

Title: Victims and Prisoners Bill: Restrictions on the Marriage or Civil Partnerships of Whole Life Prisoners IA No: MoJ053/2023 RPC Reference No: N/A Lead department or agency: The Ministry of Justice (MoJ) Other departments or agencies: N/A	Impact Assessment (IA)		
	Date: 29 March 2023		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
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Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option (in 2022/23 prices)

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Not a regulatory provision
£0.0m	£0.0m	£0.0m	

What is the problem under consideration? Why is government action or intervention necessary?
 Currently, prisoners are allowed to marry or form a civil partnership in prison unless the governor objects to the prison being used as the venue for the ceremony, subject to certain conditions as set out in paragraph 6 below. The governor may only refuse an application on grounds of safety and security relating to the ceremony taking place in the prison.

Whole life orders are reserved for those offenders who have committed the most serious crimes, such as serial or child murders that involved a substantial degree of premeditation or sexual or sadistic conduct. They are the single most severe punishment in England and Wales criminal law. The Government is concerned that allowing the marriage or civil partnership of whole life prisoners undermines public confidence in the Criminal Justice System and its ability to deal with such prisoners in a manner reflecting the seriousness of their offending.

Government intervention is required as primary legislation is needed to change the laws on marriage and civil partnership to address this issue.

What are the policy objectives of the action or intervention and the intended effects?
 The policy objectives are to prevent individuals who are serving a life sentence in prison or another place of detention and subject to a whole life order from marrying or forming a civil partnership, except if granted an exemption from the SoS in exceptional circumstances. The intended effect is to uphold public confidence in the Criminal Justice System in its role to deliver justice by ensuring that it is able to deal with the most serious offenders in an appropriate way.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Two options are considered in this Impact Assessment:

- Option 0:** Do nothing. Prisoner marriage and civil partnership applications continue to be decided in line with current marriage and civil partnership law and operational policy, with limited grounds for refusal.
- Option 1:** Legislate to prohibit marriage and civil partnership where an individual is subject to a whole life order.

The preferred option is Option 1, as this will best meet the policy objectives.

Will the policy be reviewed? The legislation will be reviewed in line with post-legislative scrutiny procedures.

Does implementation go beyond minimum EU requirements?	N/A		
Is this measure likely to impact on international trade and investment?	No		
Are any of these organisations in scope?	Micro No	Small No	Medium No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: 0		Non-traded: 0

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister Argar MP: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Legislate to prohibit marriage and civil partnership where an individual is subject to a whole life order.

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 0.0

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	1	0.0	0.0
High	0.0	1	0.0	0.0
Best Estimate	0.0	1	0.0	0.0

Description and scale of key monetised costs by 'main affected groups'

There are no monetised costs associated with this option.

Other key non-monetised costs by 'main affected groups'

Prison governors are already responsible for considering marriage and civil partnership applications from prisoners and making decisions on whether to grant the request on grounds of safety and security relating to the use of the prison as the ceremony venue. This option will simply introduce a new criterion for governors to consider, i.e., whether the applicant is serving a whole life order. This information is readily available on prison systems. While there may be some familiarisation costs for prison governors, due to the low number of whole life order prisoners (66 in the prison estate as of 31 December 2022) we expect that the resource implications will be negligible. While exemptions will be decided by the SoS, governors and staff may need to provide evidence to inform a decision, this is expected to be infrequent given the small cohort and low volume of marriage or civil partnership applications both among this cohort and in the wider prison population.

Whole life order prisoners and their intended spouses will not be able to benefit from the monetary and non-monetary benefits to marriage or civil partnership including automatic or easier routes to establish parental responsibility, automatic inheritance rights and eligibility for a partner visa without having had to live together for two years prior to the application. Given the potential variance in the personal financial circumstances of each prisoner and their partner, this cost is unquantifiable. If a prisoner or their potential spouse decides to apply for an exemption, they will need to invest time and effort in understanding the process, and criteria, and may experience uncertainty while they wait for their case to be decided. Both the prisoner and their intended spouse will be unable to marry the partner of their choice, which could have negative emotional impacts.

In certain faiths and communities, marriage is considered an important part of life and a rite of passage. Even for those who do not belong to a religion, marriage can take on a spiritual significance, and be considered a stabilising force for a relationship and a symbol of a commitment to a lifelong union. There may be a social or religious impact for prisoners or their potential spouses belonging to faiths or communities in which having a child outside of marriage can be stigmatised, though this is unlikely to be relevant unless a child was conceived just before one partner's imprisonment.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

There are no monetised benefits associated with this option.

Other key non-monetised benefits by 'main affected groups'

Preventing such prisoners from marrying or forming a civil partnership will help to uphold public confidence in the Criminal Justice System in its role to deliver justice and deal with the most serious offenders in an appropriate way.

Key assumptions/sensitivities/risks

Discount rate

N/A

The above impacts assume that whole life orders will continue to be given as sentences for similar crimes and at a similar rate as they are currently. If so, the potential number of potential marriage applications can be expected to be very low.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	N/A

Evidence Base

A. Background

Overarching background

1. The Victims and Prisoners Bill will implement reforms designed to better support victims, strengthen the parole system and drive up public confidence in the Criminal Justice System. Part 3 of the Bill, 'Prisoners', will bring forward reforms to the parole system to strengthen the system and create an additional layer of scrutiny for release decisions for the most serious offenders. These measures will ensure that the public and victims feel confident in release decisions and trust the system. Part 3 also contains measures that will prohibit prisoners subject to whole life orders from forming a marriage or civil partnership.
2. The prisoner marriage measures in the Bill will restrict prisoners serving whole life orders from being able to marry or form a civil partnership while serving their sentence in prison or another place of detention. This Impact Assessment (IA), which accompanies the Bill, sets out the issues relating to this restriction, the options considered to address them and their associated impacts. Given the very small number of cases where this restriction is likely to apply, there are no financial impacts in this IA.
3. Issues arising under the European Convention on Human Rights (ECHR) for this provision, and other provisions in the Bill, are examined in the European Convention on Human Rights Memorandum which will be published alongside the Bill.

Prisoner marriage

4. Currently, prisoners can enter into marriage in the place of their detention, according to the Marriage Act 1983. The Civil Partnership Act 2004 provided for same sex couples to enter into a civil partnership, followed by the Marriage (Same Sex Couples) Act 2013. In December 2019, civil partnerships were extended to opposite sex couples, as Civil Partnership (Opposite-sex Couples) Regulations 2019 amended the 2004 Act.
5. Marriages and civil partnerships in prison are relatively infrequent. In 2022, around 60 prisoners applied to marry in prison, out of a total prison population of approximately 80,000. There has only been one marriage application from a whole life prisoner in recent years.
6. Current operational policy on prisoner marriage and civil partnership is set out in PSI 14/2016 (Marriage of Prisoners and Civil Partnership Registration). Where a prisoner wants to marry or enter into a civil partnership in a prison, he or she is required to obtain a statement of authority from the prison governor. This statement is not required if the prisoner is getting married or entering a civil partnership outside the prison.
7. Under Section 27A of the Marriage Act 1949, the governor must decide whether they have any objection to the prison being named on the notice of marriage as the place where the marriage is to be solemnized. In exercising this discretion, the governor must be mindful of the need to make every effort possible to facilitate the prisoner's exercise of the right to marry, as per Article 12 of the European Convention on Human Rights.
8. The governor is expected to make the necessary practical arrangements to enable the marriage or registration of civil partnership to take place within the prison in a manner which ensures the security of the prison. This may include setting stringent security conditions that have to be fulfilled and/or controlling the timing of the ceremony/registration where particular

risk factors are identified. Prisoners are expected to cover any costs associated with their marriage or civil partnership.

9. Subject to these considerations of security, permission for a marriage or civil partnership to take place inside a prison should be given in the following circumstances:
- In the case of sentenced prisoners, at the time of their application, the prisoner is not expected to be released or deported, or to have the opportunity to marry or enter a civil partnership while on Temporary Release, within three months of submitting their request.
 - In the case of unsentenced prisoners, the prisoner is likely to remain in custody for three months or longer after their application.
 - In the case of prisoners who have less than three months to serve at the time of their application, where there are exceptional compassionate reasons for allowing the marriage/civil partnership to take place inside the prison sooner, for example, where the marriage/civil partnership is between parents whose child is expected to be born within three months (medical evidence of the likely date of birth will be required) or in the case of someone who is terminally ill.
 - Prisoners wishing to marry or enter into a civil partnership will also need to confirm that they are not already in a marriage/civil partnership; 18 years or older at the time of the marriage or civil partnership; and not a close relative of their intended partner.

Whole life orders

10. A whole life order is the single most severe punishment in England and Wales criminal law and means that the offender must spend the rest of their life in prison or another place of detention such as a secure hospital. These sentences are reserved for those who have committed the most serious crimes, for example serial or child murders that involved a substantial degree of premeditation or sexual or sadistic conduct.
11. Before 2003, these orders could be made by the Secretary of State; where a mandatory life sentence was imposed, the SoS could issue a notification that the prisoner should never be released. Since 18 December 2003, whole life orders have been made by judges. A prisoner sentenced to serve their whole life in prison before 2003 can apply to have the High Court decide whether it should be converted to a fixed term or confirmed as a whole life order.
12. There were 66 prisoners serving whole life orders in a prison in England and Wales, as of December 2022. This figure has risen slightly over the last decade: in 2013 there were 42 whole life prisoners. It has been fairly stable since 2017, when there were 64 whole life prisoners; since then, the number has not dropped below 63 or risen above 66.

Issues

13. We have heard from victims of a whole life prisoner who is seeking to marry, as well as the campaign group the Centre for Crime Prevention, that such prisoners marrying or forming a civil partnership can cause distress and trauma to their victims or the victims' families.
14. In line with broader social attitudes towards crime, sentencing and prisoners' rights, we believe that the public is likely to perceive it as inappropriate for prisoners subject to the single most severe punishment in England and Wales criminal law to be allowed to form marriages or civil partnerships while serving their sentence in prison or another place of detention. It is possible that allowing this to continue could undermine confidence that the Criminal Justice System is able to deal with such prisoners in a manner reflecting the seriousness of their offending.

B. Policy Rationale and Objectives

Rationale

15. The conventional approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, e.g., monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, e.g., outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g., reallocating resources from one group in society to another).
16. However, in the case of the option considered in this IA the primary rationale relates to the impact on wider public confidence in the justice system. The Government is concerned that allowing the marriage or civil partnership of whole life prisoners undermines public confidence in the Criminal Justice System and its ability to deal with the most serious offenders in a manner reflecting the seriousness of their offending.

Policy Objectives

17. A whole life order is the single most severe punishment in England and Wales criminal law and means that the offender must spend the rest of their life in prison or another place of detention, such as a secure hospital. The Government considers that due to the serious nature of their offending, allowing whole life prisoners to marry or form a civil partnership presents a particularly high risk of the negative impacts set out above – distress to victims and loss of public confidence in the Criminal Justice System.
18. The Government therefore wants to prevent whole life prisoners from forming a marriage or civil partnership. It considers that this is necessary to reinforce the seriousness of whole life orders, and in doing so uphold public confidence in the Criminal Justice System.

C. Affected Stakeholder Groups, Organisations and Sectors

19. A list of the groups that will be most affected by the measures in this IA is shown below:
 - Victims of crime, their families, and other close associates
 - Prisoners serving whole life orders
 - The intended spouses or partners of prisoners serving whole life orders, and any children from that relationship
 - Prison governors and their staff, who consider marriage and civil partnership applications from prisoners, and superintendents who perform the equivalent role in secure hospitals
 - The Secretary of State for Justice

D. Description of Options Considered

20. In order to meet the policy objectives, two options have been considered:

- **Option 0:** Do nothing. Prisoner marriage and civil partnership applications continue to be decided in line with current marriage and civil partnership law and operational policy, with limited grounds for refusal.
- **Option 1:** Legislate to prohibit marriage and civil partnership where an individual is subject to a whole life order.

21. The preferred option is Option 1, as this will best meet the Government's policy objectives.

Option 0: Do nothing

22. Under this option, there would be no legislative changes to the ability of prisoners subject to a whole life order to marry or form a civil partnership. Such prisoner marriage and civil partnership applications would continue to be decided within prisons in line with current marriage and civil partnership law and operational policy, with limited grounds for refusal. Option 1 is therefore undesirable because it would fail to meet the policy objectives.

Option 1: Legislate to prohibit marriage and civil partnership where an individual is subject to a whole life order

23. This option will prohibit prisoners who are serving whole life orders from being able to get married or form a civil partnership while in prison or another place of detention. A prisoner serving a whole life order may only marry if they have written permission from the Secretary of State, which may only be given on compassionate grounds in exceptional circumstances, for example to allow a deathbed marriage to take place.
24. There will be no appeals process for SoS decisions about exemptions, but a party could refer the decision to judicial review if they felt the procedure was improper or if they wanted to challenge the substance of the decision.
25. Operational policy will be updated to reflect the new restrictions, and to set out the procedures a prison governor (or other responsible authority) will need to follow if a prisoner serving a whole life order is seeking to marry or form a civil partnership.

E. Cost & Benefit Analysis

26. This Impact Assessment (IA) follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with His Majesty's Treasury Green Book guidance.
27. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in Great Britain with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

28. The costs and benefits of the options are compared to Option 0, the counterfactual or 'do nothing' option. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).
29. There are, however, no monetised costs or benefits in this IA. This is mainly because the expected number of cases where Option 1 will have an impact is likely to be very small.
30. It is also not normally the case that the routine impacts on offenders of punishment are included in IAs as such punishment is required to uphold the sentences of the court. However, we include such impacts in this IA as Option 1 may be seen as going beyond what might be viewed as a normal or routine element of the punishment of offenders.

Option 1: Legislate to prohibit marriage and civil partnership where an individual is subject to a whole life order

Costs of Option 1

31. Prison governors are already responsible for considering marriage and civil partnership applications from prisoners. These reforms will not change this, but simply introduce a new criterion for governors to consider, i.e., whether the applicant is serving a whole life order. This information is readily available on prison systems. While there may be some familiarisation costs for prison governors as a result of this option, due to the low number of whole life order prisoners (66 in prison as of December 2022) we expect that the resource implications will be negligible.
32. Exemptions will be decided by the SoS, with support from officials. Given the small cohort and low volume of marriage or civil partnership applications both among this cohort and in the wider prison population, we expect that this task can be absorbed in BAU activity of relevant teams without requiring additional resource. Similarly, while prison governors and staff may need to provide evidence to inform a decision, we do not expect this to be required frequently and so the resource implications will be negligible.
33. We are not proposing to create an appeals process to challenge SoS decisions on exemptions, but as mentioned above, a party could challenge the decision through judicial review, if they felt the procedure was improper or they wanted to challenge the substance of the decision. It is also possible that the restrictions themselves will be challenged on human rights grounds. The cost of such litigation will depend on the number and outcome of any such challenges. However the number is expected to be low given the small number of prisoners where this issue could arise.
34. Whole life order prisoners and their intended spouses (and any existing children from their relationship) may face some monetary disadvantage from an application being refused (e.g., not being able to benefit from marriage tax allowance, inheritance tax exemption etc). Given the potential variance in the personal financial circumstances of each prisoner and their partner, this cost is unquantifiable. They may also face non-monetary disadvantages, being unable to access spousal routes to establish parental responsibility or eligibility for a partner visa. Both the prisoner and their intended spouse will be unable to marry the partner of their choice, which could have negative emotional impacts.
35. In certain faiths and communities, marriage is often considered an important part of life, and even a rite of passage. Even for those who do not belong to a religion, marriage can take on a spiritual significance, and be considered a stabilising force for a relationship and a symbol of a commitment to a lifelong union. For example, there may be a social or religious impact for prisoners or their potential spouses belonging to certain faiths or communities where an

unmarried partner having a child outside of marriage can be stigmatised, though this is unlikely to be relevant unless a child was conceived just before one partner's imprisonment.

36. If a prisoner or their partners decides to apply for an exemption, they will need to invest time and effort in understanding the process, and criteria, and may experience uncertainty while they wait for their case to be decided.

Benefits of Option 1

37. Under this option, some victims will be spared distress and trauma related to the perpetrators of the most serious crimes marrying or forming civil partnerships while serving their sentence in prison or another place of detention.
38. It is possible that allowing whole life prisoners to continue to form marriages or civil partnerships in prison could undermine public confidence that the Criminal Justice System is able to deal with such prisoners in a manner reflecting the seriousness of their offending. The Government considers that preventing such prisoners from marrying or forming a civil partnership will therefore drive up public confidence in the Criminal Justice System in its role to deliver justice.

F. Risks and Assumptions

39. The key assumptions behind the cost benefit analysis presented in this IA are described below. There is a risk that, if the assumptions do not hold, the costs and benefits presented in this IA could be higher or lower.

Option 1

40. The conclusion that the resource requirements, including the processing of applications for exemptions to the prohibition on marriage, will be unaffected by Option 1 relies on the assumption that whole life orders will continue to be used as they are currently (i.e. reserved for the most serious crimes and with only a few such sentences given each year). Were whole life orders to be used more widely, the potential resource impacts would rise. However, as the Government has no intention of extending the availability of whole life orders beyond their current usage, this risk can be expected to be small.

G. Wider Impacts

Equalities

41. An Equalities Impact Statement has been completed and has been published alongside this Impact Assessment.

Human rights

42. Issues arising under the ECHR for this provision, and other provisions in the Bill, are examined in the European Convention on Human Rights Memorandum which will be published alongside the Bill.

Better Regulation

43. These measures are exempt from the Small Business Enterprise and Employment Act 2015 and will not count towards the department's Business Impact Target.

Environmental Impact

44. We expect there to be no environmental impact as a result of the recommended options.

H. Monitoring and Evaluation

45. The legislative measures detailed above will be commenced by regulation once the Government Departments and other organisations required have concluded the relevant preparations to accommodate the operational functionality of these changes. Further announcements about the timing of implementation will be made in due course following Royal Assent.
46. HM Prison and Probation Service has data collection processes in place to monitor applications from prisoners to marry or form civil partnerships in prison.
47. The government will monitor measures following implementation. In the normal way the Act will be subject to post-legislative scrutiny five years after Royal Assent.