



Ministry
of Justice

The Right Honourable
Alex Chalk KC MP
Lord Chancellor & Secretary of
State for Justice

Joanna Cherry KC MP
Joint Committee on Human Rights
Committee Office
House of Commons
London
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JCHR LETTER REGARDING THE SENTENCING BILL

Dear Joanna,

Thank you for your letter of 21 March 2024 regarding the Sentencing Bill.

I have carefully considered each of the points you raised in your letter. The Government's view is that the measures in the Bill are both necessary and compatible with the European Convention on Human Rights. Please see my detailed response below on each of the points you have raised.

Whole Life Orders

Given the availability of these sentences, can you explain why it is considered necessary to change the law to make whole life orders a presumption rather than a starting point and to increase the range of offences to which that presumption would apply?

The primary policy objective is to protect the public by ensuring that those who commit the very worst murders face appropriate punishment. These changes deliver on a number of manifesto commitments to make sentences tougher for the worst offenders.

The imposition of a whole life order (WLO) would still be subject to judicial discretion. Following implementation of the changes, the expectation is that for all the circumstances in Schedule 21 where a WLO is currently specified as normally being the appropriate starting point (such as the murder of two or more persons, where each murder involves a substantial degree of premeditation or planning, or a murder done for the purpose of advancing a political, religious, racial or ideological cause), a WLO must be imposed unless there are exceptional circumstances. We envisage that exceptional circumstances should be a higher bar, in terms of reducing a WLO to a minimum term order, than the presence of mitigating factors that might warrant moving down from a WLO starting point under the current framework. We want to ensure these heinous crimes are given condign punishment.

The increase in the range of murders to which this presumption applies recognises the severity of a murder of a single victim involving sexual or sadistic conduct by bringing such offences within scope of the new duty to impose a WLO.

The public has been rightly shocked by a number of recent high-profile cases, especially of young women. While all murders are abhorrent crimes, the imposition of a WLO is the most severe form of

punishment that the courts can impose and should be reserved for the most heinous cases. This Government believes that the murder of a single victim which involves sexual or sadistic conduct is exceptionally serious enough to warrant a WLO.

Please explain whether you think the proposed disapplication of section 3 HRA in respect of Chapter 2 of the Crime (Sentences) Act 1997 will affect the compliance of whole life orders with Article 3 ECHR. If you do not think that compliance will be affected, please explain your reasons.

The Victims and Prisoners Bill contains clauses which disapply section 3 of the Human Rights Act from prisoner release legislation, including Chapter 2 of the Crime (Sentences) Act 1997. The intention behind the disapplication provisions is to remove the possibility of a domestic court adopting a strained interpretation of this legislation, disregarding the intentions of Parliament in passing it.

This will not affect the compliance of the WLO framework with Article 3 of the ECHR. In *Hutchinson v UK* (2017), the European Court of Human Rights held that WLOs are reducible and therefore comply with Article 3. This is because of the Secretary of State's power under section 30 of the 1997 Act to release a prisoner on compassionate grounds in exceptional circumstances, which, as a result of section 6(1) of the HRA, must be exercised in accordance with Article 3. The proposed disapplication of section 3 of the HRA will not affect the continuing application of section 6 of the HRA. The Secretary of State will continue to be bound to exercise the section 30 power in accordance with Article 3 and therefore WLOs will continue to comply with Article 3.

Special Custodial Sentences

Can you explain why the change introduced by the Bill is justified despite this recognised risk of higher reoffending rates, and what steps will be taken to mitigate that risk?

The changes will mean that for those who receive a sentence for offenders of particular concern there will be a licence period of 12 months, and for those serving an extended determinate sentence the licence period will be up to 8 years, as determined by the court. Due to the nature of rape, it is only right that for these very serious crimes offenders should face the entirety of their custodial term in prison. This will keep the public protected for longer as they will be without the opportunity to reoffend in this period and address public concerns about lenient sentencing for serious sex offences.

To mitigate any risk, there will be a number of different controls and interventions in place. As offenders of this type will spend their entire custodial term in prison, there will be more time to ensure that rehabilitative interventions can be conducted to minimise risks of recidivism on release. Also, once released they will be managed under Multi-Agency Public Protection Arrangements (MAPPA), and subject to notification requirements (often referred to as the Sex Offender Register). They may also be subject to a civil order e.g., a Sexual Harm Prevention Order (SHPO) which can prohibit the offender from doing anything mentioned within them. These controls will help to protect victims and ensure that on release offenders are complying with their licence requirements to reduce their chance of reoffending.

Please provide a children's rights analysis of the Bill and explain how you have taken the UNCRC into account when formulating the proposed changes to how EDS and SOPC sentences are served. Please also explain how you will ensure that the UNCRC is complied with when applying these changes.

The Ministry of Justice remains committed to upholding the UN Convention on the Rights of the Child. We agree with the principle that children should be held in custody for the shortest *appropriate amount of time*

and considered carefully, in developing the measures in the Bill, whether and how to apply any sentencing changes to children.

Children generally receive shorter custodial sentences than adults for similar offences and the number of children in custody has significantly decreased since 2010, which reflects the particular need to limit the use of custody for this cohort. For example, in the year ending June 2023, children sentenced to custody for sexual offences spent an average of 48.4 months in custody, while the equivalent figure for adults is 66.0 months.

As children typically spend a much shorter period in custody, there is necessarily less time to complete interventions, rehabilitate such children and overcome barriers such as denial of wrongdoing while in detention, which can be a major issue among youth perpetrators of sexual offending¹. That's why it is appropriate to maximise the period in which these interventions can take place in a secure environment, where they do not pose a risk of harm to the public, to give more time for rehabilitation and to reduce the risks of recidivism.

You write that community supervision is important to ensure effective transition into society. We agree; that is why children subject to a SOPC and EDS are required to undertake an additional period of community supervision on licence after their release from custody.

Short Sentences

Are you confident that these exceptions are sufficient to ensure that the rights of victims of domestic violence will be adequately protected?

This Government takes domestic abuse and violence against women and girls (VAWG) extremely seriously and is committed to safeguarding victims of these offences. We recognise the importance of protecting the rights of these victims, such as their Article 3 ECHR (prohibition of torture) where the state has a positive duty to prevent inhuman or degrading treatment and Article 8 ECHR (right to respect for private and family life) rights, and that there may be instances where removing a perpetrator from the community will be important in helping a victim rebuild their life and take steps to protect themselves from further abuse.

That is why we have included an exemption to the duty to suspend where there is a significant risk of physical or psychological harm to an individual, to ensure that offenders convicted of VAWG and domestic abuse can continue to receive sentences of immediate custody. In addition, the exemption of offenders who breach an order of the court provides further safety for the victim, such as in circumstances where an offender reoffends whilst already being subject to a court order for a domestic violence offence. The court retains full discretion to impose a sentence of immediate custody in such cases.

The measure further strengthens rights of victims by recognising that there will be 'exceptional circumstances' where passing a suspended sentence could not be justified and therefore courts must impose sentences of immediate custody in these circumstances, thus ensuring that the safety of victims of domestic violence is not compromised. The Government is also taking practical steps by investing up to £39m in interventions for domestic abuse and stalking perpetrators to improve the safety of victims and their children.

¹ Report on children and young people who sexually offend (justiceinspectorates.gov.uk)

Given the potential impact on reoffending and safety in the community, and thus the rights of victims, can you explain the steps being taken to ready the probation service, and community drug and alcohol treatment services, for an increase in the numbers serving suspended sentences in the community?

We are amending frameworks and guidance to make it explicit that probation practitioners focus their attention on providing support and active supervision to offenders on the first two thirds of their licence. A similar approach will also be taken to those offenders being managed on Community Orders and Suspended Sentence Orders ensuring that the most effective intervention and engagement can be delivered earlier. We are going to enable frontline practitioners to focus on action that has the greatest impact on public protection and reducing reoffending. We will be unburdening staff from the tasks that are less impactful when it comes to keeping the public safe and turning around offenders' lives.

These are measured and sensible operational changes, made following discussions with probation unions and frontline professionals, to ensure that probation practitioners have the resources they need to deliver high quality supervision safely to manage offenders in the community. The Government remains committed to reducing reoffending and protecting the public. These operational changes will help to deliver a stronger approach to probation, focused on the moments that can reduce reoffending, support victims of crime, keep the public safe and merit the confidence of the courts and the public.

We have also expanded the capacity of drug and alcohol treatment services. The landmark Drugs Strategy sets out the ambitious cross-Government 10-year plan to address illegal drug use. It is underpinned by a record level of additional investment. As part of this, the Department of Health and Social Care has invested £532 million into treatment and recovery systems through the first 3 years of the strategy. This has led to the recruitment of 1,670 additional staff including over 1,250 new drug and alcohol workers in 2022/23, with more than 475 of these specialising in criminal justice work. The investment has increased the capacity of the system; the number of people in drug and alcohol treatment at February 2024 has increased 8% to over 322,000 since March 2022. DHSC is currently evaluating its funding for core costs, and services and interventions funding, which will inform future funding plans.

We will continue to work with our partners to strengthen the justice services that underpin the use of community treatments and support the investment made by DHSC in drug treatment services. This work includes the recruitment of over 50 Health and Justice Co-ordinators to improve links between probation and treatment providers and increasing probation capability to drug test people on a community order so that they can more effectively monitor compliance. The number of sentences with a Drug Rehabilitation Requirement has increased by 12.4% between 2021 and 2022 (from c5,300 to c5,900).

Thank you again for your letter. I trust that my response satisfactorily addresses your questions, but am very happy to assist with any further queries. I am copying this letter to the Chair of the Justice Select Committee.

Yours sincerely,



RT HON ALEX CHALK KC MP

LORD CHANCELLOR AND SECRETARY OF STATE FOR JUSTICE