

Equalities Statement: Sentencing Bill – Serious Sexual Offences

Introduction

1. The Government is building on action it has already taken to protect the public from the most serious offenders. Rape is currently significantly affecting public confidence in the justice system. 'When asked about their experiences of the criminal justice system, a number of respondents to a public victim and survivor survey in 2020/2021 felt that they had not seen justice done due to a perception of lenient sentences' ⁽¹⁾. Keeping rapists in prison for longer will actively reduce this perception and will remove the opportunity to reoffend during that period. Research shows that 'many perpetrators of these crimes continue to offend even if they have been prosecuted, with some cases resulting in an escalation of behaviours' ⁽²⁾. The Bill includes measures which amend the sentencing and release framework to address these issues.

Policy summary

2. This Bill will alter the sentencing and release arrangements for offenders who are convicted of certain serious sex offences, including rape, which carry a maximum penalty of life imprisonment. Where that offender (whether adult or youth) does not receive a life sentence or an Extended Determinate Sentence ("EDS"), the offender must receive a Sentence for Offenders of Particular Concern ("SOPC") rather than an SDS. A SOPC is made of a custodial term and an extended licence of one year and is currently applicable to specified terrorist offences and the two most serious child sex offences.
3. These provisions alter the release point of offenders who receive an EDS or SOPC on conviction of these offences so that they will now serve the entirety of the appropriate custodial term in custody, with no referral to the Parole Board at the two-thirds point, meaning that there will be no automatic or discretionary early release before the end of that period.
4. Both measures (EDS and SOPC) will ensure these offenders will still have a licence period:- of 12 months for those serving a SOPC and up to 8 years, as determined by the court, for those serving an EDS.
5. The changes are primarily focussed on the offence of rape and the other most serious sexual offences, because rape is generally viewed as the most serious sexual offence (with the highest available penalty of life imprisonment). The following offences will be included:
 - Section 1 (rape)
 - Section 2 (assault by penetration)
 - Section 4, in the circumstances outlined in subsection (4) (causing a person to engage in sexual activity involving penetration without consent)
 - Section 8, in the circumstances outlined in subsection (2) (causing or inciting a child under 13 to engage in sexual activity with penetration)
 - Section 30, in the circumstances outlined in subsection (3) (sexual activity involving penetration with a person with a mental disorder impeding choice)
 - Section 31, in the circumstances outlined in subsection (3) (causing or inciting a person with a mental disorder impeding choice, to engage in sexual activity involving penetration).

¹ [Tackling violence against women and girls \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

² [Tackling violence against women and girls strategy \(accessible version\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

- Section 34, in the circumstances outlined in subsection (2) (inducement, threat or deception to procure sexual activity with a person with a mental disorder with penetration)
- Section 35, in the circumstances outlined in subsection (2) (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception with penetration)
- Section 47, in the circumstances outlined in subsections (3) and (6) (paying for the sexual services of a child under 13 with penetration)
- Section 62, in the circumstances outlined in subsection (3) (committing an offence with intent to commit a sexual offence where the offence is committed by kidnapping / false imprisonment).

Ministry of Justice and the Public Sector Equality Duty

- Under the [Equality Act 2010³ \(the 2010 Act\)](#), when exercising its functions, the MoJ has an ongoing legal duty (the Public Sector Equality Duty or PSED) to pay 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 of persons who share a protected characteristic and those who do not; and
 - foster good relations between different groups.
- We also recognise that, as well as having an obligation not to directly or indirectly discriminate against disabled people, the MoJ as a service provider has a duty to make reasonable adjustments for disabled people.
- The payment of due regard to the PSED needs to be considered in light of the nine protected characteristics:

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|------------------------------|-----------------------|
| • Race | • Gender Reassignment |
| • Sexual Orientation | • Disability |
| • Marriage/Civil Partnership | • Age |
| • Gender | • Pregnancy/Maternity |
| • Religion or Belief | |

Sources of Information

- The latest Ministry of Justice's *Criminal Justice System statistics quarterly*⁴ has been used in order to identify offenders who would be affected by this policy. This was filtered to only include those convicted of certain serious sex offences who were subject to SOPC, SDS and EDS sentences.
- ONS statistics on Sexual offence victim characteristics⁵ have been used to identify characteristics of victims of Sexual offences.

Unavailable data

³ http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

⁴ Criminal Justice System statistics quarterly: December 2022.

<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022>

⁵ Data based on combined data from year ending March 2018 to year ending March 2020. [Sexual offences victim characteristics, England and Wales - Office for National Statistics \(ons.gov.uk\)](#)

11. Publicly available data about protected characteristics is unavailable for sentenced offenders except for their sex and age, and ethnicity. While there may be other prisoners with protected characteristics who would be affected by this policy change, offenders are in scope for this policy change dependent on the type of their sentence and the policy, and not with regard to their protected characteristic.
12. Data on the sexual orientation, race, disability, or religion of victims of rape/ sexual offences is not available.

Scope of this analysis

13. This analysis focuses on the impact of increasing the duration in custody for those sentenced for certain serious sex offences proposed above as there is available data that lends itself to comparative analysis.

Evidence and analysis

Affected Groups

Offenders

14. The proposed change will have a direct impact on those offenders who are serving SDS, SOPC or EDS sentences for certain serious sex offences. It also changes sentencing criteria to make those who would have received SDS sentences instead receive SOPC sentences. The result of these changes will mean a longer period spent in custody for all affected offenders.
15. For this equalities analysis we are comparing the affected group, those who were given an SDS, SOPC or EDS sentence in 2022 for the affected serious sexual offences, against all of those given a custodial sentence in 2022.
16. Published data that would inform whether individuals among the affected group with certain protected characteristics will be disproportionately affected is limited. However, sentencing data provides information according to some characteristics: sex, ethnicity and age.
17. This data⁶ suggests that some characteristics may be overrepresented in the population affected by this policy (those currently serving a SDS, SOPC or EDS custodial sentence for certain serious sex offences). Specifically:
 - i. Males appear to be overrepresented; in 2022, of the affected group (those serving SDS, SOPC or EDS sentences for certain serious sex offences) 99% were male. In contrast, of the full custodial cohort 94% were male.
 - ii. Asian offenders appear to be overrepresented; in 2022, of the affected group those serving SDS, SOPC or EDS sentences for certain serious sex offences) 9% were Asian. In contrast, of the full custodial cohort, 7% were Asian.
 - iii. Older people appear to be overrepresented; in 2022, of the affected group those serving SDS, SOPC or EDS sentences for certain serious sex offences, 27% were age 50 or over (where age was recorded). In contrast, of the full custodial cohort, 10% were age 50 or over.

⁶ The source data is the 'Sentence outcomes' table in the 'Outcomes by Offence data tool' workbook of the Criminal Justice System statistics quarterly: December 2022.

18. By virtue of the overrepresentation of the groups noted above, we acknowledge that any negative impacts arising from replacing SDS with SOPC and extension of the minimum custodial term will affect those groups of prisoners listed above relative to the current custodial population.

Victims

19. For this equalities analysis we are comparing the affected group, those who are victims of certain serious sexual offences to the average percentage of adults (over 16's) who were victims of certain serious sexual offences. This is used as a comparison point rather than comparing against the rate at which victim groups of other offences are observed overall, due to a lack of data availability.

20. Published data that would inform whether individuals among the affected victim group with certain protected characteristics will be disproportionately affected is limited. However, ONS sexual offence victim characteristics provides information according to some characteristics: sex and age. These statistics cover sexual crimes more broadly than the changes proposed but are used as a proxy here.

21. This data ^{7 8} suggests that some characteristics may be overrepresented in the population affected by this policy (victims of certain serious sex offences). Specifically:

- Females appear to be overrepresented; in the year ending March 2022, 3.3% of females over the age of 16 were victims of sexual assault, compared to 2.3% of adults aged 16 and over.
- Younger people appear to be overrepresented; in the year ending March 2022, 11.3% of people aged 16-19 and 8.8% of people aged 20-24 were victims of sexual assault, compared to 2.3% of adults aged 16 and over.
- Single adults (over the age of 16) appear to be overrepresented; in the year ending March 2022, 5.7% of single adults were victims of sexual assault, compared to 2.3% of adults aged 16 and over.

22. By virtue of the overrepresentation of the groups noted above, we acknowledge that any impacts arising from replacing SDS with SOPC and change of release arrangements will affect those groups of victims listed above relative to the general population of victims of crime.

Eliminating Unlawful Discrimination

Direct Discrimination

23. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that this policy is not directly discriminatory within the meaning of the 2010 Act, as the changes from this policy

⁷ Data from the Crime Survey for England and Wales for the year ending March 2022, it should be noted these are not National Statistics. They are based on six months of data collection from the face-to-face Crime Survey for England and Wales between October 2021 and March 2022. Caution should be taken when using these data due to the impact of the reduced data collection period and lower response rates on the quality of the estimates. [Sexual offences victim characteristics, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk/people-and-population/population-and-demography/articles/sexual-offences-victim-characteristics-england-and-wales/2022)

⁸ Data from the Crime Survey for England and Wales for the year ending March 2022. It should be noted, these are not National Statistics. They are based on six months of data collection from the face-to-face Crime Survey for England and Wales between October 2021 and March 2022. Caution should be taken when using these data due to the impact of the reduced data collection period and lower response rates on the quality of the estimates. [Sexual offences in England and Wales overview - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk/people-and-population/population-and-demography/articles/sexual-offences-in-england-and-wales-overview/2022)

will apply in the same way to all prisoners serving SDS, SOPC or EDS sentences for certain serious sex offences, regardless of their protected characteristics.

Indirect Discrimination

24. Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not.
25. Our assessment is that replacing SDS sentences with SOPC offences and increasing the proportion of the custodial term spent in custody does not cause particular disadvantage to any person due to their protected characteristics, subject to the over representation of certain protected characteristics as explained below. If it could be shown that people with a certain protected characteristic were put at a particular disadvantage, we believe it is a proportionate means of achieving our legitimate aim to increase the proportion of the term spent in custody for those sentenced for certain serious sex offences.
26. As noted above, the available data suggests that some groups are overrepresented in the population impacted by the policy (those currently serving SDS, SOPC or EDS sentences for certain serious sex offences) compared to the full custodial population. We do not propose any mitigating action because the fact is that the change proposed affects all individuals equally, whether they are in the overrepresented or underrepresented groups and there is no change that could be made fairly to sentencing criteria that could change this overrepresentation on the longer sentenced cohort. Waiving some of the other criteria to make an individual less likely to have their duration in custody extended, for example, would undermine public confidence in the administration of justice as well as being potentially discriminatory.

Discrimination arising from disability and duty to make reasonable adjustments

27. In so far as this policy/legislation extends to prisoners with disability who will be affected by the changes to sentence type and custodial duration, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for all prisoners with disability to make them more or less likely to be in scope of the proposal, but it remains important to make reasonable adjustments for all prisoners with disability affected to ensure appropriate support is given.

Advancing Equality of Opportunity

28. Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of prisoners whose custodial duration will increase who share a protected characteristic, where those needs are different from the needs of those who do not share that protected characteristic.
29. This legislation will mean that some prisoners may now spend longer in custody. This will remove their ability to reoffend for the extended duration and allow their rehabilitation to be more closely managed in custody.
30. A positive impact on communities will be an improved perception public safety and delivery of justice with those sentenced for certain serious sex offences.

Fostering Good Relations

31. Our assessment is that increasing the extent of custodial sentences spent in custody for offenders sentenced for certain serious sex offences in the way proposed is unlikely to impact on fostering good relations between groups with different protected characteristics.

Continuing Analysis

32. The equality duty is an ongoing duty, and we will continue to monitor and review these measures for any potential impacts on persons with protected characteristics to help ensure that access to justice is maintained. The impact of extending duration in custody for those sentenced for certain serious sex offences will be explored when the data on offenders whose sentence is adjusted broken down by protected characteristics becomes available.