

## Equality Statement

### Policy Summary

The purpose of the Prisoners (Disclosure of Information about Victims) Bill is to ensure that circumstances where offenders do not disclose certain details about their offences, specifically the location of victim's remains and the identity of child victims in indecent images thereby causing additional distress to victims and their families, are considered by the Parole Board as part of their assessment as to whether such an offender should be released from prison.

The Bill proposes to change the statutory scheme that apply to prisoners serving life sentences, extended determinate sentences and other relevant sentences for, variously, the common law offences of murder and manslaughter and the offence of taking or making an indecent photograph or pseudo-photograph of a child at s.1 (1) (a) of the Protection of Children Act 1978. The Bill does not change the statutory release tests themselves. Rather the Bill provides that when the Parole Board are applying those tests and assessing whether a relevant offender should be released after serving the appropriate custodial term, the Board must consider the matters covered by the Bill.

The Bill achieves this by adding new sections after the life sentence release provisions in section 28 of the Crime (Sentences) Act 1997, after the release provisions for extended determinate sentences in section 246A of the Criminal Justice Act 2003 and by making similar changes to Schedule 20B of the 2003 Act that apply to predecessor sentences. The changes relating to victims remains are made in respect of all such sentences as it is possible to have received either a life sentence or an extended determinate sentence for manslaughter. The changes relating to indecent images are made only for extended determinate sentences as a life sentence is not a sentence an offender can receive under the 1978 Act. All such sentences involve Parole Board release. For life sentences this is in all cases. For extended determinate sentences the Parole Board can direct release once two thirds of the requisite custodial period has been served before automatic release at the end of that period. There is currently nothing in the present statutory scheme which specifies any considerations which the Parole Board should or should not take into account in their assessment (although the Parole Board Member's Handbook provides non-statutory guidance to members in how to approach cases) and general public law principles mean that all relevant considerations should be taken into account. This Bill will change this by creating an express obligation for the Parole Board to take the non-disclosure of certain information into account when considering certain cases and as part of their wider assessment as to an offender's suitability for release.

More specifically, when a prisoner who has been convicted of murder or manslaughter and who is serving either a life sentence or an extended determinate sentence (or one of its predecessors), is considered for release by the Parole Board, the Board must take into account any failure, on the part of that prisoner, to disclose the location of his or her victim's remains as part of their assessment of the offender's suitability for release. Additionally, when a prisoner who has been convicted of the offence of taking or making an indecent photograph or pseudo photograph, of a child and who is serving an extended determinate sentence (or one of its predecessors), is considered for release by the Parole Board, again

the Board must take into account any failure, on the part of that prisoner, to disclose the identity of the child or children who are the subjects of such images.

The Bill provisions will extend to England and Wales only. Prisons and sentencing (including release provisions) are devolved to Scotland and Northern Ireland. However, the Bill will apply to those convicted of murder and the equivalent offences to manslaughter and taking or making indecent photographs of children in Scotland, Northern Ireland and other territories (including the Channel Islands and the Isle of Man) and who are subsequently transferred within the jurisdiction of England and Wales and therefore considered for release by the Parole Board of England and Wales.

## **Equality Duties**

Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying 'due regard' needs to be proportionately considered against the nine "protected characteristics" under the Equality Act 2010 – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity. This Equality Statement considers the potential effects of our proposals according to the protected characteristics for which we have data: race, sex and age.

## **Equality Considerations**

### **Direct discrimination**

The law in England and Wales applies to all members of the public. Similarly sentencing processes and procedure, including release provisions and Parole Board procedure where relevant, apply to all offenders. There is therefore no direct discrimination within the meaning of the Equality Act as the law applies equally to all offenders who contravene the law. We do not consider that this results in people being treated less favourably because of protected characteristics.

### **Indirect discrimination**

Our assessment is that the Prisoners (Disclosure of Information about Victims) Bill is not indirectly discriminatory within the meaning of the Equality Act as we believe it does not put people with protected characteristics (race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity) at a particular disadvantage when compared to others who do not share those characteristics.

The Bill seeks to put into statute established Parole Board procedure regarding what information is taken into account by panels when assessing an offender's suitability for

release. The Bill therefore does not introduce any new obligations for the Board or new procedures. In addition, the Bill does not introduce any new sentences nor does it directly affect release provisions. Instead it will ensure that certain issues – relating to the non-disclosure of information by certain offenders – must be taken into account by the Parole Board as part of their risk assessment process. This process is applied equally to all offenders who receive a relevant sentence although the number of offenders who this would specifically apply to is low as these circumstances, particularly cases of murder and manslaughter where the body of the victim has not been found, are rare.

The Bill impacts on certain offenders (those who do not disclose certain relevant information) who are being assessed by the Parole Board after having been convicted of the offences of murder, manslaughter and taking or making indecent photographs of children (at section 1 (1) (a) of the Protection of Children Act 1978). There are only published statistics relating to three of the nine protected characteristics – race, sex and age. Analysis of the sentences imposed for murder, manslaughter and the offence of taking or making indecent photographs of children is given in the tables below. Each table shows how many sentences were given for each offence in 2018 according to ethnicity, sex and age range – this is expressed as a number and also as a percentage of the overall number of sentences in that year (excluding instances where the information is not recorded). These figures are also compared with the total number of sentences given in 2018 and the percentage of a particular group – for example white offenders – amongst this total number of offences.

For murder and manslaughter, sentences given to white people are under-represented compared to the proportion given to all offences. However, white people are over-represented for the offence of taking or making indecent photographs of children. Males are over-represented in the offences in scope in comparison to sentences for all offences. Therefore, overall, this change would disproportionately impact white males. Older age groups are over-represented in sentences for taking or making indecent photographs of children (42% of sentences are individuals 50 years old or over compared to just 14% of all sentences). Therefore, this change could disproportionately impact these older age groups.

Table 1: Number and proportion of sentences in 2018, broken down by ethnicity for those offences in scope (murder, manslaughter, and taking or making indecent photographs of children) and for sentences of all offences.

Sentences (2018)	Murder		Manslaughter		Taking or making indecent photographs of children		All Offences	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
White	155	61%	89	64%	1,442	96%	119,663	80%
Black	55	21%	29	21%	31	2%	15,133	10%
Asian	26	10%	15	11%	16	1%	8,433	6%
Mixed	13	5%	1	1%	5	0%	4,697	3%
Chinese and Other	7	3%	5	4%	6	0%	1,873	1%

Not Stated	72	52	559	49,422
N/A	0	0	0	984,380
Total (excluding unknowns)	256	139	1,500	149,799

Source: Ministry of Justice; Criminal Justice System statistics quarterly: December 2018

Table 2: Number and proportion of sentences in 2018, broken down by sex for those offences in scope (murder, manslaughter, and taking or making indecent photographs of children) and for sentences of all offences. Sentences (2018)	Murder	Manslaughter	Taking or making indecent photographs of children	All Offences
Male	310 95%	170 89%	2,040 99%	787,800 73%
Female	18 5%	21 11%	19 1%	287,383 27%
Total	328	191	2,059	1,075,183

Source: Ministry of Justice; Criminal Justice System statistics quarterly: December 2018

Table 1: Number and proportion of sentences in 2018, broken down by age for those offences in scope (murder, manslaughter,	Murder	Manslaughter	Taking or making indecent photographs of children	All Offences

and taking or making indecent photographs of children) and for sentences of all offences. Sentences (2018)				
10-11	0			37 0%
12-14	2 1%	2 1%	1 0%	3,182 0%
15-17	24 7%	13 7%	28 1%	17,007 2%
18-20	46 14%	26 14%	70 3%	63,247 6%
21-24	47 14%	32 17%	85 4%	123,115 11%
25-29	40 12%	32 17%	199 10%	191,090 18%
30-39	86 26%	38 20%	431 21%	331,423 30%
40-49	42 13%	29 15%	390 19%	205,227 19%
50-59	30 9%	11 6%	485 24%	113,825 10%
60+	11 3%	8 4%	374 18%	43,513 4%
Total	328	191	2,063	1,091,666

Source: Ministry of Justice; Criminal Justice System statistics quarterly: December 2018

These findings are in line with wider sentencing trends as male prisoners are more likely to be considered for release by the Parole Board generally as they represent the majority of those sentenced by the criminal justice system.

Therefore although these proposals are likely to disproportionately impact on white, male adult offenders, and, in the case of the offence of taking or making indecent photographs of children, such offenders aged over 50, we consider that these proposals are a proportionate means of achieving the legitimate aim of ensuring that relevant information is taken into account by the Parole Board when assessing an offender's suitability for release.

#### **Advancing equality of opportunity**

We have had regard to this aspect of the equality duty but do not consider that the Bill would impact on the advancement of equality of opportunity.

#### **Discrimination arising from disability and duty to make reasonable adjustments**

We do not consider that any adjustments are required for disabled people over and above the ones already in place in courts and prisons.

**Fostering good relations**

We do not consider that there is any significant impact on the achievement of this objective.

**Welsh language Impact**

This policy does not disproportionately impact upon Welsh speakers. Any future guidance on the policy will be produced in Welsh where relevant.