relating to the transfer of Community Orders between UK jurisdictions. Three of these extend and apply to Northern Ireland and are within the legislative competence of the Assembly. A summary of the clauses in the Bill that require a Legislative Consent Motion is as follows (clause numbers relate to the print of the Bill on introduction):

Transfer of Community Orders to 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 or variation, 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 the curfew requirements of Youth Rehabilitation Orders that have been transferred from England and Wales on the same basis as that outlined above for Community Orders.

Transfer of Suspended Sentence Orders to 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 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.

5. The Bill contains similar amendments relating to the transfer of Orders from England and Wales to Scotland and which fall within the legislative competence of the Scottish Parliament. The legislative consent of the Scottish Parliament was sought and a Legislative Consent Memorandum was lodged by Humza Yousaf MSP, Cabinet Secretary for Justice, on 5 February 2020. The Scottish Justice Committee agreed on 3 March that the Scottish Parliament should give its consent to the relevant provisions and the motion was agreed by the Scottish Parliament on 17 March.

Reasons for utilizing the Bill rather than an Act of the Assembly

6. The Bill applies to sentencing law in England and Wales. However, it makes a very small number of amendments to devolved law which are intended to clarify the operation of community sentences and suspended sentences imposed by the courts in England and Wales on offenders who transfer to Northern Ireland. Although it would be technically possible to legislate for the devolved areas through a Bill in the Northern Ireland Assembly, these are largely technical amendments which make no policy changes to existing offences and penalties, and it is 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 two Acts operating together.

Consultation

7. The Law Commission's consultation on the Sentencing Code and associated documents can be found at: <https://www.lawcom.gov.uk/project/sentencing-code/>.

Human Rights and Equality

8. The provisions of the Bill which extend to Northern Ireland are considered to be compliant with section 24 of the Northern Ireland Act 1998, including EU Law and Convention Rights as defined in the Human Rights Act 1998. None of the provisions were deemed to have required an equality impact assessment.

Financial Implications

9. The provisions of the Bill which extend to Northern Ireland have no significant financial implications.

Summary of Regulatory Impact

10. No regulatory impact.

Engagement to date with the Committee for Justice

11. Briefing was issued to the Justice Committee on 12 March. Due to the current Covid-19 situation it was not considered at its meeting on 19 March 2020, but addressed by correspondence. The Committee raised no issues of concern.

Conclusion

12. The view of the Minister is that it is preferable, in the interests of appropriate and timely process and clear legislation, that the relevant provisions which fall within the legislative competence of the Assembly should be considered by the UK Parliament.

Department of Justice
27th April 2020