



Ministry
of Justice

Murder Sentencing

A consultation on the starting point for determination of the minimum term in relation to the mandatory life sentence for murder, for cases preceded by controlling or coercive behaviour against the murder victim and cases involving the use of a knife or other weapon

November 2023

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A consultation on the starting point for determination of the minimum term in relation to the mandatory life sentence for murder, for cases preceded by controlling or coercive behaviour against the murder victim and cases involving the use of a knife or other weapon

Presented to Parliament

by the Lord Chancellor and Secretary of State for Justice

by Command of His Majesty

November 2023



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About this consultation

- To:** This consultation is aimed at anyone with an interest in sentencing starting points for murder and domestic homicide. It is open to the wider public in England and Wales.
- Duration:** From 27/11/23 to 04/03/24
- Enquiries (including requests for the paper in an alternative format) to:** Sentencing and Parole Policy Division
Ministry of Justice
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Email: murdersentencingconsultation@justice.gov.uk
- How to respond:** Our preference is that you complete the consultation online on <https://consult.justice.gov.uk/digital-communications/murder-sentencing-consultation/>
Alternatively, please send us your completed consultation feedback form by email or post to the “Enquiries” contact details above.
- Additional ways to feed in your views:** A series of stakeholder meetings will be organised where views and comments will be taken.
- Response paper:** A response to this consultation exercise will be published in due course. The response paper will be available online at GOV.UK.

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Foreword

Every year, around 90 people – overwhelmingly women – are killed by their current or ex-partner, leaving their devastated families with a lifetime of unimaginable grief. Tackling violence against women and girls, and making sure those who commit these cowardly crimes serve sentences that truly reflect the severity of their offences is a priority for me as Lord Chancellor, and for this Government.

All cases of murder rightly carry a mandatory life sentence. Our current sentencing framework also sets out guidance for judges deciding the minimum term that an offender must spend in prison before being considered for release by the Parole Board, to spend the rest of their life sentence on licence in the community.

This framework recognises the significant degree of premeditation and criminality involved in the illegal possession of weapons and the need to protect the public from the use of weapons on our streets. There is a range of starting points for murder cases beginning at 15-years, with a 30-year starting point for murders involving firearms. And in 2010, following the murder of Ben Kinsella – who was stabbed to death in the street in what was believed to be a case of mistaken identity – we added a 25-year starting point for murders committed with a knife or other weapon taken to the scene with intent.

Around a quarter of all homicides in England and Wales are committed by the partner, ex-partner, or relative of the victim, and most of these domestic murders take place in the home. Therefore, when a weapon is used – often a kitchen knife – it is normally already at the scene. This means that although weapons are often used in domestic murders, these offences generally do not qualify for one of the higher starting points.

Last year, Clare Wade KC considered this, and wider issues, in her important independent review of sentencing in cases of domestic homicide. The review highlighted several key themes in domestic murders. Of the murder cases analysed, over half had a history of controlling or coercive behaviour against the victim, 60 percent involved sustained and excessive violence, known as ‘overkill’, and just under half were connected with the end of the perpetrator’s relationship with the victim.

We acted swiftly in response. We have introduced legislation to bring in new statutory aggravating factors for murders which are preceded by controlling or coercive behaviour against the murder victim, for those involving ‘overkill’, and for murders connected to the end of a relationship. And there will be a new statutory mitigating factor for cases where the perpetrator was subject to controlling or coercive behaviour. While it is for the judge to determine the appropriate weight to be given to aggravating and mitigating factors in

sentencing, we expect that together, these changes will have a significant impact on the minimum custodial terms given to the perpetrators in these cases.

The Government is determined to make sure that all options for reform in this area have been fully explored. This consultation seeks views on whether a higher starting point should apply to murders preceded by controlling or coercive behaviour against the murder victim, and to all murders committed with a knife or other weapon – a change that would likely result in higher minimum terms in these cases.

I would like to thank Carole Gould and Julie Devey for their tireless campaign to drive reform in this area after the tragic deaths of their daughters, Ellie and Poppy, at the hands of their partners. Their courage and determination in the face of extraordinary suffering is inspiring.

The Government recognises that this is a complex area of the law and one that requires consideration of a broad range of views. I would encourage anyone with an interest or expertise in this area of law to respond to this public consultation.

This is an important consultation that will help inform whether further reform is required, to ensure we have a sentencing framework that properly punishes perpetrators of this horrific crime, and gives victims' families the justice they deserve.

Rt Hon Alex Chalk KC MP

Lord Chancellor & Secretary of State for Justice

Executive Summary

Murder is the most serious crime a person can commit, and we must ensure that in every case the sentence is commensurate with the severity of the crime. Everyone should feel safe in their own home and our sentencing framework must reflect the seriousness of violence and abuse which is committed by those closest to them.

The Government has introduced legislation¹ to give domestic murders specialist consideration in the sentencing framework, as announced in response to the Domestic Homicide Sentencing Review, undertaken by Clare Wade KC. These measures were in direct response to recommendations made in the Review and mark a step change in the way in which our sentencing framework responds to cases of domestic murder.

However, we recognise that there are issues which would benefit from further consideration, beyond the recommendations made in the review. That is why we also committed to launch this public consultation, in order to ensure that all options for reform in this area have been fully explored.

This consultation is seeking views on a minimum term starting point for (i) cases of murder preceded by controlling or coercive behaviour against the murder victim, and (ii) all murders committed with a knife or other weapon.

Section 1 – A minimum term starting point for cases of murder preceded by controlling or coercive behaviour against the murder victim

Cases of domestic murder are rarely isolated incidents and are often the culmination of years of abuse. The legislation that sets out our sentencing framework for murder was first introduced twenty years ago and does not currently include any specific consideration of the seriousness of domestic murders and the abuse that often precedes these cases, in either the starting points or the statutory aggravating or mitigating factors.

As part of the Government's response to the recommendations made in the Domestic Homicide Sentencing Review, we have introduced legislation² to change this. There will be new statutory aggravating factors for murders which are preceded by controlling or coercive behaviour against the murder victim, and for overkill. We will also introduce

¹ Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 laid in Parliament 23 October 2023

² *ibid*

legislation to make killing connected to the end of a relationship a statutory aggravating factor, when parliamentary time allows.

In order to ensure that all options for reform have been explored, we are seeking views on whether there should be a starting point for cases of murder preceded by a history of controlling or coercive behaviour against the murder victim, above the baseline starting point of 15 years, and if so, what this should be.

The final consideration in this section is whether a starting point for such cases should only apply where the controlling or coercive behaviour was at the upper end of the scale of seriousness. While this behaviour is serious in every case, the relative seriousness can vary significantly.

Section 2 – A minimum term starting point for all murders committed with a knife or other weapon

Currently, Schedule 21 generally makes reference to the circumstances in which the killing took place, and not the means by which death was caused. The exceptions to this are the 25-year starting point which applies only to murders where a knife or weapon used was taken to the scene with intent, and the 30-year starting point which applies to murders involving firearms.

Concerns have been raised that Schedule 21 does not include a specific starting point for all other murders which are committed with a knife or other weapon. This concern has particular relevance to cases of domestic murder, which more commonly take place within a home and therefore if a weapon is used, often a kitchen knife, it is likely to have already been at the scene, and therefore the 25-year starting point would not apply.

This issue was considered in the Domestic Homicide Sentencing Review and the legislation³ we have introduced in response to this will give domestic murders specialist consideration in the sentencing framework for murder for the first time.

Since the Government announced our commitment to introduce this legislation, some have argued that these changes do not go far enough and that an unfair difference remains between the starting points for murders committed with a knife or weapon taken to the scene with intent (25 years) and all other murders committed with a knife or other weapon (normally 15 years, except for murders involving firearms). We are therefore seeking views on whether there should be a starting point for all other cases of murder committed with a knife or other weapon, to eliminate or reduce this difference, and if so, what this should be.

³ Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 laid in Parliament 23 October 2023

The final consideration in this section is whether a starting point for all murders committed with a knife or weapon should be disapplied from perpetrators who are the victims of abuse and who have killed their abuser.

Introduction

In this consultation we are seeking views on a minimum term starting point for (i) cases of murder preceded by controlling or coercive behaviour against the murder victim and (ii) all murders committed with a knife or other weapon.

The consultation is aimed at all those with an interest in or views on the subject covered by this paper in England and Wales. The consultation will be open for 14 weeks and will close on 04 March 2024.

A Welsh language consultation paper is available at <https://www.gov.uk/government/consultations/murder-sentencing>

An Impact Assessment has been prepared and published alongside this consultation. Comments on the Impact Assessment are welcome.

Instructions for responding to the consultation can be found on page 35. The deadline for submissions is 04 March 2024. The Government will carefully consider the responses received and subsequently publish a response.

Background

The Domestic Homicide Sentencing Review

In March this year, the Government published the independent Domestic Homicide Sentencing Review, which had been undertaken by Clare Wade KC.

The Government commissioned this review in response to concerns raised by a number of stakeholders including the Domestic Abuse Commissioner and the Victims Commissioner, and also by the parents of two young women, Poppy Devey Waterhouse and Ellie Gould, who were tragically murdered by their ex-boyfriends in 2018 and 2019 respectively.

Around a quarter of all homicides in England and Wales are classed as domestic; that is, they are committed by the partner, ex-partner or relative of the victim. Over the last 10 years, this represents an average of nearly 160 homicides per year, with almost 90 of these being committed by a partner or ex-partner.

The majority of domestic homicides are committed by men against women. The Review found that in many of these cases the victim has been subjected to years of abuse before their death. Where female perpetrators commit domestic homicide, it is often, though not exclusively, the case that they have been the victims of abuse and have killed their abuser.

The legislation that sets out our sentencing framework for murder is contained in Schedule 21 to the Sentencing Act 2020. It was first introduced in the Criminal Justice Act 2003 some twenty years ago and it does not include any specific consideration of the seriousness of domestic homicides and the abuse that often precedes these cases.

Over the last twenty years our societal and legal understanding of domestic abuse has evolved, and the Review found that our sentencing framework for homicide needs to be updated to reflect this.

Government response to the Domestic Homicide Sentencing Review

The Government's full response to the Domestic Homicide Sentencing Review was published in July and marks a step change in the way in which our sentencing framework responds to cases of domestic murder.

For the first time, the seriousness of domestic murders and the particular harms that arise in these cases will be recognised in our sentencing framework. The perpetrators in these cases must, and will, serve sentences that truly reflect the severity of these crimes.

The package of measures in the full response include:

- Legislative changes to give domestic murders specialist consideration in the sentencing framework for murder.
 - This legislation has now been introduced:
 - A history of controlling or coercive behaviour by the perpetrator against the victim will be a statutory aggravating factor.
 - A history of controlling or coercive behaviour by the victim against the perpetrator will be a statutory mitigating factor.
 - Violence which amounts to overkill will be a statutory aggravating factor.
 - This legislation will be introduced when parliamentary time allows:
 - Killing connected to the end of a relationship, or the victim's intention to end a relationship will be a statutory aggravating factor.
- Non-legislative measures to improve the way in which the Government responds to cases of domestic homicide:
 - The Law Commission has been invited to undertake a review of the use of defences in domestic homicide cases. The Terms of Reference for this review have now been agreed and will be published shortly.
 - The Home Office has launched a new Domestic Homicide Library, which will enable greater analysis of patterns, trends, and risk factors.
 - The Crown Prosecution Service will continue to work with partners and improve mandatory training on understanding controlling and coercive behaviour.

In the full response, the Lord Chancellor also committed to write to the Sentencing Council for England and Wales, proposing that it revises their guidelines in light of both the Review and the Government's response to its recommendations. This was fulfilled and the Sentencing Council have subsequently published their own response to the recommendations relating to sentencing guidelines in the Review.⁴ In this they announced they are consulting on:

- Adding an aggravating factor to all four manslaughter guidelines of the use of strangulation, suffocation or asphyxiation.
- Amending the aggravating and mitigating factors in all four manslaughter guidelines to include specific reference to controlling or coercive behaviour.

⁴ Sentencing Council responds to the Domestic Homicide Sentencing Review – Sentencing

Going further – this consultation

We recognise that there are issues which would benefit from further consideration, beyond the recommendations made in the review undertaken by Clare Wade KC. That is why we committed to launch this public consultation, in order to ensure that all options for reform in this area have been fully explored.

This consultation is open to the public and is seeking views on a minimum term starting point for (i) cases of murder preceded by controlling or coercive behaviour against the murder victim, and (ii) all murders committed with a knife or other weapon.

We will carefully consider your views and feedback. The views collected through this consultation will help inform whether any further reform to the sentencing framework is required, beyond that which has already been committed to in response to the Domestic Homicide Sentencing Review.

The Sentencing Framework

Murder

A mandatory life sentence

Anyone who is found guilty of murder will receive a mandatory life sentence.

Alongside this life sentence, the sentencing judge is required to consider whether to impose a whole life order or a minimum term order. Offenders who receive a whole life order are only eligible for release on exceptional compassionate grounds by the Secretary of State. In practice, most whole life order prisoners spend the remainder of their lives in prison.

Minimum term orders, by contrast, specify a minimum term of the life sentence which the offender must remain in prison before the Parole Board considers, for the first time, whether the offender can safely be released to serve the rest of their life sentence on licence in the community. If released, the offender will remain on licence for the rest of their life and can be recalled to prison at any time. The Parole Board may decide that it is never safe for the offender to be released, in which case the offender will spend all of their life sentence in prison.

Schedule 21 to the Sentencing Act 2020

Schedule 21 to the Sentencing Act 2020 (previously Schedule 21 to the Criminal Justice Act 2003) sets out the principles which the court must have regard to when assessing the seriousness of all cases of murder, to determine whether to make a whole life order or, if making a minimum term order, the appropriate minimum term to be imposed.

Schedule 21 does not set out all possible scenarios. It provides a framework for the determination of the appropriate minimum term based on the specific circumstances of each case. Judges are required to have regard to the general principles set out in Schedule 21.

Sentencing Guidelines

The independent Sentencing Council for England and Wales produces guidelines on sentencing. There is no offence-specific guideline for murder, but the court must follow any relevant sentencing guidelines unless it is contrary to the interests of justice to do so. Guidelines relevant to murder include the General Guideline: Overarching Principles, the Overarching Principles: Domestic Abuse Guideline, and the Sentencing Children and Young People Guideline.

Starting Points in Schedule 21

Schedule 21 contains a range of starting points for determination of the minimum term. For each starting point, Schedule 21 specifies categories of case which will normally fall within them and the particular circumstances of a murder will determine which of these starting points apply.

A baseline starting point of 15 years applies to all murder cases committed by offenders aged 18 or over.

There is a 25-year starting point for murders involving the use of a weapon which has been taken to the scene with intent, which was put in place to recognise the seriousness of the illegal possession and use of knives in public.

The highest starting points are 30 years and a whole life order. These recognise the particularly and exceptionally high seriousness of some murders, such as those involving the murder of two or more persons or the abduction and murder of a child.

Offenders who are under 18 when they commit murder face a sliding scale of starting points ranging from 8 to 27 years, depending on the age of the offender when the offence was committed and the seriousness of the offence.

Aggravating and Mitigating Factors in Schedule 21

After identifying the starting point, the minimum term imposed can vary significantly upwards or downwards from the initial starting point, depending on the aggravating and mitigating factors. It is for the sentencing judge to determine the appropriate weight to be given to the aggravating and mitigating factors, based on the specific circumstances of each case.

Schedule 21 contains statutory aggravating and mitigating factors which may be relevant to the offence of murder. These statutory factors are not exhaustive, and the sentencing judge is able to consider any relevant factors in terms of aggravation and mitigation.

There is no upper or lower limit on the final minimum term to be imposed. Having taken into account all the circumstances of the case and the relevant aggravating and mitigating factors, the judge is able to impose a minimum term of any length, whatever the starting point.

Controlling or coercive behaviour

The offence of controlling or coercive behaviour

This Government made controlling or coercive behaviour a criminal offence in Section 76 of the Serious Crime Act 2015. This behaviour can comprise economic, emotional or

psychological abuse, technology-facilitated domestic abuse, as well as threats, whether they are accompanied or not by physical and sexual violence or abuse.

Controlling or coercive behaviour does not relate to a single incident. It is a purposeful pattern of behaviour which takes place over time which isolates the victim from support, exploits them, deprives them of independence and regulates their everyday behaviour.

In 2018, the independent Sentencing Council for England and Wales introduced a sentencing guideline for the offence of controlling or coercive behaviour in an intimate or family relationship. In the same year the 'Overarching Principles: Domestic Abuse Guideline' was published, which recognises that the domestic context of offending behaviour represents a violation of trust and security, and therefore makes the offending behaviour more serious. Controlling or coercive behaviour is included in the guideline's definition of domestic abuse. The courts must follow any relevant sentencing guidelines, unless it is contrary to the interests of justice to do so.

All cases of controlling or coercive behaviour are serious. However, the relative seriousness of each case can vary significantly in terms of the culpability of the perpetrator and the harm caused to the victim. The guideline for the offence provides a framework for assessing the culpability and harm, in order to determine the offence category for the purposes of sentencing. The guideline then provides a starting point and category range, dependent on the offence category. For the lowest offence category the starting point is a medium level community order and for the highest offence category the starting point is 2 years 6 months custody. The maximum penalty is 5 years custody.

Controlling or coercive behaviour and murder

Although the 'Overarching Principles: Domestic Abuse Guideline' will be a relevant consideration in all domestic murders, Schedule 21 currently has no starting points or statutory aggravating or mitigating factors which recognise the seriousness of murders committed in the context of coercive or controlling behaviour. In response to the Domestic Homicide Sentencing Review the Government has introduced legislation⁵ to change this.

For cases where an abusive partner or family member has killed their victim, a history of controlling or coercive behaviour by the perpetrator against the victim will be a statutory aggravating factor to murder. For cases where a victim of abuse has killed their abuser, a history of controlling or coercive behaviour by the victim against the perpetrator will be a statutory mitigating factor to murder.

⁵ Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 laid in Parliament 23 October 2023

Use of a weapon

Sentencing Guidelines

The 'General Guideline: Overarching Principles' includes the use of a weapon as an aggravating factor, which applies to all offences where a weapon has been used in any context.

The guideline states that it is for the sentencing court to determine how much weight should be assigned to the aggravating and mitigating factors, taking into account all of the circumstances of the offence and the offender. The Guideline is clear that not all factors which apply will necessarily influence the sentence, and that care should be taken to avoid double counting factors, including those already taken into account in assessing culpability or harm or those factors inherent in the offence.

The Guideline includes the following guidance for the court in determining whether use of a weapon should result in any upward adjustment to the sentence and if so, the weight that should be assigned to it:

- A 'weapon' can take many forms
- The use or production of a weapon has relevance
 - to the culpability of the offender where it indicates planning or intention to cause harm; and
 - to the harm caused (both physical or psychological) or the potential for harm.
- Relevant considerations will include:
 - the dangerousness of the weapon;
 - whether the offender brought the weapon to the scene, or just used what was available on impulse;
 - whether the offender made or adapted something for use as a weapon;
 - the context in which the weapon was threatened, used or produced.
- When sentencing young adult offenders (typically aged 18–25), consideration should also be given to the guidance on the mitigating factor relating to age and/or lack of maturity when assessing the relevance of this factor to culpability.

Use of a weapon and murder

Schedule 21 generally defines the seriousness with which a murder should be considered in sentencing by the circumstances in which the killing took place, as opposed to the means by which death was caused.

There are two exceptions to this, where seriousness in Schedule 21 is ascribed according to the method of killing. The 30-year starting point applies to murders involving the use of a firearm or explosive, and the 25-year starting point applies to murders where a weapon used was taken to the scene with intent.

The 25-year starting point was added to Schedule 21 in 2010, following the murder of Ben Kinsella, who was stabbed in the street by a gang in what was believed to be a case of mistaken identity. The change was prompted by concern that the starting point for this type of murder should be higher than the baseline starting point of 15 years, particularly as the starting point for murder using a firearm is 30 years. It was considered that the risk posed to the public by knives being carried on the streets, with the intention of using them to cause harm, needed to be reflected in the sentencing framework for murder.

The baseline 15-year starting point would normally apply to all other murders committed with a knife or weapon, or by any other method of killing (unless circumstances in which the killing took place mean the 30-year or Whole Life Order starting points apply).

There are no statutory aggravating factors to murder related to the use of a weapon, but the Sentencing Council's 'General Guideline: Overarching Principles' lists the use of a weapon as an aggravating factor which applies to all offences. This position is also apparent in case law. For example, in *R v M, AM, Kika* (2010), the Court of Appeal stated that the use of a weapon will always be an aggravating factor, save for exceptional circumstances.

Wider Programme of Reforms

Tackling violence against women and girls

Tackling violence against women and girls remains a top priority for this Government and the changes proposed in the Government response to the Domestic Homicide Sentencing Review sit in the context of significant, wider cross-Government work to tackle violence against women and girls.

This includes the creation of the offence of controlling or coercive behaviour in intimate or family relationships in Section 76 of the Serious Crime Act 2015, and the introduction of the Domestic Abuse Act 2021 which helps to ensure that domestic abuse is properly understood, rightly deemed completely unacceptable and is actively challenged across statutory agencies and in public attitudes. The Domestic Abuse Act also introduced the new criminal offence of non-fatal strangulation.

In 2021 the Government also published two major strategies. Firstly, the Rape Review Action Plan committed to more than double the number of adult rape cases reaching court by the end of this Parliament, and to improving support for victims and survivors. Secondly, the Tackling Violence Against Women and Girls strategy, which helps to ensure that women and girls are safe everywhere – at home, online, at work and on the streets. These were followed in March 2022 by the complementary Tackling Domestic Abuse Plan containing key commitments to drive further change in response to domestic abuse.

Together, these transformative cross-government programmes set out the programme of reforms that this Government is pushing forward to prevent abuse, support victims, pursue perpetrators, and strengthen the system's response to violence against women and girls.

Preventing domestic homicides

Last year the Home Office published its Tackling Domestic Abuse Plan which introduced key commitments to reduce domestic homicide, including reform of the Domestic Homicide Review (DHR) process, introducing a domestic abuse policing and domestic homicide prevention pilot, investing significantly in healthcare settings to improve agencies' abilities to identify and refer victims into support services and continuing to invest in research to build the evidence base on domestic homicide prevention.

Although the Government is committed to the fundamental principles underpinning the DHR process, we have also recognised there is room for improvement in the way these are conducted, and how the lessons learned are applied. New reforms to this process will

include refreshing the DHR statutory guidance, introducing a formal role for the Domestic Abuse Commissioner, providing a more bespoke training package for DHR Chairs and working with the Association of Police and Crime Commissioners to explore the possibility of creating a formal role for PCCs in the process.

The Home Office is also working with the National Police Chiefs' Council on a new Domestic Abuse Policing and Domestic Homicide Prevention Pilot which will identify forces that have relatively high levels of domestic homicide and serious domestic abuse incidents. These forces will be audited to ensure they are doing everything they can to prevent domestic abusers from causing harm.

Up to £7.5 million investment over three years has been committed by the Home Office for interventions in healthcare settings. This will support training for healthcare professionals and ensure they can effectively identify and refer victims and survivors to support services.

The Home Office is continuing to build the evidence base on domestic homicides through the Vulnerability and Knowledge Practice Domestic Homicide Project run by the National Police Chiefs' Council, and the College of Policing. The project counts all domestic abuse related deaths which, as well as domestic murder by a (current or ex) partner, family member or co-habitee, also counts child deaths in a domestic setting, unexplained or suspicious deaths, and suspected suicides of individuals where the police are aware of a known history of domestic abuse victimisation. Now in its third year, the Home Office has continued to provide further funding for the project to build on the initial findings and learnings from these deaths to aid the police in their response to tackling domestic abuse and to prevent further deaths.

The Home Office is also continuing to provide funding to support the provision of domestic abuse perpetrator interventions. It has invested £25m over the past two years and will continue to provide support over this spending review period. It is also designing pilots for Domestic Abuse Protection Orders, including using electronic monitoring of high-risk domestic abuse offenders, and has just launched the first central library for DHRs.

Sentencing and Parole

The 2019 Government Manifesto committed to introduce tougher sentencing for the worst offenders and the changes on which we are consulting in this paper build on the action that has already been taken to achieve this.

Most recently, the Government announced changes to ensure that convicted rapists (and those convicted of the most serious sexual offences) must serve 100% of their custodial term in prison. Rape is a despicable and serious offence with hugely personal and traumatic victim impacts and it is important the justice system appropriately addresses and punishes this offending. This change builds on other recent announcements to do with

whole life orders. We have announced changes to ensure that the courts must impose a whole life order in circumstances which currently trigger the whole life order as a sentencing starting point, unless there are exceptional circumstances. The murder of a single victim involving sexual or sadistic conduct will also be added to the categories of murder for which a whole life order must be given (other than in exceptional circumstances). These reforms will ensure that those who commit the very worst crimes are given the most severe punishment available and will be introduced when parliamentary time allows.

The Police, Crime, Sentencing and Courts Act 2022 delivered changes to ensure that the most serious and dangerous offenders spend longer in prison, serving sentences that truly reflect the severity of their crimes. These changes included abolishing automatic halfway release for certain serious sexual and violent offenders, instead requiring them to serve two-thirds of their sentence in prison. We also changed the way that discretionary life sentences are calculated, to ensure longer tariffs in these cases.

We introduced a new power to prevent the automatic release of offenders who become of significant public protection concern while in prison. We made a Whole Life Order (life imprisonment without Parole Board release) the starting point for the premeditated murder of a child, and judges now also have the discretion to impose this sentence on offenders aged 18 to 20 in very exceptional cases.

In the Police Crime Sentencing and Courts Act, we also took action in response to the tragic case of Ellie Gould, who was murdered by her 17-year-old ex-boyfriend. A different sentencing framework applies to children and within this we raised the starting points for murder committed by older children to ensure sentences in these cases better reflect both the seriousness of the crime and the age of the perpetrator.

Building on this, the Victims and Prisoners Bill which is currently before Parliament contains significant new parole reforms to protect the public and increase confidence in the system. This includes giving the Justice Secretary the power to intervene on the release of the most serious offenders, such as murderers or rapists, to ensure there is a second check on whether the prisoner is safe to release.

We have also made a commitment to introduce measures that will allow victims to observe parole hearings, as part of our work to improve the transparency and openness of the parole system in England and Wales. And we have committed to developing a process to allow victims to make written submissions to the Parole Board, in addition to their Victim Personal Statement. This change will be enshrined in the Victims' Code.

These changes show that this Government is serious about keeping dangerous offenders off the streets for longer and ensuring that the punishment is appropriate for the crime. We are committed to protecting the public and having a system that delivers justice for victims, their families and the wider public.

Section 1 – A minimum term starting point for cases of murder preceded by controlling or coercive behaviour against the murder victim

The primary question considered in this section is:

Q1.1: Should a minimum term starting point, above the baseline starting point of 15-years, apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim or not?

There are then two secondary questions. These questions assume that a starting point applies to cases of murder preceded by controlling or coercive behaviour against the murder victim, and considers the details of such a policy.

The secondary questions are:

If a minimum term starting point were to apply to cases of murder preceded by controlling or coercive behaviour against the murder victim...

Q1.2: What should the starting point be?

Q1.3: Should this apply to all cases where there was controlling or coercive behaviour or only to those cases where the controlling or coercive behaviour was of a high level of seriousness?

Relevant Context

Schedule 21 and controlling or coercive behaviour

Cases of domestic murder are rarely isolated incidents and are often the culmination of years of abuse. Currently, the seriousness of domestic murders and the particular harms that arise in these cases are not recognised in Schedule 21, in either the statutory aggravating factors or one of the higher starting points. This means that domestic murders most often fall within the baseline starting point of 15-years.

This issue was considered in the independent Domestic Homicide Sentencing Review. In response, the Government has introduced legislation⁶ to give domestic murders specialist consideration in the sentencing framework. This legislation will make controlling or coercive behaviour a statutory aggravating factor to murder. It will also make ‘overkill’ a statutory aggravating factor to murder, which is strikingly prevalent in cases of domestic murder, particularly in cases which also involve controlling or coercive behaviour. Legislation will also be introduced when parliamentary time allows, to make killing connected to the end of a relationship a statutory aggravating factor to murder, recognising this as the final controlling act of an abusive partner.

While it is for the judge to determine the appropriate weight to be given to the aggravating factors in each case, we expect that together, these changes will have a significant impact on the minimum terms given to the perpetrators in these cases.

Controlling or coercive behaviour

All cases of controlling or coercive behaviour are serious. However, the relative seriousness of the behaviour in each case can vary significantly in terms of the culpability of the perpetrator and the harm caused to the victim. Sentencing in individual cases is a matter for our independent courts. When deciding what sentence to impose, courts must consider the culpability of the offender, the harm caused or intended to be caused, and any aggravating and mitigating factors. The courts also have a statutory duty to follow any relevant sentencing guidelines.

The guideline for the offence assesses the seriousness of the behaviour by the level of culpability demonstrated and level of harm caused and assigns a sentencing starting point accordingly. The starting point for the lowest level of the offence is a medium level community order, and for the highest level of the offence it is 2 years 6 months’ custody. The maximum penalty for the offence of controlling or coercive behaviour is 5 years’ custody. Examples of cases of high culpability are those which involve persistent action over a prolonged period of time, or multiple and sophisticated methods. Examples of cases of low culpability are those which are limited in scope and duration, or those in which the perpetrator has a mental disorder or learning disability.

A starting point in replacement of, or in addition to, a statutory aggravating factor

The interplay between the new statutory aggravating factor for controlling or coercive behaviour which has been introduced, and a new starting point for the same behaviour, is dependant on the policy detail considered in Question 1.3. If a starting point were to apply to all murders preceded by controlling or coercive behaviour, then this would replace the statutory aggravating factor. If the starting point were to apply only to those cases where the controlling or coercive behaviour was of a high level of seriousness, then this could be

⁶ Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 laid in Parliament 23 October 2023

in addition to the statutory aggravating factor which could capture cases where such behaviour did not meet that threshold.

Question 1.1

This question considers whether a starting point, above the baseline starting point of 15-years, should apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim.

In response to the Domestic Homicide Sentencing Review, the Government has already introduced legislation⁷ for a statutory aggravating factor for murders preceded by controlling or coercive behaviour against the victim. In order to ensure that all options for reform have been explored, we are seeking views on a starting point, above the baseline starting point of 15 years, for cases of murder preceded by such behaviour.

In many cases, it is likely that a starting point above the baseline starting point of 15-years would result in the imposition of a higher minimum term than application of a statutory aggravating factor, for murders preceded by a history of controlling or coercive behaviour against the murder victim.

However, it may not allow for the flexibility in adjusting the final minimum term imposed based on the relative seriousness of the controlling or coercive behaviour, in the way that the statutory aggravating factor will. We expect that consideration of the new statutory aggravating factor for controlling or coercive will result in varying levels of increase from the relevant starting point, with the level of increase being dependent on the seriousness of the behaviour in a particular case.

Question 1.2

This question considers, if a starting point were to apply to cases of murder preceded by controlling or coercive behaviour against the murder victim, what the starting point should be.

The 25-year starting point currently only applies to murders involving the use of a weapon which has been taken to the scene with intent. The Domestic Homicide Sentencing Review was commissioned partly in response to particular concerns that while the specific circumstances and wider harms of domestic murders may differ from cases such as these, they are no less serious and therefore it was felt that the same starting point should apply

⁷ Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 laid in Parliament 23 October 2023

to more cases of domestic murders. A starting point of 25-years for murders preceded by controlling or coercive behaviour against the murder victim may therefore achieve this.

Alternatively, a starting point of somewhere between 15 and 25 years is another option. A 25-year starting point is 10 years higher than the baseline starting point of 15 years. This level of increase in the starting point may not be proportionate in all cases of murder preceded by controlling or coercive behaviour against the murder victim, given the range of conduct that such behaviour can involve. A 25-year starting point in these cases would also mean a 10-year difference in this starting point compared to that for other cases of domestic murder which are not preceded by a history of controlling or coercive behaviour against the victim, to which the baseline starting point of 15-years would normally still apply. This difference may be appropriate in some cases, but in others there may be other circumstances of the murder which could be considered of a similar level of seriousness.

If a starting point is to apply to murders preceded by controlling or coercive behaviour against the murder victim, it may therefore be more proportionate for this starting point to be somewhere between the baseline starting point of 15-years and the 25-year starting point. In the case file analysis of intimate partner domestic homicides undertaken for the Domestic Homicide Sentencing Review,⁸ the average length of the minimum term for the murders which had a 15-year starting point was 18.7 years, due to the application of aggravating factors. Therefore, if there were to be a starting point somewhere between 15-years and 25-years for murders preceded by controlling or coercive behaviour, in some cases it may be that the application of other aggravating factors, such as overkill, would still mean that the final minimum term imposed would be in the region of 25-years.

Question 1.3

This question considers whether a starting point for murders preceded by controlling or coercive behaviour against the murder victim should apply only to those cases where such behaviour was of a high level of seriousness.

All cases of controlling or coercive behaviour are serious. However, the relative seriousness of the behaviour in each case can vary significantly in terms of the culpability of the perpetrator and the harm caused to the victim.

It may therefore not be proportionate for a starting point to apply to all murders preceded by controlling or coercive behaviour against the murder victim, given the range of conduct that such behaviour can involve. It may be more proportionate for it to apply only to those cases where the controlling or coercive behaviour was of a high level of seriousness.

⁸ See the accompanying Impact Assessment for this consultation; and Appendix D, Domestic Homicide Sentencing Review (publishing.service.gov.uk)

In response to the Domestic Homicide Sentencing Review, the Government has already introduced legislation⁹ for a statutory aggravating factor for murders preceded by controlling or coercive behaviour against the victim. If a starting point were to apply to all murders preceded by controlling or coercive behaviour, then this would replace the statutory aggravating factor. If the starting point were to apply only to those cases where the controlling or coercive behaviour was of a high level of seriousness, then this would be in addition to the statutory aggravating factor which would capture cases where such behaviour did not meet that threshold.

Q1.1: Should a minimum term starting point, above the baseline starting point of 15-years, apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim or not?

Q1.2: If a minimum term starting point were to apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim, what should the starting point be?

Q1.3: If a minimum term starting point were to apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim, should this apply to all cases where there was controlling or coercive behaviour or only to those cases where the controlling or coercive behaviour was of a high level of seriousness?

⁹ Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 laid in Parliament 23 October 2023

Section 2 – A minimum term starting point for all murders committed with a knife or other weapon

The primary question considered in this section is:

Q2.1: Should a minimum term starting point, above the baseline starting point of 15-years, apply to all murders committed with a knife or other weapon or not?

There are then two secondary questions. These questions assume that a starting point applies to all murders committed with a knife or other weapon and considers the details of such a policy.

The secondary questions are:

If a minimum term starting point were to apply to all murders committed with a knife or other weapon...

Q2.2: What should the starting point be?

Q2.3: Should this be disapplied in cases where a victim of abuse has killed their abuser or not?

Relevant Context

Schedule 21 and the method of killing

Currently, Schedule 21 generally makes reference to the circumstances in which the killing took place, and not the means by which death was caused. The starting points and statutory aggravating factors in Schedule 21 relate to either a particular need to recognise the vulnerability of the victim (e.g. a police officer, prison officer, child, or those killed due to their race, sexual orientation, religion, age or disability), or the purpose for which the murder was committed (e.g. political, for gain, to obstruct or interfere with the course of justice or involving sexual or sadistic conduct).

There are two exceptions to this, where Schedule 21 does have starting points for specific methods of killing. The 30-year starting point applies to murders involving the use of a firearm or explosive, and the 25-year starting point applies to murders where a weapon used was taken to the scene with intent.

The 25-year starting point

The current 25-year starting point applies only to murders committed with a knife or other weapon taken to the scene with intent. This starting point was added to Schedule 21 in 2010, following the murder of Ben Kinsella, who was stabbed in the street by a gang in what was believed to be a case of mistaken identity. The change was prompted by concern that the starting point murders which involved carrying knives in public with intent should be higher than the baseline starting point of 15-years, particularly as the starting point for murder using a firearm is 30-years. It was considered that the risk posed to the public by knives being carried on the streets, with the intention of using them to cause harm, needed to be reflected in the sentencing framework for murder.

Use of a weapon aggravating factor

The Sentencing Council's 'Overarching Principles Guideline' includes the use of a weapon as an aggravating factor, which applies to all offences where a weapon has been used in any context. Courts must follow any relevant sentencing guidelines, unless it is contrary to the interests of justice to do so. This guideline does not include any other particular form of violence which could be a method of killing as an aggravating factor.

Minimum term lengths for murders committed with a knife or weapon taken to the scene with intent compared to all other murders committed with a knife or weapon

The case file analysis of intimate partner domestic homicides undertaken for the Domestic Homicide Sentencing Review¹⁰ suggests that the 25-year starting point means that whether a weapon used was brought to the scene with intent does make a significant difference to the overall length of the final minimum term imposed. In this sample, the average minimum term for murders committed with a knife or weapon taken to the scene with intent was 24.5 years (where the 25-year starting point applied), whereas the average minimum term for murders committed with a knife or weapon in other circumstances was 19 years (where the 15-year starting point applied).

This analysis also shows therefore, that although the 10-year difference in the starting points does make a significant difference, the application of aggravating factors means that this difference is much less than 10 years. The average difference in the final minimum terms imposed between murders committed with a knife or weapon taken to the scene with intent and all other murders committed with a knife or weapon is 5.5 years.

Question 2.1

This question considers whether a starting point, above the baseline starting point of 15-years, should apply to all murders committed with a knife or other weapon.

¹⁰ See the accompanying Impact Assessment for this consultation; and Appendix D, Domestic Homicide Sentencing Review (publishing.service.gov.uk)

Except for murders involving firearms and those committed with a knife or weapon taken to the scene with intent, there are no starting points, or statutory aggravating factors, for particular methods of killing in Schedule 21. Therefore, the baseline 15-year starting point normally applies to all other murders committed with a knife or weapon, or by any other method of killing (unless circumstances in which the killing took place mean the 30-year or Whole Life Order starting points apply).

Concerns have been raised that, in contrast to the 25-year starting point for murders committed with a knife or weapon taken to the scene with intent, Schedule 21 does not include a specific starting point for all other murders which are committed with a knife or weapon. This concern has particular relevance to cases of domestic murder, which more commonly take place within a home and therefore if a weapon is used, often a kitchen knife, it is likely to have already been at the scene, and therefore the 25-year starting point would not apply.

This issue was considered in the Domestic Homicide Sentencing Review. In response the Government has introduced legislation which will give domestic murders specialist consideration in the sentencing framework. This includes new statutory aggravating factors for murders preceded by a history of controlling or coercive behaviour, and for overkill. Legislation to make killing connected with the end of a relationship will be introduced when parliamentary time allows. While it is for the judge to determine the appropriate weight to be given to the aggravating factors in each case, reflecting the independence of the judiciary, we expect that together, these changes will have a significant impact on the minimum terms imposed for the perpetrators in these cases. This will include many cases committed with a knife or other weapon.

Since the Government committed to introduce this legislation, some have argued that these changes do not go far enough and that an unfair difference remains between the starting points for murders committed with a knife or weapon taken to the scene with intent (25-years) and all other murders committed with a knife or weapon (normally 15-years, except for murder involving firearms). A difference which has particular relevance to murders committed in a domestic context.

We are therefore seeking views on whether, in addition to the changes the Government is making in response to the Domestic Homicide Sentencing Review, Schedule 21 should be amended further. A minimum term starting point for all other murders committed with a knife or other weapon would eliminate or reduce the difference in starting points and would recognise in statute the particular seriousness of this method of killing in all such cases.

However, this could have the effect of placing too much emphasis in statute on the method of killing and may have the potential to set a precedent of attempting to rank methods of killing in statute. It may be possible that this could have the unintended consequence of

reducing the relative seriousness with which other methods of killing, such as strangulation or beating, are viewed for the purposes of sentencing.

Question 2.2

This question considers, that if a starting point were to apply to all murders committed with a knife or other weapon, what the starting point should be.

One approach is to eliminate the difference in starting points by expanding the current 25-year starting point, so that it applies to all murders committed with a knife or weapon. This would likely lead to an increase in the minimum terms imposed for many murders where a knife or weapon was used but not taken to the scene with intent.

This approach would mean a 10-year uplift in the starting point for murders committed with a knife or weapon which had not been taken to the scene with intent. However, our analysis¹¹ has shown that the average difference in the final minimum terms imposed between murders committed with a knife or weapon taken to the scene with intent (25-year starting point) and all other murders committed with a knife or weapon (15-year starting point) was 5.5 years.

We expect that the new aggravating factors the Government has introduced in response to the Domestic Homicide Sentencing Review will mean that the final minimum term imposed in the most serious cases of domestic murder will increase significantly, including those using a knife or other weapon. The application of aggravating factors therefore means that a 10-year uplift in starting point may not be required to achieve minimum terms in the region of 25-years for more cases of domestic murder.

Another option is a new starting point of between 15 and 25 years for all murders committed with a knife or other weapon which has not been taken to the scene with intent. This change would reduce, rather than eliminate the difference in starting points, but would still likely lead to an increase in the minimum terms imposed for many of these murders to the region of 25-years.

With this approach, murders committed with a knife or weapon taken to the scene with intent, and those involving firearms, would retain a higher starting point in recognition of the significant degree of premeditation and criminality involved in these cases and the need to protect the public from the illegal possession and use of weapons in public.

¹¹ See the accompanying Impact Assessment for this consultation; and Appendix D, Domestic Homicide Sentencing Review (publishing.service.gov.uk)

Question 2.3

This question considers whether, if a starting point were to apply to all murders committed using a knife or other weapon, this should be able to be disapplied in cases where a victim of abuse has killed their abuser.

The majority of victims in cases of domestic homicide are women. The victim is female in around 3 out of 10 homicides, but in around 8 out of 10 intimate partner domestic homicides.¹² Domestic homicides are rarely isolated incidents. They are often the culmination of years of abuse and in the majority of cases, this abuse has been committed by the perpetrator of the murder, usually a man, against the victim, usually a woman. A minority of domestic homicides, however, involve a victim of abuse who has killed their abuser. In most of these cases, the perpetrator of the killing, who is the victim of the abuse, is a woman.

Analysis undertaken for the Domestic Homicide Sentencing Review found that in every case of women killing their male partner, they did so using a weapon.¹³ A third of murder cases with a male perpetrator involved strangulation. The analysis also found that when a woman kills with a weapon it often involves a single blow, whereas over half of murders committed by men involved overkill (the use of excessive violence).

If a starting point were to apply to all murders committed with a knife or other weapon, this could apply equally to all such cases. This would include a single blow with a knife by a female victim of abuse who has snapped and finally lashed out at their abuser, and an excessively violent attack by a male perpetrator who had been abusing the victim before killing them.

While all cases of murder are the worst crime that a person can commit, this change could have a particular and significant impact on the minimum terms imposed on female victims of abuse who kill their abuser. It may be unjust for these women to have their minimum term significantly increased for using a weapon to do so, which is invariably the case due to the imbalance in physical strength.

In response to the Domestic Homicide Sentencing Review the Government has committed to make controlling or coercive behaviour a statutory mitigating factor to murder in cases where a victim of abuse has killed their abuser. If there were to be a starting point for all murders committed with a knife or other weapon, this new statutory mitigating factor may be a sufficient means of recognising the vulnerability of perpetrators in these circumstances.

¹² Homicide in England and Wales - Office for National Statistics (ons.gov.uk)

¹³ See Appendix D, Domestic Homicide Sentencing Review (publishing.service.gov.uk)

However, we anticipate that application of the new statutory mitigating factor to a 25-year starting point would not, in the majority of cases, reduce the final minimum term imposed to the region of 15 years; the starting point that would apply in circumstances where an abusive partner has murdered their victim without a weapon.

It may therefore be proportionate to provide for the vulnerability of perpetrators in these circumstances to be recognised by the disapplication of any such higher starting point to them.

Q2.1. Should a minimum term starting point, above the baseline starting point of 15 years, apply to all murders committed with a knife or other weapon or not?

Q2.2 If a minimum term starting point were to apply to all murders committed with a knife or other weapon, what should the starting point be?

Q2.3 If a minimum term starting point were to apply to all murders committed with a knife or other weapon, should this be disappplied in cases where a victim of abuse has killed their abuser or not?

Questionnaire

We would welcome responses to the following questions set out in this Consultation paper.

Section 1: A minimum term starting point for cases of murder preceded by controlling or coercive behaviour against the murder victim

Question 1.1: Should a minimum term starting point, above the baseline starting point of 15 years, apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim or not?

- Yes
- No
- Don't know

Please briefly explain your answer

Question 1.2: If a minimum term starting point were to apply to cases of murder preceded by a history of controlling coercive behaviour against the murder victim, what should the starting point be?

- N/A – disagree with a minimum term above the baseline starting point of 15-years for cases with a history of controlling or coercive behaviour
- Between 15-years and 25-years
- 25-years
- Other – please specify below
- Don't know

Please briefly explain your answer

Question 1.3: If a minimum term starting point were to apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim, should this apply to all cases where there was controlling or coercive behaviour or only to those cases where the controlling or coercive behaviour was of a high level of seriousness?

- All cases with a history of controlling or coercive behaviour
- Only cases of a high level of seriousness of controlling or coercive behaviour
- Other – please specify below
- Don't know

Please briefly explain your answer

SECTION 2: A minimum term starting point for all murders committed with a knife or other weapon

Question 2.1: Should a minimum term starting point, above the baseline starting point of 15 years, apply to all murders committed with a knife or other weapon or not?

- Yes
- No
- Don't know

Please briefly explain your answer

Question 2.2: If a minimum term starting point were to apply to all murders committed with a knife or other weapon, what should the starting point be?

- N/A – disagree with a minimum term above the baseline starting point of 15-years for all murders committed with a knife or weapon
- Between 15-years and 25-years
- 25-years
- Other – please specify below
- Don't know

Please provide reasons for briefly explain your answer

Question 2.3: If a minimum term starting point were to apply to all murders committed with a knife or other weapon, should this be disapplied in cases where a victim of abuse has killed their abuser or not?

- Yes
- No
- Don't know

Please briefly explain your answer

Question 3.1: Do you agree or disagree that we have correctly identified the range and extent of the equalities impacts under Section 1 of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts if you believe otherwise.

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please briefly explain your answer

Question 3.2: Do you agree or disagree that we have correctly identified the range and extent of the equalities impacts under Section 2 of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts if you believe otherwise.

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please briefly explain your answer.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

| | |
|---|---|
| Full name | |
| Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.) | |
| Date | |
| Company name/organisation (if applicable): | |
| Address | |
| | |
| Postcode | |
| If you would like us to acknowledge receipt of your response, please tick this box | <input type="checkbox"/> (please tick box) |
| Address to which the acknowledgement should be sent, if different from above | |
| | |
| | |

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 04 March 2024 to:

Sentencing and Parole Policy Division

Ministry of Justice

102 Petty France

London SW1H 9AJ

Email: murdersentencingconsultation@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/digital-communications/murder-sentencing-consultation/>.

Alternative format versions of this publication can be requested from murdersentencingconsultation@justice.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (UKGDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Impact Assessment and Equalities Statement

Impact assessment

A separate impact assessment has been published alongside this consultation.

Equalities Statement

A separate equalities statement has been published alongside this consultation.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A

Schedule 21 of the Sentencing Act 2020

This is an extract from Schedule 21 of the Sentencing Act 2020, which is the legislative sentencing framework for murder. This does not reflect any of the proposed changes that the Government has recently announced in relation to Whole Life Orders and new statutory aggravating and mitigating factors to murder.

DETERMINATION OF MINIMUM TERM IN RELATION TO MANDATORY LIFE SENTENCE FOR MURDER ETC

Starting points

2 (1) If –

- (a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and
 - (b) the offender was aged 21 or over when the offence was committed,
- the appropriate starting point is a whole life order.

(2) Cases that would normally fall within sub-paragraph (1)(a) include –

- (a) the murder of two or more persons, where each murder involves any of the following –
 - (i) a substantial degree of premeditation or planning
 - (ii) the abduction of the victim, or
 - (iii) sexual or sadistic conduct
- (b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation
- (c) the murder of a police officer or prison officer in the course of his or her duty, where the offence was committed on or after 13 April 2015
- (d) A murder done for the purpose of advancing a political, religious, racial or cause
- (e) A murder by an offender previously convicted of murder

3 (1) If –

(a) the case does not fall within paragraph 2 (1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particular high, and

(b) the offender was aged 18 or over when the offence was committed, the appropriate starting point, in determining the minimum term, is 30 years.

(2) Cases that (if not falling within paragraph 2(1) would normally fall within sub-paragraph (1)(a) include –

in the case of an offence committed before 13 April 2015, the murder of a police officer or prison officer in the course of his or her duty

(a) a murder involving the use of a firearm or explosive

(b) a murder done for gain (such as a murder done in the course of furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death)

(c) a murder intended to obstruct or interfere with the course of justice

(d) a murder involving sexual or sadistic conduct

(e) the murder of two or more persons

(f) a murder that is aggravated by racial hostility or by hostility related to sexual orientation

a murder that is aggravated by hostility related to disability or transgender identity, where the offence was committed on or after 3 December 2012 (or over a period, or at some time during a period, ending on or after that date)

a murder falling within paragraph 2(2) committed by an offender who was aged under 21 when the offence was committed

(3) An offence is aggravated in any of the ways mentioned in sub-paragraph (2)(g) or (h) if section 66 requires the court to treat the fact that it is so aggravated as an aggravating factor

4 (1) If –

the case does not fall within paragraph 2(1) or 3(1)

the offence falls within sub-paragraph (2) and

the offender was aged 18 or over when the offence was committed

the offence was committed on or after 2 March 2010

the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.

(2) The offence falls within this sub-paragraph if the offender took a knife or other weapon to the scene intending to –
commit any offence or
have it available to use as a weapon
and used that knife or other weapon in committing the murder

5 If the offender was aged 18 or over when the offence was committed and the case does not fall within paragraph 2(1), 3(1) or 4(1), the appropriate starting point, in determining the minimum term, is 15 years.

6 If the offender was aged under 18 when the offence was committed, the appropriate starting point, in determining the minimum term, is 12 years

Aggravating and mitigating factors

7 Having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

8 Detailed consideration of aggravating or mitigating factor may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

9 Aggravating factors (additional to those mentioned in paragraphs 2(2), 3(2) and 4(2) that may be relevant to the offence of murder include –

(a) a significant degree of planning or premeditation

the fact that the victim was particularly vulnerable because of age or disability
mental or physical suffering inflicted on the victim before death

(b) the abuse of a position of trust

(c) the use of duress or threats against another person to facilitate the commission of the offence

(d) the fact that the victim was providing a public service or performing a public duty, and

(e) concealment, destruction or dismemberment of the body

- 10 Mitigating factors that may be relevant to the offence of murder include –
- (a) an intention to cause serious bodily harm rather than to kill
 - (b) lack of premeditation
 - (c) the fact that the offender suffered from any mental disorder or disability which (although not falling within section 2(1) of the Homicide Act 1957) lowered the offender's degree of culpability
 - (d) the fact that the offender was provoked (for example, by prolonged stress) but, in the case of a murder committed before 4 October 2010, in a way not amounting to a defence of provocation
 - (e) the fact that the offender acted to any extent in self-defence or, in the case of a murder committed on or after 4 October 2010, in fear of violence
 - (f) a belief by the offender that the murder was an act of mercy, and the age of the offender
- 11 Nothing in this Schedule restricts the application of –
- (a) section 65 (previous convictions)
 - (b) section 64 (bail), or
 - (c) section 73 (guilty plea)
- or of section 238(1)(b) or (c) or 239 of the Armed Forces Act 2006.

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