

## **Equalities Statement: Sentencing Bill - Extension of Whole Life Orders**

### **Introduction**

1. A Whole Life Order (WLO) is the most severe punishment in England and Wales criminal law and means that the offender must spend the rest of their life in custody (subject only to release on exceptional compassionate grounds). WLOs 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 – and are the starting point when sentencing for such crimes. There were 65 prisoners serving whole life orders in a prison in England and Wales as of 30 June 2023.<sup>1</sup>
2. These measures create a new duty on the court to impose a WLO in circumstances in which it is currently the starting point, unless there are exceptional circumstances relating to the offence or the offender, which justify not imposing a WLO.
3. In addition, the Bill includes a measure to add the murder of a single person involving sexual or sadistic conduct to the category of cases for which the court will now be required to impose a WLO unless there are exceptional circumstances relating to the offence or the offender, which justify not imposing a WLO.
4. The effect of this change will be that WLOs are imposed in a greater number and for a wider range of cases.

### **Current legislation**

5. The current legislation governing the imposing of WLOs is contained in sections 321 and 322 of, and Schedule 21 to, the Sentencing Act 2020. Paragraph 2 of Schedule 21 to the Sentencing Act 2020 sets out the cases for which a WLO is currently the starting point.

### **Human rights**

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

### **Summary of proposals**

7. The aims of the proposed changes to current legislation are to create a new duty on the courts to impose a WLO for cases of murder for which WLOs are currently the starting point and for the murder of a single person involving sexual or sadistic conduct to be subject to this new duty. The duty provides that the court is not required to impose a WLO if there are exceptional circumstances relating to the offence or the offender, which justify not imposing a WLO, and it will be a matter for the judiciary to determine what constitutes 'exceptional circumstances'.

### **Evidence and analysis – context**

8. We consider that the cohort most relevant to consideration of the equalities impacts of this policy measure would be prisoners serving whole life orders and have compared those to the characteristics of the wider prison population. There were 65 individuals in the prison estate in England and Wales serving whole life order sentences as of June

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<sup>1</sup>[Offender management statistics quarterly - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/offender-management-statistics-quarterly)

2023. This figure has risen steadily over the last decade from 43 individuals in June 2013.<sup>2</sup> Data on the protected characteristics of the whole life order prisoner cohort has been drawn from data published by the Ministry of Justice, obtained from administrative systems and as at end December 2022 when there were 65 prisoners serving a whole life order.<sup>3</sup>

9. Due to the small number of WLOs sentenced each year and difficulties identifying murder cases impacted by the whole life order measures in the Sentencing Bill, we have instead considered the protected characteristics for all those sentenced for murder.

### **Public Sector Equality Duty (PSED) aims**

10. We have considered the above Bill provision in light of our Public Sector Equality Duty obligations. Key considerations are listed below.

#### Direct discrimination

11. We consider that the policy provisions are not directly discriminatory within the meaning of the Equality Act, as they do not treat people less favourably because of their particular protected characteristics and they apply in the same way to all individuals who are in scope, regardless of their protected characteristics.

#### Indirect discrimination

12. These Bill measures will be applied in the same way to all individuals in scope. However, from the data we have on the relevant cohorts, as caveated above and explored in more detail below, we consider that the offenders impacted by this policy (the new duty to impose WLOs) are more likely to be male, to be older, to be White, and to have a recorded religion compared to the wider prison population.
13. We consider that any indirect discrimination, reflecting the demographics of those prisoners who have tended to be sentenced to WLOs as a result of the serious crimes they committed, would be justified and proportionate to achieve the legitimate aim of upholding confidence in the Criminal Justice System.
14. Due to limited available data, the following demographic breakdown is taken from data as at December 2022 and includes 66 prisoners serving WLOs. However, due to the nature of this cohort, there is significant overlap with the prison population as at June 2023.

#### *Age*

15. In 2022, 70% of those sentenced for murder were aged between 18 and 39, with only 9% aged 50 or over, compared with 62% and 17% respectively of all those sentenced in 2022.<sup>4</sup>

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2 Prison Population: 2013, [Offender Management statistics quarterly: January to March 2013 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2013)

<sup>3</sup> Annex A, [Victims and Prisoners Bill Equality Statement \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/108888/victims-and-prisoners-bill-equality-statement)

<sup>4</sup> Excludes companies and those of unknown age. Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022)

16. Overall, the current whole life prisoner cohort tend to be older when compared to the wider prison population. This difference is particularly driven by an over-representation of prisoners aged 50 and above (77% compared to 17% of the wider prison population).<sup>5</sup>

### **Sex**

17. 94% of sentences for murder in 2022 involved male defendants, compared with 78% of all sentences.<sup>6</sup> In comparison, men make up 49% of the general population.<sup>7</sup>

18. Comparing prisoners' sex, and with exact values suppressed due to the small number of prisoners in the WLO cohort, distribution across sex is proportional to that of the wider prison population (with males representing approximately 96% of both).<sup>8</sup>

### *Ethnicity*

19. In 2022, 45% of those convicted of murder were from an ethnic minority group.<sup>9</sup> In the general population, 18% belong to an ethnic minority group.<sup>10</sup>

20. Regarding ethnicity, those whose ethnicity is White (83%) have disproportionately higher representation among those serving a whole life order than that among the wider prison population (72%).<sup>11</sup>

### *Religion*

21. Prisoners with a recorded religion are over-represented in the whole life order cohort (77%) when compared to the overall prison population (69%).

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

22. We do not currently collect data on disabilities reported by prisoners who have been sentenced to whole life orders.

23. Additionally, disability data for offenders across the general prison population is very limited and thus cannot be published.

24. However, the application of this Bill measure will not be based on the characteristic of disability and is unlikely to directly discriminate against those who share this protected characteristic.

### **Harassment and victimisation**

25. We do not consider that this Bill measure will give rise to harassment or victimisation within the meaning of the Equality Act.

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<sup>5</sup> Annex A, [Victims and Prisoners Bill Equality Statement \(publishing.service.gov.uk\)](#)

<sup>6</sup> Excluding companies and those of unknown sex. Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](#)

<sup>7</sup> 2021 Census data, Population and household estimates, England and Wales: Census 2021, unrounded data, 2 November 2022, [Population and household estimates, England and Wales - Office for National Statistics \(ons.gov.uk\)](#)

<sup>8</sup> Annex A, [Victims and Prisoners Bill Equality Statement \(publishing.service.gov.uk\)](#)

<sup>9</sup> Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](#)

<sup>10</sup> 2021 Census data, [Ethnic group, England and Wales - Office for National Statistics \(ons.gov.uk\)](#)

<sup>11</sup> Annex A, [Victims and Prisoners Bill Equality Statement \(publishing.service.gov.uk\)](#)

## **Advancing equality of opportunity and fostering good relations**

26. We have considered whether this Bill measure would have an impact in relation to advancing equality and fostering good relations; no obvious impacts have been identified.

### **Data limitations**

27. There are several areas where data is unavailable for some protected characteristics. Data coverage for sexual orientation, gender reassignment, marital and civil partnership status, disabilities and pregnancy and maternity among prisoners – both in terms of those who will fall under the legislation, and across the overall prison population – is limited, and therefore cannot be published.
28. As a result, we cannot assess the impacts on offenders with these characteristics.

## **Annex A -**

**Table 1 - Demographics of prison population subject to a whole life order (WLO) sentence as compared to the rest of the prison population<sup>12</sup>**

<b>Characteristic<sup>1</sup></b>	<b>Whole life order N = 66</b>	<b>Overall N = 81,806</b>
<b>Median Age (IQR)</b>	55 (50, 64)	35 (28, 45)
<b>Age Group</b>		
15 - 39	7 (12.7%)	51,409 (62.8%)
40 - 49	8 (12.1%)	16,175 (19.8%)
50 - 59	26 (39.4%)	8,655 (10.6%)
60 and over	25 (37.9%)	5,567 (6.8%)
<b>Sex</b>		
Female	≤3 (≤4.5%)	3,107 (3.8%)
Male	≥63 (>95.5%)	78,699 (96.2%)
<b>Ethnicity</b>		
Non-White	11 (16.7%)	23,059 (28.2%)
White	55 (83.3%)	58,747 (71.8%)
<b>Religion</b>		
Religion	51 (77.3%)	56,084 (68.6%)
No Religion	15 (22.7%)	25,446 (31.1%)
Not recorded	0 (0.0%)	276 (0.3%)

<sup>1</sup>Data shown as n(%) unless otherwise noted; Data sourced from [Offender Management Statistics Quarterly](#); **Please note: Counts of ≤3 are suppressed to reduce risk of disclosure.**

Data in table 1 shows the demographic breakdown of the prison population as of December 2022, as well as how the population splits out by those serving WLOs.

1. We have suppressed values where the count of prisoners in any given category is not greater than 3 to reduce the risk of disclosing protected characteristic information about individuals. Where columns add to a set total, we have also adjusted the other values to ensure the count cannot be inferred from other data.
2. Some characteristics have been grouped together to ensure we do not excessively suppress values.

<sup>12</sup> Annex A, [Victims and Prisoners Bill Equality Statement \(publishing.service.gov.uk\)](#)