

Legislative Consent Memorandum

Sentencing Bill

Background

1. This memorandum has been lodged by Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, in accordance with rule 9B.3.1(c) of the Parliament's Standing Orders.
2. The Sentencing Bill was introduced by the UK Government in the House of Commons on 2 September 2025, with amendments tabled on 14 October 2025 which have initiated the requirement for legislative consent. The Bill is available on the UK Parliament website via this link: [Sentencing Bill - Parliamentary Bills - UK Parliament](#).
3. Both Parole Board Scotland (PBS) and the Scottish Prison Service (SPS) have confirmed that 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 are no prisoners with these relevant offences in SPS custody.

Policy objectives of the Bill

4. The Sentencing Bill is a UK Government Bill that proposes reforms to sentencing law following an independent sentencing review commissioned by the UK Government, which reported in May 2025.
5. The UK Government considers that the Bill's provisions are needed to address the capacity crisis in the prison system in England and Wales to ensure capacity to imprison the most dangerous offenders, and to avoid further use of emergency release processes (as was seen in 2023 and 2024). It aims to introduce several changes recommended by the independent sentencing review, most prominently to introduce an 'earned progression model' for the release of offenders serving standard determinate sentences, enabling those eligible prisoners who comply with prison conditions to be released at 30% of their sentence (and detaining those who do not comply for a higher proportion). This approach will also commonly reduce the standard period for post-release supervision for such prisoners to one third of their total sentence after release, compared to the previous regime which typically maintained post-release supervision for the balance of their sentence. The UK Government considers that this approach will help to address the prison population problem, recognising good behaviour whilst ensuring that bad behaviour in prisons is punished.

6. Other provisions address other aspects of sentencing which aim to impact the prison population and further develop alternatives to custody. This includes introducing a presumption of a suspended sentence order when a court imposes a sentence of 12 months or less (subject to exceptions); changing the conditions for recalling individuals to custody after initial release (by raising the level at which recall to prison will be applied, but then increasing the minimum period of recall to 56 days); and expanding the circumstances under which the court can defer sentence.

7. The key provisions which extend to Scotland are found in Schedule 2 and, as noted above, are considered to have minimal impact. These provisions change sentencing of offenders who have committed a national security offence, bringing sentencing for these individuals in line with sentencing of terrorist offences.

8. The Bill also covers a range of other measures to adjust the existing sentencing regime, which are detailed below.

Content of the Bill

9. 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. An indicative timeline for the Bill is attached at the Annex to this Legislative Consent Memorandum (LCM).

10. 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.

11. The Bill introduces the following measures with regard 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.

12. On 14 October 2025, UK Government amendments to the Sentencing Bill were tabled in the UK Parliament, some of which apply to Scotland.

13. 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.

14. The provisions which have triggered the requirement for legislative consent are set out in new schedule 2 to the Bill, as introduced via amendment on 14 October 2025. 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”).

Provisions which 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-related offences.

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 the 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, the Scottish Ministers must release that prisoner on licence if recommended to do so by the Parole Board. This amendment will remove 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 the 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.

24. The Scottish Government considers that each of these amendments confer, vary or remove functions of the Scottish Ministers in relation to release of prisoners serving a custodial sentence for a national security offence. The Scottish Government therefore considers that this is a relevant Bill and that an LCM is required on the basis that the amendments alter the executive competence of the Scottish Ministers.

25. The UK Government considers that the measures are primarily concerned with national security, which is a reserved matter, however they agree that an LCM is required but only in respect of the amendment to section 27 of the 1993 Act concerning single-terming. The UK Government's interpretation is that the LCM process is engaged because the amendment would alter the current function of Scottish Ministers in relation to automatic release of short-term national security offenders, by removing that function and instead requiring Scottish Ministers to refer such prisoners to the Parole Board for Scotland for consideration. The Scottish Government's position, however, is that it is the amendments to other provisions of the 1993 Act which make these changes and therefore engage the LCM process (as outlined above).

Reasons for seeking legislative consent

Clause 8

26. The Scottish Government recommends that the Parliament consents to the amendments to clause 8 of the Bill, which extend the scope of section 205ZC of the 1995 Act beyond terrorism offences to include national security-related offences.

27. As noted at paragraph 3, these changes are expected to have little to no operational impact due to the low numbers of prisoners with this sentence type held

in Scottish prisons. However, seeking legislative consent is recommended to ensure alignment with England and Wales with regard to sentencing of offenders convicted of a national security offence.

28. As national security offences are considered as UK-wide, it would be reasonable to have consistency in treatment of these kinds of offenders across the UK, in regard to sentence and release.

29. Non-consent may have a negative impact as, without these amendments being made, national security offenders could be considered as being managed under a less stringent regime in Scotland compared with the rest of the UK. This could pose the risk of Scotland being viewed as a more attractive location, for example for state threat actors.

Schedule 2

30. The Scottish Government recommends that the Parliament consents to the amendments made in schedule 2 of the Bill, which ensure that sentences imposed under section 205ZC for national security-related offences are treated consistently with the existing sentencing regime for terrorism offences.

31. As noted at paragraph 3, these changes are expected to have little to no operational impact due to the low numbers of prisoners with this sentence type held in Scottish prisons. However, the Scottish Government recommends that the Parliament consents to ensure alignment with England and Wales with regard to sentencing of offenders convicted of a national security offence.

32. As noted above, it would be reasonable to have consistency in treatment of these kinds of offenders across the country, and to avoid any perception that national security offenders would be treated in a less stringent manner in Scotland compared with the rest of the UK.

33. Furthermore, it would be reasonable to bring the process of release from custody for these potentially sensitive cases within the remit of the Parole Board, and to manage them in the same manner as terrorism offences.

Consultation

34. As noted at paragraph 3, the Scottish Government has engaged with both the SPS and PBS to determine the impact of the changes which will be affected as a result of the amendments to the Bill. Both PBS and SPS have confirmed that changes will have little to no impact due to the small number of prisoners of this kind in Scottish prisons. As of 10 November, there are no prisoners with relevant offences in SPS custody.

Financial implications

35. It is considered that there will be no financial implications as a result of these amendments.

Post-EU scrutiny

36. The Scottish Government has not identified any assimilated law which will be impacted by the Bill.

Conclusion

37. The Scottish Government has concluded that certain provisions found in Clause 8 and Schedule 2 of the Bill require the consent of the Scottish Parliament.

38. The Scottish Government recommends that the Scottish Parliament consent to the amendments set out in Part 1 of schedule 2 of the Bill, insofar as they alter the executive competence of Scottish Ministers, as noted in paragraphs 26-33.

39. 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).

Draft motion on legislative consent

40. The draft motion, which will be lodged by the Cabinet Secretary for Justice and Home Affairs, is:

“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.”

Scottish Government
November 2025

Annex

Indicative parliamentary timetable for the Sentencing Bill in the UK Parliament

Stage	Date
House of Commons	
1st Reading	2 September 2025
2nd Reading	16 September 2025
Programme Motion	16 September 2025
Money Resolution	16 September 2025
Committee of the Whole House	21 October 2025
Report Stage	29 October 2025
3rd Reading	29 October 2025
House of Lords	
1st Reading	30 October 2025
2nd Reading	12 November 2025
Committee stage	TBC- late November/early December
Report stage	TBC- possibly early in the new year
3rd Reading	TBC
Final Stages	
Consideration of Amendments	TBC
Royal Assent	TBC

This Legislative Consent Memorandum relates to the Sentencing Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 26 November 2025

Sentencing Bill – Legislative Consent Memorandum

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