



## **Crime and Policing Bill – Equalities Impact Assessment**

### **Introduction**

This document records the analysis of measures being introduced by the Ministry of Justice (MoJ) in the Crime and Policing Bill to fulfil the requirements placed on them by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010 (the EA).

The measures covered in this Equalities Impact Assessment (EIA) will:

- (a) Introduce a new offence of administering etc. harmful substances (including by spiking);
- (b) Introduce a broader offence for encouraging or assisting serious self-harm;
- (c) Introduce new offences of "taking" an intimate image without consent, and installing, adapting, preparing or maintaining equipment with the intention of enabling the commission of one of these offences;
- (d) Replace the offence of sexual penetration of a corpse with a broader offence of sexual activity with a corpse;
- (e) Expand the scope of the existing offence of exposure;
- (f) Amend the existing offences of sexual activity in the presence of a child or person with a mental disorder;
- (g) Criminalise the detention of a child outside the UK without the appropriate consent;
- (h) Ensure that the terrorism sentence with a fixed licence period in Northern Ireland is handed down consistently with the equivalent sentence in England and Wales;
- (i) Extend the criteria for polygraph testing;
- (j) Add the offence of breaching a foreign travel restriction order (FTRO) to the terrorism sentencing, release and management regime;
- (k) Introduce a new requirement for offenders serving community and suspended sentences to notify probation/Youth Offending Teams of changes to their names or personal contact information;
- (l) Repeal section 22A of the Magistrates' Court Act 1980 in relation to shoplifting.

## **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:
  - a. Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
  - b. Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
  - c. Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
  
- In line with our responsibilities under the EA, the Department has considered the “protected characteristics” – namely race, sex, disability, sexual orientation, religion and belief, age, gender reassignment, pregnancy, and maternity. Although the Department is not required by the PSED to consider ‘marriage or civil partnership’ the Department has included it in our analysis where particularly relevant.
  
- The Department’s assessment is that all of the proposals (taking an intimate image without consent, encouraging or assisting serious self-harm, sexual activity with a corpse, sexual activity in the presence of a child or person with a mental disorder, exposure, spiking, child abduction, community and suspended sentences notification details, polygraph testing, adding the offence to terrorism sentencing, extending the length of terrorism sentence with fixed licence period: Northern Ireland, and retail crime) are neither directly nor indirectly discriminatory within the meaning of the Equality Act 2010. They apply in the same way to all individuals and do not treat people less favourably because of their protected characteristics. Where they potentially put those with a protected characteristic at a particular disadvantage compared to those without, this is a proportionate means of achieving a legitimate aim.

# **Intimate Images**

## **Introduction**

- The taking of intimate images without consent is highly intrusive, humiliating and distressing. It is important that our legal framework deals effectively with this behaviour, so that victims have the protection they deserve.
- The behaviour targeted is the intentional taking of an intimate photograph or film of a person without their consent, whether by the use of hidden means (e.g., spy cameras) where the victim is unaware, or where the victim is aware their image has been taken. In addition, the Department is targeting those who install, adapt, prepare, or maintain equipment with the intention of enabling either themselves or someone else to take an intimate image without consent.
- Some of the behaviour of taking of an intimate image without consent may in certain circumstances already be caught by existing offences, for example by the voyeurism offence at section 67(3) of the Sexual Offences Act 2003 (the 2003 Act), but there are several limitations with the application of these offences.
- The Law Commission, in their July 2022 Report, *Intimate Image Abuse* (the 2022 Report), recommended a package of offences to update the laws relating to taking and sharing intimate images without consent. The new offences in this Bill will strengthen the law in relation to the taking of intimate images without consent and the installation of equipment to do so. Sharing offences were previously introduced via the Online Safety Act 2023.

## **Policy summary**

- The Department intends to introduce further provisions in the Crime and Policing Bill, largely based on the Law Commission's recommendations to tackle the taking and recording of intimate images without consent and related behaviour. The Bill will insert three new criminal offences into the 2003 Act to criminalise the non-consensual taking or recording of an intimate image and provisions to criminalise someone who installs, adapts, prepares or maintains equipment and does so with the intent of enabling themselves or another to commit one of the three offences of taking or recording an intimate image without consent. The Bill will also make some changes to the sharing offences inserted into the 2003 Act by the Online Safety Act 2023 to ensure effectiveness and consistency across the full range of intimate image offences. These will extend to and apply in England and Wales.

## **Methodology and data analysis**

- As a result of rapidly developing technological advancements, deeply intimate or sexual images can now easily be taken non-consensually with new discreet filming or recording devices, including mobile phones and easily hidden or concealed digital image recording devices.

- The 2022 Report highlighted that the scale of sharing digital images in general is huge, with research suggesting that in 2021, 240,000 photos were shared on Facebook and two million on Snapchat every minute.
- The problem of abuse appears to be growing with the Revenge Porn Helpline receiving 19,000 reports of non-consensual intimate image sharing in 2023 (a 106% increase since 2022 and a tenfold increase in five years).
- The non-consensual taking of intimate photographs or films can cause great distress to any victim and is a significant and upsetting invasion of personal privacy. Whilst the law is equipped in many cases to deal with such behaviour, for example under offences that deal with voyeurism and “upskirting” (sections 67 and 67A of the Sexual Offences Act 2003), the Law Commission’s review identified several limitations with the application of these offences. These offences do not for example capture the full range of perpetrator motivations.
- The existing law in this sensitive area consists of a “patchwork” of criminal offences created in response to developments in IT and offending methods. A modern and consistent set of offences is needed to ensure the law is fully able to deal with this behaviour and that victims have both the protection they deserve and confidence in the law when coming forward to report such abuse.

## Age

- Within this process the Department has considered the impact the creation of new offences may have on young people. The Department is alive to concerns about the impact of intimate image abuse on children, both as perpetrators and victims, and the risk of discriminating against them through this legislation. A series of Freedom of Information requests, submitted by the media literacy charity The Student View, revealed that thirty-six police forces in England and Wales collectively received reports relating to 541 child victims of the disclosure of private sexual images without consent. A further 360 children and young people were revealed to be suspects, suggesting that children are often being victimised by other children.<sup>1,2</sup>
- In terms of the age groups of the victims of intimate image offending, the year after the disclosure offence was introduced in England and Wales, 36% of victims were 19 or younger and 39% were between 20 and 29.<sup>3</sup> Additionally, in the Cyber Civil Rights Initiative’s survey, 27% of individuals whose private sexual images were shared without consent were between 18 and 22 years old.<sup>4,5</sup>

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<sup>1</sup> Intimate Image Abuse: A consultation paper (2021) Law Commission Consultation Paper No 253, para 2.75.

<sup>2</sup> Caitlin Webb and Sally Weale, “More than 500 child victims of ‘revenge porn’ in England and Wales last year” (9 October 2020) The Guardian, <https://www.theguardian.com/society/2020/oct/09/more-than-500-child-victims-of-revenge-porn-in-england-and-wales-last-year>

<sup>3</sup> Peter Sherlock, “Revenge pornography victims as young as 11, investigation finds” (27 April 2016) BBC News, <https://www.bbc.co.uk/news/uk-england-3605427>.

<sup>4</sup> Cyber Civil Rights Initiative, “End Revenge Porn: A Campaign of the Cyber Civil Rights Initiative”, <https://www.cybercivilrights.org/wp-content/uploads/2014/12/RPStatistics.pdf>

<sup>5</sup> Intimate Image Abuse: A consultation paper (2021) Law Commission Consultation Paper No 253, para 5.103.

- In particular, the Department recognises the risks of over-criminalising young people who naively engage in intimate image abuse as a joke, due to peer pressure, or without fully understanding the implications of sexual harm, which may mean that these offences risk having a disproportionate impact on children and young people. These concerns are most acute with acts of sharing, but also apply with acts of taking or installing. However, the Department has seen in the 2022 Report sufficient evidence of the serious harm caused to victims by this behaviour, and the prevalence of intimate image abuse among children, that the Department continues to believe the offences should apply regardless of age. The youth justice system is designed to mitigate the risks associated with children engaging with the criminal justice system.

### **Race**

- The Law Commission’s initial consultation paper also noted that women and minority groups are most often the targets of intimate image abuse and that this could result in their subordination and marginalisation becoming further entrenched in society.

### **Age**

- Both women and men could be the victims of the behaviour targeted by the offences, but the Department predicts that the majority of victims will be women. The Revenge Porn Helpline for example reported that, in 2021, 75% of calls received were from women victims, with the perpetrators reported by them as predominantly male.
- The offences are based on the conduct and intent of the perpetrator and not on gender (or any other protected characteristic). However, evidence indicates that intimate image abuse is most often (though not always) perpetrated by men against women. It is therefore likely that new offences will indirectly have a greater positive impact on women who are more likely than men to be victims of this behaviour.
- Whilst men are more likely to be the perpetrators of these new offences and will therefore be indirectly impacted to a greater degree, the Department does not consider that the provisions will amount to unlawful indirect discrimination. This behaviour is harmful regardless of the gender of the perpetrator or victim. The offences themselves are similarly gender neutral, and the Department therefore believes the measures, applying equally to male and female perpetrators are an appropriate means of achieving the legitimate aim of protecting victims from criminal behaviour.

### **Sexual orientation**

- The Law Commission’s initial consultation paper noted that for LGBTQ people the abuse of intimate images, for example the disclosure or threat to disclose, could have particularly severe consequences, especially if the victim felt unable to be “out” with their family, friends, or community.

### **Other protected characteristics**

- The Department is currently not able to identify the likely impacts of this policy on the other protected characteristics of age, disability, gender reassignment, marriage, and

civil partnership, pregnancy and maternity, religion, or belief. This is due to the lack of data for the cohort of defendants and potential victims likely to be affected.

## **Eliminating unlawful discrimination, harassment, etc.**

### **Direct Discrimination**

- Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. The offences will apply to all perpetrators and victims, regardless of their protected characteristics. As a result, this measure does not involve direct discrimination within the meaning of the EA because it does not treat people unfavourably due to their protected characteristics.

### **Indirect Discrimination**

- 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. The Department's initial assessment is that these changes are not indirectly discriminatory within the meaning of the EA as explained below.
- Both women and men could be the victims and perpetrators of the behaviour targeted by the offences, but the Department predicts that the majority of victims will be women and the majority of perpetrators will be men.
- The Revenge Porn Helpline for example reported that, in 2022, 78% of all voyeurism calls received were from female victims, compared to 17% male victims. The victim was also female in 71% calls relating to intimate images shared without consent, with over 81% perpetrators reported to be male (The Revenge Porn Helpline Annual Report 2023).
- The Law Commission's initial consultation paper (Intimate Image Abuse - A consultation paper, 26 Feb 2021), also noted that that women and minority groups are most often the targets of intimate image abuse and that this could result in their subordination and marginalisation becoming further entrenched in society.
- In addition, it highlighted that for LGBTQ people the abuse of intimate images, for example the disclosure or threat to disclose, could have particularly severe consequences, especially if the victim felt unable to be "out" with their family, friends, or community.
- Given that women may be more likely than men to be victims of this behaviour, it is therefore likely that new offences will have a greater positive impact on women. In turn, given that men are more likely than women to be the perpetrators of these new offences, it is therefore likely that new offences will have a greater negative impact on men, through convictions under the new offences. This potentially puts men at a particular disadvantage.

- However, the Department does not consider that the provisions will amount to unlawful indirect discrimination. This behaviour is harmful regardless of the gender of the perpetrator or victim. These measures are a proportionate means of achieving the legitimate aim of protecting victims from this behaviour.
- Within this process the Department has considered the impact the new offences may have on young people. The Department is alive to concerns about the impact of intimate image abuse on children, both as perpetrators and victims, and the risk of discriminating against them through this legislation. The Department recognises the risks of over-criminalising young people who naively engage in intimate image abuse as a joke, due to peer pressure, or without fully understanding the implications of sexual harm, which may mean that these offences risk having a disproportionate impact on children and young people. These concerns are most acute with acts of sharing but also apply with acts of taking or installing. However, there is sufficient evidence in the Law Commission's 2022 Report *Intimate Image Abuse* of the serious harm caused to victims by this behaviour, and the prevalence of intimate image abuse among children. The Department therefore believes the offences should apply regardless of age. The youth justice system is designed to mitigate the risks associated with children engaging with the criminal justice system.

### **Disability and the duty to make reasonable adjustments**

- The Department does not consider that the proposed changes will result in any discrimination in relation to disability for perpetrators and victims. The Department will continue to make reasonable adjustments for perpetrators and victims with disabilities.

### **Advancing Equality of Opportunity**

- The Department does not believe that these measures specifically advance the equality of opportunity for people with protected characteristics, but the creation of these offences aims to protect people from this harmful behaviour and should have a positive impact on them.

### **Fostering Good Relations**

- The Department does not consider that these proposals would have any significant impact on the achievement of this objective.

# **Encouraging or assisting serious self-harm**

## **Introduction**

- Encouragement of suicide or self-harm falling short of suicide is a matter of great concern. It is already an offence, under the Suicide Act 1961, to do an act capable of encouraging or assisting another person to take, or attempt to take, their own life with the intent that they should do so. In their Modernising Communications Offences report, published in July 2021, the Law Commission considered how the criminal law might best tackle encouragement of self-harm.<sup>6</sup> Recognising that any criminal law solution in this complex area must be properly constrained to avoid criminalising vulnerable people who share their experiences of self-harm or those offering them support, the Commission recommended a narrow offence, modelled largely on the Suicide Act offence, that targets the deliberate encouragement or assistance of serious self-harm.

## **Policy summary**

- The Online Safety Act 2023 gave partial effect to the Law Commission recommendation by introducing a new offence of encouraging or assisting serious self-harm by means of verbal or electronic communications, publications, or correspondence (“the communications offence”).
- To give full effect to the recommendation, the Crime and Policing Bill will repeal the communications offence (in relation to England and Wales) and replace it with a broader offence that covers encouraging or assisting serious self-harm both by means of communication, and in any other way, including, for example, direct assistance such as providing bladed articles with which to self-harm (“the broader offence”). The broader offence will be consistent in this regard with the Suicide Act 1961 offence which is not limited to encouraging or assisting suicide by means of communication.

## **Methodology and data analysis**

- In assessing the equalities impacts on defendants, the most comparable offence to this provision is the communications offence under the Online Safety Act. However, there is no available data on this offence, as it only came into effect on 31 January 2024. The existing offence of ‘intentionally doing an act capable of encouraging or assisting suicide or attempted suicide of another’ under section 2 of the Suicide Act 1961 serves as a proxy for the broader offence. However, due to the limited number of cases, it is not possible to derive equalities trends from it. To assess potential equalities impacts, the Department has therefore used coercive and controlling behaviour (‘CCB’) as the next best available proxy. While it is not a particularly close match, there are similar characteristics in the offending behaviour.
- The Department’s analysis also illustrates the general prevalence of self-harm to demonstrate the potential impact of the broader offence on victims. While there is some evidence on the prevalence of self-harm, accurately estimating it remains challenging

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<sup>6</sup> [Reform of the Communications Offences - Law Commission](#)



due to underreporting. Additionally, collecting evidence on individuals who have been encouraged or assisted to self-harm, and therefore assessing the impact of this broader offence on protected characteristics, is also difficult.

### Sources of information

- The main source of information used for analysis on defendant equalities impacts is the MoJ's Criminal Court Statistics Quarterly – Accredited Official Statistics and our analysis is based on the most recent data available up to June 2023. The latest census with detailed ethnicity statistics in the UK is the 2021 Census, which was published in December 2022. Detailed data on Crown Court and Magistrates' outcomes is only available for three of the nine protected characteristics – age, sex, and race. Due to limitations in data collection, the Department is not currently able to identify the likely impacts of this policy on other protected characteristics.
- The Department's analysis of the impact on victims is based on data from recent studies on the prevalence and risk factors associated with self-harm, with sources provided in the footnotes.

### Availability of data

- Data is presented where known, therefore where an individual's sex, ethnicity, or age is not stated or unknown, they are omitted from analysis.

### Sex

- When looking into cases proceeded against in relation to CCB there is a significantly higher proportion of male defendants to females. Of the 826 cases proceeded against in the year ending 2023, 93.8% were male defendants and 2.5% female.
- In relation to the impact on victims, one study of the prevalence of self-reported non-suicidal self-harm (NSSH) from 2000-2014<sup>7</sup> found increases in prevalence in both sexes and across age groups, most notably in women and girls aged 16-24. Male participants and those aged 16-34 years were less likely to have contact with health services than were female participants and older people. Similarly, a recent study on young people aged 13 to 15 reported that prevalence was greater among girls (22.7%) than boys (8.5%); the figures for those aged 17 to 19 were 21.5% for girls and 9.7% for boys.<sup>8</sup>

### Race

- Across England and Wales, the proportion of white individuals that make up the majority of the population is at 81.7%. In relation to CCB, where ethnicity was known, the proportion of white defendants proceeded against was the greatest, at 66.59%. The proportion of those from other ethnic backgrounds who were proceeded against is relatively similar to their representation in the general population of England and Wales. For instance, Asian individuals make up 6.17% of those proceeded against, compared to 9.3% of the total population. Asian people as a proportion of those proceeded against

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<sup>7</sup> [Prevalence of non-suicidal self-harm and service contact in England, 2000-14: repeated cross-sectional surveys of the general population - PubMed](#)

<sup>8</sup> [Context | Self-harm: assessment, management and preventing recurrence | Guidance | NICE](#)

(6.17%) relative to the total population (9.3%). Similarly, Black individuals constitute 3.6% of defendants and 4% of the population, while those that identify as 'other' account for 1.08% of defendants and 2.1% of the population). Additionally, individuals identifying as mixed represented 2.07% of defendants and 2.9% of the population.

- In relation to the potential impact on victims of the broader offence, a recent study on the prevalence of self-harm on young people aged 13 to 15 reported that prevalence was more than twice as prevalent in white children (16.5%) compared to South Asian (6.9%) or Black children (7.6%).<sup>9</sup>

## **Age**

- In relation to those proceeded against in relation to CCB, adult age groups make up the highest proportion at 65.6%. Young adults made up 3.75% and children represented 0.4% of those proceeded against.
- When looking at potential victims of the encouragement or assistance of self-harm, the prevalence of self-harm is difficult to estimate as it is often unreported. Self-harm can occur at any age, but a recent national study reported that 7.3% of girls aged 11 to 16, and 3.6% of boys aged 11 to 16, had self-harmed or attempted suicide at some point. The figures for those aged 17 to 19 were 21.5% for girls and 9.7% for boys. There is increasing evidence of links between internet usage and self-harm, with one study finding that, among self-harm hospital presentations, the prevalence of suicide and self-harm related internet use was 8.4% among adults and 26% among children and adolescents.

## **Other protected characteristics**

- The Department is currently not able to identify the likely impacts of this policy on the other protected characteristics of disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, or sexual orientation. This is due to the lack of data for the cohort of defendants and potential victims likely to be affected.

## **Eliminating unlawful discrimination, harassment, etc.**

### **Direct Discrimination**

- The Department assesses that the broader offence will not be directly discriminatory within the meaning of the Equality Act 2010. It will apply in the same way to all perpetrators and victims. The new offence is not considered to result in people being treated less favourably because of their protected characteristics.

### **Indirect Discrimination**

- As indicated above, evidence suggests that younger people, particularly young women, are more likely to self-harm. Moreover, there is evidence that self-harm is more

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<sup>9</sup> [Exploring gender differences in risk factors for self-harm in adolescents using data from the Millennium Cohort Study - ScienceDirect](#)

prevalent amongst white children. However, evidence of the prevalence of self-harm amongst those with other protected characteristics is less clear and it is difficult to estimate the specific impact of the broader offence on particular groups. It is possible that women are more likely than men to be victims of this behaviour and therefore the broader offence may have a greater positive impact on women.

- Conversely, the Department knows that, in general, men commit more offences than women<sup>10</sup>, which is further evidenced by the higher proportion of male individuals proceeded against for CCB. Men are therefore more likely to be disproportionately impacted as offenders. To the extent that men (or those with any other protected characteristic) are particularly disadvantaged by this broader offence, the Department does not consider that this will amount to unlawful indirect discrimination. It is a proportionate means of achieving the legitimate aim of protecting vulnerable people from deliberate encouragement to self-harm.

### **Disability and the duty to make reasonable adjustments**

- The Department does not consider that the proposed changes will result in any discrimination in relation to disability for perpetrators and victims. The Department will continue to make reasonable adjustments for perpetrators and victims with disabilities.

### **Advancing Equality of Opportunity**

- Both perpetrators and victims of the broader offence could be people with any of the protected characteristics. The broader offence of encouraging or assisting serious self-harm would not specifically advance the equality of opportunity for particular groups. However, the creation of the broader offence aims to protect all people (regardless of their protected characteristics) from this harmful behaviour and should positively impact them.

### **Fostering Good Relations**

- The Department does not consider that the broader offence would have any significant impact on the achievement of this objective. The policy rationale behind this change is to ensure that the criminal law is adequately equipped to protect individuals from those who intend to encourage or assist another person to seriously self-harm. It aims to bring to justice those who intentionally encourage or assist others in self-harming, while ensuring that vulnerable individuals who have experienced self-harm are not disproportionately affected. The Department therefore believe that this policy will positively impact victims and deter the encouragement and assistance of self-harm both online and more broadly. Consequently, the Department anticipates that it will enhance public confidence in the criminal justice system and reinforce the perception that these matters are taken seriously.

## **Sexual Activity with a Corpse**

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<sup>10</sup> [Women and the Criminal Justice System 2021 - GOV.UK](#)

## Introduction

- Section 70 of the Sexual Offences Act 2003 criminalises the ‘sexual penetration of a corpse’, with a maximum penalty of two years imprisonment. It does not criminalise any other sexual activity with a corpse. Given the impact that both penetrative and non-penetrative activity with a corpse can have on the family of the deceased, the Department intends to replace the existing offence with a broader offence of ‘sexual activity with a corpse.’ This will (i) raise the maximum penalty of penetrative activity to 7 years’ imprisonment; and (ii) expand the criminal law to capture non-penetrative sexual touching with a corpse.

## Policy summary

- These provisions replace the existing offence at section 70 of the Sexual Offences Act 2003 with a broader offence of ‘sexual activity with a corpse’ with a maximum penalty of 7 years’ imprisonment where the offence involved penetration and capturing non-penetrative sexual touching with a corpse within the criminal law.

## Methodology and data analysis

- In 2021, following the arrest and conviction of David Fuller for the murder of two young women and shocking sexual offences, several campaigners including the victims’ families (supported by Centre for Women’s Justice), MPs and other members of the public have put forward the view that 2 year- maximum penalty for the section 70 (‘sexual penetration of a corpse’) does not adequately reflect the harm inflicted on the families of the deceased.
- In response to this, the then Secretary of State for Justice committed to looking at whether the maximum penalty for section 70 was appropriate.
- In addition to this work an independent inquiry commissioned by the then Health Secretary is currently underway to investigate Mr Fuller’s offending, focusing on events which took place in mortuaries in Kent. On 28 November 2023, the independent inquiry published Phase 1 report which stated that the victims’ families considered the sentence that Fuller received was too lenient. Since then, an interim report on Phase 2 has been published, and a final report to be published in 2025.
- This is an extremely rare offence. In 2022, there were twelve convictions. Section 70 was the principal offence in only two of the convictions; the remaining ten were for other serious offences, with s70 included as one count. There are no new cases reported in 2023. The lack of cases and available sentencing remarks means that there is limited data and evidence available on this offence and can also be difficult to draw comparisons with other offences.

## Age

- From the evidence above, the Department has identified the likely impact of this policy on the protected characteristics of age in that it targets any age.

## **Sex**

- From the evidence above, the Department has identified the likely impacts of this policy on the protected characteristic of sex in that it targets mainly women based on the victims who have been affected. However, the Department has no reliable data to determine what these impacts will be but the Department will continue to monitor as the policy evolves.

## **Other protected characteristics**

- The Department is currently not able to identify the likely impacts of this policy on the other protected characteristics of disability, gender reassignment, marriage, and civil partnership, pregnancy and maternity, religion or belief, or sexual orientation. This is due to the lack of data for the cohort of defendants and potential victims likely to be affected.

## **Eliminating unlawful discrimination, harassment, etc.**

### **Direct discrimination**

- The replacement offence will apply to all perpetrators, regardless of their protected characteristics. As a result, this measure does not involve direct discrimination within the meaning of the 2010 Act because it does not treat people unfavourably due to their protected characteristics.

### **Indirect discrimination**

- Indirect discrimination arises where a policy, practice or provision is applied in the same way for everyone but results in those who share a protected characteristic suffering a particular disadvantage when compared with those who do not share the protected characteristic.
- The Department has however considered that men are more likely to be the perpetrators of this conduct and will therefore be more likely to be particularly disadvantaged through convictions under the new offence. Engaging in sexual activity with a corpse is harmful to both the family of the deceased and wider society and the Department therefore considers that the measure is a proportionate means of achieving the legitimate aim of protecting the dignity of deceased persons and preventing harm to their families and wider society.

## **Disability and the duty to make reasonable adjustments**

- The Department does not consider that the proposed changes will result in any discrimination in relation to disability for perpetrators. The Department will continue to make reasonable adjustments for perpetrators with disabilities.

## **Advancing Equality of Opportunity**

- The Department do not believe that these measures specifically advance the equality of opportunity for people with protected characteristics, but the creation of these offences aims to protect people from this harmful behaviour.

## **Fostering Good Relations**

- The Department does not consider that these proposals would have any significant impact on the achievement of this objective.

## **Expanding the scope of offences related to sexual activity in the presence of a child or a person with mental disorder**

### **Introduction**

- The Department is amending the criminal law to capture a broader range of culpable behaviour where a person engages in sexual activity in the presence of a child or a person with a mental disorder.
- The Sexual Offences Act 2003 (SOA 2003) contains a range of offences (sections 11, 18, 32, 36 and 40) that capture a range of situations where a person (A) intentionally engages in sexual activity and for the purpose of obtaining sexual gratification, they do so in the presence of a child or a person with a mental disorder (B) or in a place from which they can be observed by B, knowing or believing that B is aware of the activity, or intending that B should be aware of the activity.
- The Department has introduced provisions to amend these offences to remove the requirement for A to know or believe that B is aware, or intend that B should be aware, of the activity, and ensure that intentional sexual activity in the presence or observation of a child or person with mental disorder for the purpose of obtaining sexual gratification is an offence, regardless of whether A knows or believes that B is aware, or intends that B should be aware, that A is engaging in the activity.
- These reforms are a direct response to concerns expressed by the police and the Crown Prosecution Service who have made us aware of difficulties in prosecuting a number of cases involving this harmful type of sexually motivated behaviour where it was not clear that the perpetrator knew, believed, or intended that the child or mentally disordered person was aware of the sexual activity.

### **Policy summary**

- The offences will continue to extend to and apply in England and Wales. The policy change will ensure that where a person engages in sexual activity in the presence or observation of a child or a person with mental disorder for the purpose of obtaining sexual gratification regardless of whether the person knows or believes that the victim is aware or intends that the victim should be aware that the person is engaging in the activity.

### **Methodology and data analysis**

- A National Police Chiefs' Council (NPCC) representative, the Crown Prosecution Service (CPS), and Devon & Cornwall Police raised concerns specifically in relation to the scope of section 11 of the SOA 2003 ('engaging in the sexual activity in the presence of a child') to the Home Office and Ministry of Justice.
- The requirement in section 11(1)(c)(ii) that A know or believe that B is aware, or intend that B should be aware, that A is engaging in the activity, has led to difficulties in a small number of cases where there was insufficient evidence that A had the requisite knowledge, belief or intent. This has led to concerns that police are unable to appropriately deal with some individuals who pose a sexual risk to children due to the specific nature of their harmful activity not being covered by the existing legislation.

- As set out above, each of the offences currently require the Prosecution to prove that A acted knowing or believing that B was aware, or intending that B should be aware, that A was engaging in sexual activity. Therefore, where this cannot be proved the offence will not be made out. One example that was provided included a scenario involving a child who appeared to be asleep when the suspect began to masturbate whilst standing next to the child's bed; the suspect was not prosecuted however as they ceased their activity when the child stirred, indicating they were conscious, which suggested that the perpetrator did not have the necessary knowledge, belief or intent around the child's awareness.
- After further consideration, the same concerns were raised regarding the intent elements of sections 18, 32, 36 and 40 of the SOA 2003, which also needed to be revised to capture the additional culpable behaviour.
- The Department agreed that sections 11, 18, 32, 36 and 40 of the SOA 2003 needed to be amended to capture the circumstances where a person intentionally engages in sexual activity in the presence of a child or a person with mental disorder for the purpose of sexual gratification but where they do so without the knowledge or belief that the child or person with mental disorder is aware of the activity, or an intent that they should be aware.

### **Age**

- From the evidence, the Department can identify the impacts of this policy on the protected characteristic of age can affect both children and adults with a mental disorder. The police have identified cases of where this has affected children and, therefore, the Department believes this policy can affect both adults and children. The Department does not currently have data on adult cases.

### **Disability**

- This offence will impact children and persons with a mental disorder which means there will likely have an impact of this policy on the protected characteristic of disability, however, there is a lack of data available.

### **Other protected characteristics**

- The Department is currently not able to identify the likely impacts of this policy on the other protected characteristics of gender reassignment, marriage, and civil partnership, pregnancy and maternity, religion or belief, race, sex, or sexual orientation. This is due to the lack of data for the cohort of defendants and potential victims likely to be affected.

### **Eliminating unlawful discrimination, harassment, etc.**

#### **Direct Discrimination**

- The Department assesses that the offences will not be directly discriminatory against anyone within the meaning of the Equality Act 2010. They will apply in the same way to all perpetrators and victims. The new offences are not considered to result in people being treated less favourably because of their protected characteristics.



## **Indirect Discrimination**

- Indirect discrimination arises where a policy, practice or provision is applied in the same way for everyone but results in those who share a protected characteristic suffering a particular disadvantage when compared with those who do not share the protected characteristic.
- The Department knows that, in general, men commit more sexual offences than women. Therefore, men may be more likely to be the perpetrators of these new offences and may therefore be more likely to be negatively impacted through convictions under the new offences, potentially putting them at a particular disadvantage.
- However, the Department does not consider that the provisions will amount to unlawful indirect discrimination. This behaviour is harmful regardless of the gender of the perpetrator, and the Department therefore believes the measures, applying equally to male and female perpetrators are an appropriate and proportionate means of achieving the legitimate aim of protecting vulnerable groups of people.
- As children and adults with mental disorders are the victims of these offences, the protected characteristics of age and disability will be particularly impacted in a positive way.
- The Department believes that, though this is a small change to the law, it will increase protection for people with those protected characteristics.

## **Advancing Equality of Opportunity**

- As set out above, perpetrators could be people with any of the protected characteristics, but the Department thinks it likely that the majority of the perpetrators of this behaviour will be men. The Department does not believe that these measures specifically advance the equality of opportunity for particular groups, but the creation of these offences aims to protect people from this harmful behaviour.

## **Fostering Good rRelations**

- The Department does not consider that these proposals would have any significant impact on the achievement of this objective.

## **Exposure**

### **Introduction**

- The Department is amending the exposure offence at Section 66 of the Sexual Offences Act 2003 (“2003 Act”) to criminalise those who expose their genitals with the intent to cause the victim humiliation, or where they are acting for the purpose of obtaining sexual gratification whilst being reckless as to whether the person who sees their genitals will be caused alarm, distress or humiliation. Currently, a person only commits this offence if they intentionally expose their genitals and intend that someone will see them and be caused alarm or distress.
- This amendment is being made to align the elements of the offence more closely with Section 66A of the 2003 Act, the offence of “sending etc. photograph or film of genitals” (colloquially known as the “cyberflashing offence”). The creation of this offence followed recommendations made by the Law Commission in their review ‘Modernising Communications Offences.’
- Unlike the Section 66 offence, Section 66A criminalises those that send or give a photograph or film of any person’s genitals and intend that the recipient will see the genitals and be caused alarm, distress or humiliation, or sends or gives a photograph or film for the purpose of obtaining sexual gratification and is reckless as to whether the recipient will be caused alarm, distress or humiliation.
- Adding these additional elements to offence at section 66 would ensure consistency between these analogous offences and strengthen protection for those subjected to this behaviour.

### **Policy summary**

- The expanded offence will extend Section 66 of the 2003 Act to make it a criminal offence where someone intentionally exposes their genitals, and they intend that someone will see them and be caused alarm, distress or humiliation, or where someone exposes their genitals for the purpose of obtaining sexual gratification and does so with the intention that someone will see them, and is reckless as to whether someone who sees them will be caused alarm, distress or humiliation.
- Currently, the offence only captures those who intentionally expose their genitals and intend that someone will see them and be caused alarm or distress. This will make for consistent law, give more people subject to this behaviour protection under the 2003 Act, and ensure that notification requirements can apply in such cases.

### **Methodology and data analysis**

- The exposure offence is set out at Section 66 of the Sexual Offences Act 2003.
- Research shows that the offending behaviour may have a serious impact on those who witness it, and that some men commit this offence as part of wider pattern of sexual offending, some of which is very serious. Research amongst those convicted of serious sex

offences suggests that many had committed “nuisance” offences such as exposing or voyeurism.<sup>11</sup>

- In July 2021, the Law Commission published Modernising Communications Offences: a final report.<sup>12</sup> Chapter 6 of that Report focuses on cyberflashing and includes the Law Commission’s recommendation that a new criminal offence be implemented to address the behaviour.
- The Law Commission recommended that the new offence have two alternative specific intent elements:
  - a. A intended that B would see the photograph or film and be caused alarm, distress, or humiliation, or
  - b. A sent the photograph or film for the purpose of obtaining sexual gratification and was reckless as to whether B would be caused alarm, distress, or humiliation.
- These differ from the mental element of the existing section (exposure) 66 offence, which requires that the exposure be done with the intent that someone will see the genitals and be caused alarm or distress. Much of the evidence presented to the Law Commission during their consultation opposed adopting the section 66 standard for the new cyberflashing offence, on the basis that it was too narrow and did not capture cases of exposure for the purpose of sexual gratification, or exposure with intent to humiliate.
- The then Government accepted the Law Commission’s recommendation as to the mental element for the new cyberflashing offence (including the recommendation regarding the offence’s mental elements) and implemented it by creating the new offence at Section 66A of the 2003 Act.
- The result is that there are two offences in the 2003 Act– sections 66 and 66A - covering very similar behaviour (carried out in different ways), but which have different mental elements.
- As a matter of law, where a person exposes their genitals to another with the intent to humiliate, or for the purpose of obtaining sexual gratification, and does not also have an intent to cause alarm or distress, this is not captured by section 66.
- Much of the evidence submitted to the Law Commission pointed out that sexual gratification is one of the key drivers of exposure behaviour. Currently, acting (only) with the intent of obtaining sexual gratification is insufficient and this is reflected in the Crown Prosecution Service (the CPS) guidance which states: “If the purpose in exposing their genitals is to obtain sexual gratification this is not sufficient, and an offence of outraging public decency should be considered.”<sup>13</sup>

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<sup>11</sup> Abel, Mittelman and Becker in Clinical Criminology: the assessment and treatment of criminal behaviour: Ben-Aron et al, Toronto

<sup>12</sup> [Modernising Communications Offences: A final report \(2021\)](#)

<sup>13</sup> [Public Order Offences incorporating the Charging Standard | The Crown Prosecution Service](#)

- The Law Commission was provided with evidence and examples of where cyberflashing was done with the intent to cause (and where it did cause) humiliation, as distinct from alarm or distress. It is reasonable to assume that this sort of intent is likely present in many cases of in-person exposure as well.

## **Age**

- ONS data regarding the age of victims and perpetrators in exposure cases only covers those over 16, thus limiting the available evidence relating to age. Overcriminalisation of young people was a direct concern during the Law Commission's consultation into cyberflashing<sup>14</sup>. However, the Department has not seen any evidence to suggest that this is the case for the in person section 66 offence.

## **Sex**

- Research suggests that the majority of victims of this crime are women and that the majority of the perpetrators are men,<sup>15</sup> although the Department is aware that both men and women can be both victims and perpetrators in exposure cases.

## **Other protected characteristics**

- The Department is currently not able to identify the likely impacts of this policy on the other protected characteristics of age, gender reassignment, marriage, and civil partnership, pregnancy and maternity, religion or belief, race, sex, or sexual orientation. This is due to the lack of data for the cohort of defendants and potential victims likely to be affected.

## **Eliminating unlawful discrimination, harassment, etc.**

### **Direct Discrimination**

- The Department assesses that the amended offence will not be directly discriminatory within the meaning of the Equality Act 2010. It will apply in the same way to all perpetrators and victims. The new offence is not considered to result in people being treated less favourably because of their protected characteristics.

### **Indirect Discrimination**

- Indirect discrimination arises where a policy, practice or provision is applied in the same way for everyone but results in those who share a protected characteristic suffering a particular disadvantage when compared with those who do not share the protected characteristic.

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<sup>14</sup> [Modernising Communications Offences: A final report \(2021\) Law Commission Report No 399](#)

<sup>15</sup> [An evidence review of the connections between sexual exposure and contact sexual offending \(2024\) College of Policing Report Dr Fiona Vera-Gray, Professor Clare McGlynn](#)

- Whilst the new policy will apply to all perpetrators and victims, the available data suggests that the vast majority of charges under Section 66 of the 2003 Act have been levelled against men. For example, Metropolitan Police data shows that between 2010 - 2020 98.4% of 2,121 people charged for exposure were men.<sup>16</sup> Therefore, men are more likely to be the perpetrators of the amended offence and will therefore be more likely to be particularly disadvantaged through convictions under the amended offence.
- However, the Department does not consider that the provisions will amount to unlawful indirect discrimination. This behaviour is harmful regardless of the gender of the perpetrator or victim, and the Department therefore believes the measures, applying equally to male and female perpetrators are an appropriate and proportionate means of achieving the legitimate aim of protecting victims from this behaviour.

### **Disability and the duty to make reasonable adjustments**

- The Department does not consider that the proposed changes will result in any discrimination in relation to disability for perpetrators and victims. The Department will continue to make reasonable adjustments for perpetrators and victims with disabilities.

### **Advancing Equality of Opportunity**

- Both perpetrators and victims could be people with any of the protected characteristics, but in the main the perpetrators of the behaviour targeted are likely to be men. The Department does not believe that these measures specifically advance the equality of opportunity for particular groups, but the creation of these offences aims to protect people from this harmful behaviour and should have a positive impact on them.

### **Fostering Good Relations**

- The Department does not consider that these proposals would have any significant impact on the achievement of this objective.

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<sup>16</sup> [Males and Females charged with indecent exposure in London from 2010 to 2020 | Metropolitan Police](#)

## **Administering etc. harmful substances (including by spiking)**

### **Introduction**

- Spiking is a term used to describe the administration of a substance, whether by adding it to food or drink or otherwise, without a person's consent, and usually with an intent to cause some harm to, or incapacitate, that person. It can include putting alcohol into a non-alcoholic drink, adding extra alcohol to an alcoholic drink, or slipping prescription or illegal drugs into an alcoholic or non-alcoholic drink, food, cigarette or vape. In Autumn 2021, the police reported a surge in reports of drink-spiking incidents, as well as the emergence of a new practice known as "needle spiking".
- Spiking is currently illegal and can be prosecuted under a range of criminal offences depending on the circumstances of the case. In addition to general offences such as assault, there are offences relating to the administration of a substance at sections 22 to 24 of the Offences against the Person Act 1861 (the 1861 Act) which capture all forms of spiking. Sections 23 and 24 of the 1861 Act also cover other non-spiking behaviours where a noxious substance may be administered, e.g., where a person is sprayed with CS gas. In cases where a substance is administered with the intention of engaging in sexual activity with the victim, there is also a separate offence at section 61 of the Sexual Offences Act 2003.

### **Policy summary**

- In response to concerns raised about an increase in prevalence of spiking, and that there is a lack of understanding of how existing offences apply to this behaviour, the Department is creating a new administering a harmful substance offence.
- The new offence aims to address the concerns of victims, campaigners, and MPs by increasing public awareness of spiking and encouraging victims to report such crimes to the police as soon as possible.
- The Department's intention is to repeal sections 22, 23 and 25 of the 1861 Act and replace section 24 with a single administering a harmful substance (including by spiking) offence which has a maximum penalty of 10 years and is triable either way. The new offence will continue to criminalise broadly the same behaviour that is currently criminalised under sections 23 and 24 of the 1861 Act, including spiking behaviour.

### **Methodology and data analysis**

- Incidents of spiking are underreported. This can be due to a range of factors, including embarrassment, pressure from perpetrators or fear of further violence, lack of trust in the police or an assumption that the police could not help or fear of not being believed. Spiking in all its forms is a challenging crime to assess, as victims may not be aware that the effects, they are experiencing are the result of being spiked. Victims may also be dealing with the trauma of a related offence, such as sexual assault, which could impact their willingness to pursue reporting the crime. This means there are challenges in

understanding the true prevalence of spiking, the motivations of perpetrators, the substances being used, and the nature of spiking.

- There are no national statistics which show the number of individuals who are charged and subsequently prosecuted and convicted of offences relating to spiking. Although data is collated on convictions for offences under which spiking incidents may be prosecuted, these offences also apply to a wider range of criminal behaviours in addition to spiking. It is currently not possible to extract data from these offences where they relate solely to incidents of spiking.
- In order to increase understanding of the prevalence of spiking, in particular whether it occurs through drink, food, vape or needle, new crime codes are being introduced with the aim of capturing better data to help devise preventative strategies for spiking where needed. These will come into effect in the Spring of 2025.

### **Availability of data**

- The Government’s manifesto committed to introducing “a new criminal offence to help the police better respond to this crime [spiking].”
- In Autumn 2021, the police reported a surge in reports of drink-spiking incidents, as well as the emergence of “needle spiking”. In a debate pack published by the House of Common Library on 13 December 2023,<sup>17</sup> reference was made to the receipt of 6,732 reports of spiking to the police, which included 957 needle spiking reports during the period May 2022 to April 2023. This further stated that according to the National Police Chiefs Council (NPCC)<sup>18</sup> on average, the police receive 561 reports a month.
- The Government is committed to halving violence against women and girls over the next decade. While victims of spiking can be both male and female, and victims can be ‘spiked’ in non-sexual attacks (like robbery), or for any other reason, it is an offence which typically occurs as an attack on women, particularly in the night-time economy. The Government is also conscious that victims, campaigners, and Parliamentarians from across the political spectrum, continue to have concerns about the increased prevalence of spiking.
- Data, however, can only be presented where known therefore where an individual’s disability, gender reassignment, marriage or civil partnership, pregnancy, race, religion, or belief are not stated or are unknown, they are omitted from the analysis below.

### **Age**

- According to a spiking factsheet published on 21 December 2023<sup>19</sup>, the average age of victims of spiking (across all types of spiking, e.g., drink, needle, food, vape, etc.), is 26 years. This seems to suggest that victims of spiking, where such incidents are reported, are

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<sup>17</sup> [Spiking - House of Commons Library](#)

<sup>18</sup> [Police target night-time economy to tackle spiking](#)

<sup>19</sup> [Spiking: factsheet - GOV.UK](#)

mainly young women (see below) and they are likely to benefit more once this measure is introduced.

### **Sex and sexual orientation**

- According to the spiking factsheet published on 21 December 2023<sup>20</sup>, when it comes to spiking, women are disproportionately affected with almost 74% of victims of spiking being women. However, this data relies on those cases reported to the police.
- The Department is aware that it is not just women who report drink spiking. According to the report on the Review of Spiking,<sup>21</sup> 40% of those reporting an episode of spiking in the last 12 months were male.
- Evidence submitted to Parliament by campaigners Raise your Voice<sup>22</sup> also suggests that gay and bisexual men are more likely to be victims of spiking than heterosexual men and that this is becoming increasingly more prevalent. In a 2022 report, the Alcohol Education Trust<sup>23</sup> also recommended that more awareness be raised around drink spiking in the LGBTQ+ community, claiming that the prevalence of drink spiking was as high as it was among women.

### **Other protected characteristics**

- The Department is currently not able to identify the likely impacts of this policy on the other protected characteristics of disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion, or belief. This is due to the lack of data for the cohort of defendants and potential victims likely to be affected.

### **Eliminating unlawful discrimination, harassment, etc.**

#### **Direct Discrimination**

- The Department assesses that the offence of administering a harmful substance (including spiking) will not be directly discriminatory within the meaning of the Equality Act 2010. It will apply in the same way to all perpetrators and victims. The new offence is not considered to result in people being treated less favourably because of their protected characteristics.

#### **Indirect Discrimination**

- Indirect discrimination arises where a policy, practice or provision is applied in the same way for everyone but results in those who share a protected characteristic suffering a particular disadvantage when compared with those who do not share the protected characteristic. Indirect discrimination will not be unlawful if it is a proportionate means of achieving a legitimate aim.
- Evidence suggests that women are disproportionately affected by spiking, but campaign groups have also highlighted that gay and bisexual men might be more likely than

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<sup>20</sup> [Spiking: factsheet - GOV.UK](#)

<sup>21</sup> [Report: Understanding and tackling spiking \(accessible\) - GOV.UK](#)

<sup>22</sup> [committees.parliament.uk/writtenevidence/42659/pdf/](https://committees.parliament.uk/writtenevidence/42659/pdf/)

<sup>23</sup> <https://committees.parliament.uk/writtenevidence/42627/pdf/>



heterosexual men to be a victim of spiking. Although the new administering a harmful substance offence will be beneficial to all victims despite any protected characteristic, the new offence is likely to have a greater positive impact on women, and it may also have a positive impact on gay and bisexual men.

- The Department understands that, in general, men commit more spiking offences than women and are therefore more likely to be disproportionately impacted as offenders. To the extent that men (or those with any other protected characteristic) are indirectly impacted by the new offence, the Department does not consider that this will amount to unlawful indirect discrimination, because it is a proportionate means of achieving the legitimate aim of protecting people from being administered a harmful substance without their consent. The new offence aims to increase public awareness and understanding of spiking and in turn make it more likely for victims to report this type of criminal behaviour.

### **Disability and the duty to make reasonable adjustments**

- The Department does not consider that the proposed changes will result in any discrimination in relation to disability for perpetrators and victims. The Department will continue to make reasonable adjustments for perpetrators and victims with disabilities.

### **Advancing Equality of Opportunity**

- Both perpetrators and victims could be people of any of the protected characteristics, but the victims of the behaviour are more likely to be women. The Department does not believe that these measures specifically advance the equality of opportunity for particular groups, but the creation of these offences aims to protect people from this harmful behaviour and should have a positive impact on them.

### **Fostering Good Relations**

- The Department does not consider that the new offence of administering a substance capable of causing harm including spiking, would have any significant impact on the achievement of this objective.

# **Child Abduction**

## **Introduction**

- Disputes involving children detained abroad without appropriate consent are usually resolved through civil dispute and family custody processes, rather than by the criminal law. The UK is a contracting State to the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the 1980 Hague Convention). Under the 1980 Hague Convention, the court in the country where the child has been taken will decide whether the child should be returned to the country where they were habitually resident. Unlike the existing domestic criminal law in England and Wales, the 1980 Hague Convention treats the removal and retention of a child abroad equally.
- It is currently a criminal offence for persons other than parents or persons with similar responsibility to take or detain a child out of the control of any person entitled to have lawful control, whether or not the child is taken out of the UK. It is also a criminal offence for a parent or person with similar responsibility to take or send a child out of the UK without the consent of the other parent or other person with similar responsibility or the court. It is not, however, a criminal offence for a parent who has lawfully removed a child from the UK (i.e., they have the consent of the other parent or person with similar responsibility or the court), to detain that child outside the UK for longer than the period granted.
- This 'gap' in the law was highlighted in the case of *R (on the application of Nicolaou) v Redbridge Magistrates' Court [2012]*.

## **Policy summary**

- The Department aims to close a legislative gap by amending the Child Abduction Act 1984 (the 1984 Act) to make it an offence for a parent or person with similar responsibility for a child, to detain that child outside the UK without the consent of the other parent or persons with similar responsibility, or of the court.
- Consent to prosecute cases of detaining a child abroad without consent will be required from the Director of Public Prosecutions. A maximum penalty of 7 years would apply - the same penalty which applies currently to existing offences at sections 1 and 2 of the 1984 Act.

## **Methodology and data analysis**

- International parental child abductions are difficult, complex, and emotional for those affected. Many children have parents of different nationalities or have connections to different countries. If parental relationships break down, it is possible that the parents may not agree on major decisions about their child (or children). This may lead to one parent moving their child from their usual home without the agreement of the other parent or where they have obtained consent to take the child abroad, they may detain the child abroad indefinitely (without getting further consent to do so).

- In their report, “Simplification of the Criminal Law: Kidnapping and Related Offences”, published in November 2014, the Law Commission recommended that “...*the offence under section 1 of the Child Abduction Act 1984 should be amended to include the case where the connected person, having taken or sent the child out of the UK with the appropriate consent, keeps or retains that child outside the UK without the appropriate consent or in breach of the conditions of the consent given*”. The Government did not publish a formal response to this Law Commission report.
- Reunite International, a leading UK charity, who specialise in international child abduction cases, claim there is an increasing trend away from wrongful abduction to wrongful detention of a child abroad. They believe that some parents see this as an ‘easier route’ to permanently keeping their child abroad, with no criminal charges or police involvement, and are therefore using this method to circumvent the law.
- International child abduction, including children who are detained abroad by a parent or person with similar responsibility for the child without consent, was debated by Parliament in March 2023 and on 30 April 2024.

### **Availability of data**

- There is no quantifiable data on children who are detained abroad by a parent or person with similar responsibility without consent to do so.
- Data can therefore only be presented where this is known. Where an individual’s disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief or sexual orientation are not stated or are unknown, they are omitted from the analysis below.

### **Sex**

- From the available information on the number of individuals prosecuted and convicted under the existing section 1 of the Child Abduction Act 1984, this seems to show that both men and women (although this differs year on year) are equally responsible for abducting their child. The Department does not consider, therefore, that any one group of people who share a protected characteristic will be indirectly impacted by this new offence.

### **Age**

- The Department does not have any data on the age of people who may wrongfully detain a child abroad. The new offence criminalises the action of the parent (or person with similar responsibility) so does not directly return the detained child to the UK, but it might indirectly help to do so. Depending on the circumstances, therefore, it could benefit a child under the age of 16.

### **Eliminating unlawful discrimination, harassment, etc.**

#### **Direct Discrimination**

- The new child detention offence will apply to all parents (or persons with similar parental responsibility), regardless of protected characteristics. As a result, this measure does not involve direct discrimination within the meaning of the EA as it does not treat people unfavourably due to their protected characteristics.

### **Indirect Discrimination**

- Given the Department has no statistical evidence to show the gender of the person who wrongfully detains a child abroad, the Department is unable to determine whether those with a particular protected characteristic are more likely to detain their child abroad without the appropriate consent to do so. From the available information on data collected on the number of individuals prosecuted and convicted under the existing section 1 of the Child Abduction Act 1984, this seems to show that both men and women (although this differs year on year) are equally responsible for abducting their child. The Department does not consider, therefore, that any one group of people who share a protected characteristic will be particularly disadvantaged by this new offence.
- In the event that it did, this would not amount to unlawful indirect discrimination, because it is a proportionate means of achieving the legitimate aim of protecting the child and left-behind parent. The action of detaining the child abroad without consent might cause the child actual harm, or at the minimum it is likely to have the effect of separating the child from the left-behind parent and result in the child not living at their usual address or attending their usual school. The detention also interferes with the left-behind parent's right to maintain their relationship with their child, including (depending on the circumstances) living with their child or having regular contact with them.
- There may be a direct, positive impact on children if fewer are detained abroad without consent and / or more are successfully returned to the UK as a result of this new offence.

### **Disability and the duty to make reasonable adjustments**

- The Department does not consider that the proposed changes will result in any discrimination in relation to disability for perpetrators and victims. The Department will continue to make reasonable adjustments for perpetrators and victims with disabilities.

### **Advancing Equality of Opportunity**

- The Department does not believe that these measures specifically advance the equality of opportunity for particular groups, but the creation of this offence aims to protect people from this harmful behaviour and should have a positive impact on them.

### **Fostering Good Relations**

- Criminalising the wrongful detention of a child by a parent or person with similar responsibility aims to both address a gap in the current law and complement existing civil law remedies in securing the return of a child to the UK. It will provide clarity in that where a parent or person with similar responsibility detains a child outside the UK without appropriate consent, they could face criminal proceedings. This measure will therefore not

have a significant impact on fostering good relations with any particular sector of society, except in that it will be of benefit to a parent seeking the return of their child to the UK.

# **Error! Bookmark not defined.Error! Bookmark not defined.Error! Bookmark not defined.Error! Bookmark not defined.**Community and Suspended Sentences Notification Details

## **Introduction**

- This measure will improve the ability of probation and youth offending teams (“YOT”) to monitor offenders, ensuring that the public are protected so that, while an offender is serving a sentence in the community, the responsible officer has the information that they need to supervise that individual effectively, including if they change their name and their up-to-date contact information. Swift and clear action can be taken where an offender does not comply.

## **Policy summary**

- The measure will place a new duty on offenders serving a sentence in the community, and who are supervised by probation or a YOT, requiring them to inform the responsible officer if they change their name, use a different name (e.g., an alias) or change their contact information. The name change could be for any reason.
- This will amend the Sentencing Code to create a duty on offenders to notify the responsible officer of any change of name if they are sentenced to a Community Order, Suspended Sentence Order, Youth Rehabilitation Order or Referral Order. The responsible officer will have the power to initiate breach proceedings if the offender does not comply.
- This requirement already applies to offenders released from custody. In 2022, secondary legislation was passed requiring offenders on licence to inform their probation officer, or YOT officer, if they change their name. (Criminal Justice (Sentencing) (Licence Conditions) (Amendment) (No.2) Order 2022). The measures in this Bill cannot be established by secondary legislation under the Sentencing Act 2020.

## **Evidence and analysis**

- Data on the protected characteristics of those under probation supervision is published in Ministry of Justice’s (“MoJ’s”) Offender Management Statistics<sup>24</sup>. Data on the protected characteristics of children serving youth community sentences is published in MoJ’s Criminal Justice Statistics Quarterly<sup>25</sup>. As data on protected characteristics are only published where data is collected and of sufficient quality for statistics to be meaningful, data is limited to the characteristics of sex, age, and race (ethnicity).

## **Sex**

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<sup>24</sup> [Offender management statistics quarterly - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/offender-management-statistics-quarterly) The annual 2022 probation tables are used as they include a wider range of data on protected characteristics than more recent quarterly tables.

<sup>25</sup> [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) The Outcomes by Offence data tool is used for juvenile offenders as they provide a wider range of characteristics.

- Men are overrepresented in the criminal justice system and probation caseload. At end of December 2023, 84% of those under probation supervision on a Community Order (“**CO**”) were male and 88% of those on a Suspended Sentence Order (“**SSO**”). In 2023, 83% of children sentenced to a Youth Rehabilitation Order (“**YRO**”) or Referral Order (“**RO**”) were male<sup>26</sup>.
- The average length of a CO and SSO is longer for men than women. At end of December 2023, the average length of a CO for men under probation supervision was 15.8m and 19.7m for a SSO, compared to 13.9m and 18.8m respectively for women.

**Age**

- At the end of December 2023, adults on the probation caseload serving a sentence in the community were most likely to be aged between 30 and 39 – 34% of those supervised under a CO and 32% under an SSO.
- At the same point in time, 81% of juveniles sentenced to a YRO or RO were aged between 15 and 17 – 86% of those sentenced to a YRO and 79% to a RO.
- As shown in Table 1, those aged 18 to 39 are overrepresented in the CO and SSO probation caseload. In contrast, those aged 50 or over are under-represented on the CO and SSO probation caseload, accounting for 11% and 13% respectively, compared to 48% of the general adult population.

**Table 1: Those under probation supervision on a CO or SSO and the general adult population, by age**

Age	Under probation supervision at end Dec 2023		General adult population 2021 <sup>[3]</sup>
	CO	SSO	
18 – 24	19%	21%	11%
25 – 29	15%	16%	8%
30 – 39	34%	32%	17%
40 – 49	20%	18%	16%
50 or over	12%	13%	48%

**Ethnicity**

- As shown in Table 2, those from some minority ethnic backgrounds, particularly Black people, were overrepresented amongst those under probation supervision on a CO or SSO compared to the general adult population.

<sup>26</sup> 2021 Census data, [Age groups - GOV.UK Ethnicity facts and figures \(ethnicity-facts-figures.service.gov.uk\)](https://ethnicity-facts-figures.service.gov.uk)

**Table 2: Those under probation supervision on a CO or SSO and general adult population, by ethnicity**

Ethnicity	Under probation supervision at end Dec 2023 <sup>[27]</sup>		General adult population 2021 <sup>28</sup>
	CO	SSO	
White	79%	76%	84%
Black	6%	8%	4%
Asian	6%	7%	9%
Mixed	4%	5%	2%
Other	2%	2%	2%

- Similarly to adults under probation supervision, those from Black or mixed ethnic background were over-represented amongst juveniles sentenced to a YRO or RO compared to the general 10-17 population (see Table 3).

**Table 3: Juveniles sentenced to a YRO or RO and general youth population, by ethnicity**

Ethnicity	Sentenced to a court order at end Dec 2022 <sup>29</sup>		10-17 year-old general population 2021 <sup>30</sup>
	YRO	RO	
<b>White</b>	74%	75%	<b>74%</b>
<b>Black</b>	11%	11%	<b>6%</b>
<b>Asian</b>	5%	6%	<b>12%</b>
<b>Mixed</b>	8%	7%	<b>6%</b>
<b>Other</b>	2%	1%	<b>3%</b>

## Eliminating unlawful discrimination, harassment, etc.

### Direct discrimination

- Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. The Department's assessment is that this policy is not directly discriminatory within the meaning of the Act, as the proposals are not considered to result in people being treated less favourably because of their protected characteristics.

<sup>27</sup> Where ethnicity was stated/recorded.

<sup>28</sup> 2021 Census data, [Ethnic group, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/ethnicityandnationality/datasets/ethnicgroup)

<sup>29</sup> Where ethnicity was stated/recorded.

<sup>30</sup> 2021 census data, [Ethnic group by age and sex in England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/ethnicityandnationality/datasets/ethnicgroupbyageandsex)



## **Indirect Discrimination**

- 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.
- The Department believes that there is potential for this measure to be indirectly discriminatory to some groups with certain protected characteristics. This is because some characteristics (age, sex, race – see the data above) are overrepresented in the criminal justice system and those serving a sentence in the community under probation or YOT supervision. The Department considers the policy to be a proportionate means to help probation and YOT services effectively manage offenders in the community.
- Transgender offenders may be disproportionately affected by this policy as, if offenders socially transition, they may also elect to change their name. It should be noted that the objective of this policy is not to single out offenders who have changed their name through a transition but to ensure probation and YOTs are able to manage offenders effectively in the community with updated information.
- Men are overrepresented in the criminal justice system so it is possible that this policy may impact them more. However, the Department believes that women may be more likely to change their name, for example through marriage.
- The Department does 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 to this policy that could change this overrepresentation.

## **Disability and the duty to make reasonable adjustments**

- The Department does not consider that the proposed changes will result in any discrimination in relation to disability for perpetrators and victims. The Department will continue to make reasonable adjustments for perpetrators and victims with disabilities.

## **Advancing equality of Opportunity**

- The Department does not believe that this provision will have an impact on the duty to advance equality of opportunity because the policy relates to ensuring offenders can be supervised and managed appropriately

## **Fostering Good Relations**

- The Department's assessment is that imposing a duty on offenders serving a sentence in the community, and who are supervised by probation or a youth offending team, to inform the responsible officer if they change their name or contact details, is unlikely to impact on fostering good relations between groups with different protected characteristics.

## **Polygraph testing of serious sexual offenders**

### **Introduction**

- This policy is to introduce polygraph testing as a licence condition for offenders who have been convicted of murder and are assessed as posing a risk of sexual offending on release, or who at an earlier point during their sentence had also been serving a concurrent sentence for a relevant sexual offence.

### **Policy summary**

- The Probation Service has been using polygraph testing with certain individuals convicted of sexual offences released on licence since 2014. In 2021, it was extended to terrorist offenders by the Counter Terrorism and Sentencing Act 2021 and, under provision in the Domestic Abuse Act 2021, the Probation Service also commenced a three-year pilot of polygraph testing with high-risk domestic abuse perpetrators.
- The Bill will introduce a provision that enables a polygraph testing condition to be added to the licence of individuals convicted of murder who the Secretary of State assesses to pose a risk of sexual offending upon release.
- When polygraph testing was introduced for sexual offending, the criteria always intended it to be targeted at offenders who pose a high risk and likelihood of causing sexual harm. On average, the Department finds that people have made risk-related disclosures in approximately two-thirds of these tests which demonstrates the value of it as a risk management measure. The current law, however, means that in cases where someone has been convicted of a murder where there is either clear evidence of sexual motivation at the time (i.e. the person is also sentenced for an offence of rape, or a sexual offence is left to lie on file), or this later becomes apparent after someone has started their sentence, in most instances they are not eligible for polygraph testing on release. In simple terms, if an offender rapes someone they can be polygraph tested them on licence; if they rape and murder the victim, they cannot always be polygraph tested on licence as it is dependent on the sentences that were given. Given how important polygraph testing is in providing the probation practitioner with risk-related information that they otherwise would not know, it is essential that the Department is able to use it with those who have previously committed murder and are established to pose a risk of sexual offending whilst on licence.
- This clause will ensure that the Department is able to use polygraph testing to manage those offenders who pose significant risks of sexual harm. Furthermore, it will make the testing of sexual offenders consistent with terrorist and domestic abuse offenders, for whom polygraph can be used if they have been convicted of murder.

### **People released on licence who had a concurrent sentence for a relevant sexual offence**

- The Bill will introduce a provision that enables a polygraph testing condition to be added to the licence of individuals serving a sentence for a non-sexual offence who, at any earlier point in the sentence, were concurrently serving a sentence for a relevant sexual offence.

- As per the clause above, this will ensure that the Department is able to polygraph test people convicted of polygraph-eligible sexual offences who are also serving sentences for other offences but where the licence period for their sexual offence ends before they are released or ends before the end of their licence period for their non-sexual offence.
- This remains consistent with the current policy intentions to target the policy at those who pose a high risk of sexual harm.
- This clause will ensure that the Department is able to use polygraph testing to manage those offenders who pose significant risks of sexual harm.

### **Evidence and analysis**

- Operational data drawn from probation case management systems
- Polygraph Policy Framework
- Polygraph Policy Framework Equality Analysis

### **Impact**

- The use of polygraph testing in the Probation Service is underpinned by a Policy Framework. The Policy Framework (PF) is informed by an equality analysis (EA) which is regularly reviewed, particularly when the PF is updated. The EA considers the impacts of the polygraph PF on people on probation and staff with protected characteristics. The EA was most recently updated in February 2024.
- Number of people on probation who will be impacted:
  - a. When looking at the caseload data (October 2024), there were 855 people on the HMPPS caseload with a conviction for murder where the assessor assessed the murder to be sexually motivated.
  - b. Of these, 365 are currently on licence in the community. 160 of these would become eligible for polygraph testing if new legislation were brought in, on the basis that they are currently assessed as high or very high risk of serious harm (the policy criteria).
  - c. 490 are currently in custody, and any of these assessed as high or very high risk of harm upon release would also become eligible for polygraph testing.
  - d. With regards people with concurrent sentences which included an earlier relevant sexual offence, the Department does not have data on the numbers of people serving concurrent sentences, the shorter of which was for a relevant sexual offence. However, colleagues with operational experience and feedback from the team who manage polygraph queries suggest the numbers will be low.

### **Eliminating unlawful discrimination, harassment, etc.**

#### **Direct Discrimination**

- Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. The Department's assessment is that these changes to polygraph testing are not directly discriminatory within the meaning of the EA, as they apply in the same way to all individuals regardless of their protected

characteristics. No offender will be treated less favourably in relation to any protected characteristic.

### **Indirect Discrimination**

- Indirect discrimination occurs when a policy applies equally to all individuals but would put those with a particular protected characteristic at a particular disadvantage compared to those who do not share that characteristic. The Department assesses that this amendment will not be indirectly discriminatory within the meaning of the Equality Act 2010 as explained below.
- Eligibility for polygraph testing is determined by legal criteria (type of offence and length of sentence) and policy criteria (risk of harm and risk of reoffending). This clause will amend the legal criteria - it is not determined by personal characteristics. For this reason, the Department does not anticipate that the clauses in this Bill will directly discriminate on any offender with protected characteristics.
- The impact of the changes will be monitored closely by MoJ and HMPPS jointly. The Independent Reviewer of Terrorism Legislation (IRTL) also has routine oversight of the operation of the relevant Terrorism Acts and post-legislative scrutiny will be conducted on this Bill.
- Below, the Department draws on the existing EA and have also considered the impact of the new clauses on offenders that fall into the protected characteristic groups and put in place plans to mitigate any disproportionate impact.
- The eligibility of individuals falling within the scope of this measure is determined by offence type, sentence length and risk assessment, not by any individual's protected characteristic(s).

### **Age**

- The polygraph test will only be added to the licences of individuals who are aged 18 years and over at the most recent date of release from prison.
- There is no upper age limit. There are no known adverse impacts of the polygraph on any particular age group. Continuing to test will be determined by level of risk of serious harm, not age.
- A thorough 3-stage suitability assessment is undertaken prior to any examination taking place. This will ensure that any individual with any age-related conditions, such as dementia, will be assessed to ensure they are suitable for the examination before it takes place. The policy framework sets out the suitability assessment process. The specialist polygraph provider can also provide advice on suitability, if required.

### **Disability**

- The thorough 3-stage suitability assessment undertaken prior to any examination taking place will also ensure that any potential disabilities are known about and can be considered

in terms of the individual's suitability for the assessment and for making arrangements for the examination to take place. The polygraph equipment and sensors do not impact on physical health.

- Attending for and undertaking a polygraph test can make some people apprehensive or anxious. Polygraph examiners are trained to put examinees at ease, as best they can, to mitigate the impact of the test on raising their anxiety any further. This will be particularly relevant for people who are diagnosed with a mental health condition (such as depression and/or anxiety).

### **Gender Reassignment**

- There are no adverse effects of the polygraph test for individuals who have undergone, or who are in the process of undergoing, gender reassignment. The test is applied to all individuals in the same manner, regardless of gender.
- One of the polygraph instruments is attached to the individual by a band placed on the upper chest and one on the diaphragm. This may impact on individuals who identify as a different gender than the one assigned at birth but who have not undergone gender affirmation surgery. The wearing of binders or prosthetics does not impact on the use of the polygraph instruments. Examiners should therefore ensure that individuals are told this by their probation practitioner before they attend for the test, to help minimise any anxiety.
- Every effort will be made for either a male or female polygraph examiner to be made available upon request, but this cannot be guaranteed as it will depend on the availability of examiners.

### **Marriage and Civil Partnership**

- There are no adverse effects of the polygraph test on individuals who are married or in civil partnerships.

### **Pregnancy and Maternity**

- There is no evidence that the polygraph sensors pose any risk of harm to someone who is pregnant. They include a cuff to the upper arm, a band to the abdomen (it is not tight or restrictive), a pressure pad on the seat and small clips to the finger. Tests would be conducted to fit at times that enabled pregnant women to attend all maternity appointments. Probation staff would comply with any instructions from a GP or Obstetrician in relation to the physical care of any female examinee to protect the health of the mother and unborn child.

### **Race**

- There are no adverse effects of the polygraph test on individuals based on their race. If an individual uses English as an alternative language, for example a Foreign National Offender, a translator will be made available to them to allow them to complete the test in their first language.

### **Religion and Belief**

- Polygraph examinations require direct physical contact between examiners and examinees, as equipment is attached to the body to conduct the test.
- In some cases, cultural and religious sensitivities may impact certain groups (for example, individuals identifying as Muslim) more than others. Of the 254 persons in custody<sup>2</sup> for terrorism and terrorism-connected offences in Great Britain with a self-declared religion, 161 were Muslim (63%). Although there is much variation in practice among Muslims, some observant Muslim individuals may find polygraph examinations contrary to their religious beliefs because of the close physical contact required with the examiner. Every effort will be made to ensure either a male or female polygraph examiner is available upon request, albeit the Department cannot guarantee to grant the request in every case.
- Due to the makeup of polygraph examiners, the Department knows that it will not be possible to accommodate male examiners in all cases of male Muslim individuals. Polygraph examiners also cover large geographical regions, and the majority of terrorist offenders subject to polygraph examinations will be male, meaning that there is unlikely to be capacity for examiners to cover wider geographical regions than their remit.

## **Sex**

- It is likely that the majority of people who will be in scope under this measure will be legally recorded as male which reflects the make-up of the prison and probation population.
- The test could (likely in a very small number of cases) be applied to female individuals.
- Every effort will be made to ensure either a male or female polygraph examiner is available upon request. However, due to the relatively small number of polygraph examiners in HMPPS, this may not always be possible.

## **Sexual Orientation**

- An individual's sexual orientation will not be adversely impacted upon by means of the polygraph test. The test asks questions that relate to sexual offending and not about sexual orientation. There will be individuals who have a preference to sexually offend against children or adults of the same sex and there may therefore be questions asked which may include contact with individuals of certain gender; this is not discriminatory in relation to the individual, but an issue which is solely related to the identification of and protection of current/potential victims.

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

- Other than the issues discussed above, the Department does not consider that there is likely to be any discrimination in relation to disability and will continue to make reasonable adjustments for disabled people impacted by the policy proposals.

## **Advancing Equality of Opportunity**

- Consideration has been given to how the measure impacts on the duty to have due regard to the need to advance equality of opportunity by meeting the needs of prisoners and offenders in the community who share a protected characteristic, where those needs are

different from the needs of those who do not share that particular characteristic. The proposals are not considered likely to have an impact on equality of opportunity.

## **Fostering Good Relations**

- The Department's assessment is that these changes are unlikely to impact on fostering good relations between groups with different protected characteristics.

## **Polygraph testing for cohort of historic terrorist connected offenders**

### **Introduction**

- Section 28 of the Offender Management Act (OMA) 2007 enables the Secretary of State to impose a polygraph condition on an offender released on licence in England and Wales.
- The Counter-Terrorism and Sentencing Act (CTSA) 2021 inserted section 28(4A) and (4B) into the OMA, enabling a polygraph condition to be imposed on offenders who have committed a 'relevant terrorist offence' and who fulfil certain other statutory and policy criteria.
- 'Relevant terrorist offence' includes those who have committed 'terrorist-connected' offences. 'Terrorist connected' is a statutory sentencing aggravating factor introduced by the Counter-Terrorism Act (CTA) 2008 which permits the court at the point of sentencing to impose a terrorism connection 'label' to offenders who have committed a non-terrorist offence when the relevant criteria are met.
- Non-terrorist offences committed before 18 June 2009 (the commencement date of the relevant CTA 2008 provisions), currently cannot have a court-determined terrorist connected aggravating factor and therefore these offenders currently cannot have a polygraph testing licence condition imposed on release.
- This provision extends polygraph testing to offenders who have been convicted of a non-terrorist offence, but which was clearly terrorism-related, and was committed before the relevant provisions in the CTA 2008 came into force.
- In passing the CTSA 2021, the then Government made a commitment to undertake a review of the use and operation of the polygraph condition on those convicted of a relevant terrorist offence. As set out within that review, which was published in October 2023, between the CTSA 2021 coming into force on 29 June 2021 and 30 June 2023, 88 polygraph examinations were completed by 39 relevant terrorist offenders on probation. A number have been polygraphed on more than one occasion.
- Polygraph testing is subject to rigorous quality controls which, in accordance with the Polygraph Rules 2009 includes reports to the Lord Chancellor at least every six months. The Department will continue to use quality control arrangements for testing moving forward.

### **Policy summary**

- The Bill will extend polygraph testing as a licence condition to a small cohort of ‘historic terrorist connected offenders.’ These are offenders who committed a non-terrorism offence, e.g., conspiracy to murder, but did so during, or for the purposes of, terrorism. These offences were committed before legislation came into force enabling the court at the point of sentencing to formally determine there to be a ‘terrorist connection.’ As such, this small cohort of serious offenders cannot be made subject to polygraph testing by HMPPS as they are not classified as a terrorist or terrorist connected offender. Extending polygraph eligibility to this cohort will strengthen post-release risk management measures and better protect the public.

**Methodology and data analysis**

**Sources of information include**

- Operational data drawn from probation case management systems
- Polygraph Policy Framework
- Polygraph Policy Framework Equality Analysis
- HM Prison and Probation Service (HMPPS) Offender Equalities Report 2023/24.<sup>31</sup>
- The use of polygraph testing in the Probation Service is underpinned by a Policy Framework. The Policy Framework (PF) is informed by an equality analysis (EA) which is regularly reviewed, particularly when the PF is updated. The EA considers the impacts of the polygraph PF on people on probation and staff with protected characteristics. The EA was most recently updated in February 2024.

Number of people on probation who will be impacted:

- a. The extension of this provision applies retrospectively to all sentences already imposed, covering a small cohort of serious offenders, some of whom have already been released on licence, and others who are still in custody.
  - b. The HMPPS Offender Equalities 2023/24 report contains the latest information on progress and achievements pertaining to equalities objectives, as stated in the Equality Act 2010.
- When evaluating the impact of these measures on individuals with protected characteristics, the Department has considered the following protected characteristics where data are collected and are of sufficient quality for statistics to be meaningful:

**Table 4: Prison Population Data by Protected Characteristic as of 31 March 2024**

Protected Characteristic	Prison Population Data as of 31 March 2024
Age	<ul style="list-style-type: none"> <li>• As of 31 March 2024, a third (33.4% or 29,339) of prisoners were in the 30 to 39 age group, the second largest age group was the 40 to 49 age group, which covered 20.7% (18,175) of the prison population.</li> </ul>

<sup>31</sup> <https://www.gov.uk/government/statistics/hmppps-offender-equalities-annual-report-2023-to-2024>



	<ul style="list-style-type: none"> <li>• The younger prison population has been falling since 2013 whereas the over 30 prison population has been steadily rising.</li> <li>• Prisoners that were under 25 made up 13.1% (11,509) of the population.</li> </ul>
Gender Reassignment	<ul style="list-style-type: none"> <li>• There were 295 transgender prisoners in the 2024 data collection.</li> </ul>
Race	<ul style="list-style-type: none"> <li>• In England and Wales, as of 31 March 2024, white prisoners made up 68.3% (10,809) of the remand prison population and 73.7% (52,000) of the sentenced prison population.</li> <li>• At this same point in time, prisoners who self-declared as being from a black or black British ethnic background made up 12.9% (2,047) of the remand prison population and 12.1% (8,534) of the sentenced population.</li> <li>• Prisoners who declared their ethnicity as Asian or Asian British represented 9.5% (1,506) of remand and 7.8% (5,530) of sentenced prisoners.</li> </ul>
Religion or belief	<ul style="list-style-type: none"> <li>• As of 31 March 2024, within the England and Wales prison population, almost half (44.6% or 39,068) that specified a religion or belief self-identified as being Christian, 31.0% (27,122) prisoners identified as having no religion and 18.2% (15,909) identified as being Muslim.</li> </ul>
Sex	<ul style="list-style-type: none"> <li>• On 31 March 2024, males made up 95.9% (84,234) of the total prison population and females 4.1% (3,635).</li> </ul>
Sexual orientation	<ul style="list-style-type: none"> <li>• On 31 March 2024, 97.0% (88,032) of prisoners who declared a sexual orientation reported that they were heterosexual.</li> </ul>

**Age**

- The polygraph test will only be added to the licences of individuals who are aged 18 years and over at the most recent date of release from prison.
- There is no upper age limit. Although this measure will affect those aged 18 or above, there are no known adverse impacts of the polygraph on any particular age group. Continuing to test will be determined by the level of risk of serious harm, not age.
- A thorough 3-stage suitability assessment is undertaken prior to any examination taking place. This will ensure that any individual with any age-related conditions, such as dementia, will be assessed to ensure they are suitable for the examination before it takes place. The policy framework sets out the suitability assessment process. The Department will continue to consider any identified impacts by the specialist polygraph provider and update this document if required.

**Disability and the duty to make reasonable adjustments**

- The thorough 3-stage suitability assessment undertaken prior to any examination taking place will also ensure that any potential disabilities are known about and can be considered in terms of the individual's suitability for the assessment and for making arrangements for the examination to take place.
- The polygraph equipment and sensors do not impact on physical health.
- Attending for and undertaking a polygraph test can make some people apprehensive or anxious and the effects might be more pronounced for people with disabilities and how they can cope. Polygraph examiners are trained to put examinees at ease, as best they can, to mitigate the impact of the test on raising their anxiety any further. This will be particularly relevant for people who are diagnosed with a mental health condition (such as depression and/or anxiety).

### **Gender Reassignment**

- There are no known adverse effects of the polygraph test for individuals who have undergone, or who are in the process of undergoing, gender reassignment. The test is applied to all individuals in the same manner, regardless of gender.
- One of the polygraph instruments is attached to the individual by a band placed on the upper chest and one on the diaphragm. This may impact on individuals who identify as a different gender than the one assigned at birth but who have not undergone gender affirmation surgery. The wearing of binders or prosthetics does not impact on the use of polygraph instruments. Examiners should therefore ensure that individuals are told this by their probation practitioner before they attend the test, to help minimise any anxiety.
- Every effort will be made for either a male or female polygraph examiner to be made available upon request, but this cannot be guaranteed as it will depend on the availability of examiners.

### **Marriage and Civil Partnership**

- There are no adverse effects of the polygraph test on individuals who are married or in civil partnerships.

### **Pregnancy and Maternity**

- There is no evidence that the polygraph sensors pose any risk of harm to someone who is pregnant. They include a cuff to the upper arm, a band to the abdomen (it is not tight or restrictive), a pressure pad on the seat and small clips to the finger. Tests would be conducted to fit at times that enabled pregnant women to attend all maternity appointments. Probation staff would comply with any instructions from a GP or Obstetrician in relation to the physical care of any female examinee to protect the health of the mother and unborn child.

### **Race**

- There are no adverse effects of the polygraph test on individuals based on their race.

- If an individual uses English as an alternative language, for example a Foreign National Offender, a translator will be made available to them to allow them to complete the test in their first language.

### **Religion and Belief**

- Polygraph examinations require direct physical contact between examiners and examinees, as equipment is attached to the body to conduct the test.
- In some cases, cultural and religious sensitivities may impact certain groups (for example, individuals identifying as Muslim) more than others. Of the 254 persons in custody for terrorism and terrorism-connected offences in Great Britain with a self-declared religion, 161 were Muslim (63%). Although there is much variation in practice among Muslims, some observant Muslim individuals may find polygraph examinations contrary to their religious beliefs because of the close physical contact required with the examiner. Every effort will be made to ensure either a male or female polygraph examiner is available upon request, albeit the Department cannot guarantee to grant the request in every case.
- Due to the makeup of polygraph examiners, the Department knows that it will not be possible to accommodate male examiners in all cases of male Muslim individuals. Polygraph examiners also cover large geographical regions, and the majority of terrorist offenders subject to polygraph examinations will be male, meaning that there is unlikely to be capacity for examiners to cover wider geographical regions than their remit.

### **Sex**

- It is likely that the majority of people who will be in scope under this measure will be legally recorded as male which reflects the make-up of the prison and probation population.
- The test could (likely in a very small number of cases) be applied to female individuals. However, the test is applied to all individuals in the same manner, regardless of sex.

Every effort will be made to ensure either a male or female polygraph examiner is available upon request. However, due to the relatively small number of polygraph examiners in HMPPS, this may not always be possible.

### **Sexual Orientation**

- An individual's sexual orientation will not be adversely impacted upon by means of the polygraph test. The test asks questions that relate to sexual offending and not about sexual orientation. There will be individuals who have a preference to sexually offend against children or adults of the same sex and there may therefore be questions asked which may include contact with individuals of certain gender; this is not discriminatory in relation to the individual, but an issue which is solely related to the identification of and protection of current/potential victims.

### **Eliminating unlawful discrimination, harassment, etc.**

#### **Direct Discrimination**

- Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. The Department's assessment is that these changes to polygraph testing are not directly discriminatory within the meaning of the EA, as they apply in the same way to all individuals regardless of their protected characteristics. No offender will be treated less favourably in relation to any protected characteristic.

### **Indirect Discrimination**

- Indirect discrimination occurs when a policy applies equally to all individuals but would put those with a particular protected characteristic at a particular disadvantage compared to those who do not share that characteristic.
- The Department assesses that this amendment will not be indirectly discriminatory within the meaning of the Equality Act 2010 as explained below.
- Eligibility for polygraph testing is determined by legal criteria (type of offence and length of sentence) and policy criteria (risk of harm and risk of reoffending). This clause will amend the legal criteria - it is not determined by personal characteristics. For this reason, the Department does not anticipate that the clauses in this Bill will directly discriminate on any offender with protected characteristics.
- The impact of the changes will be monitored closely by MoJ and HMPPS jointly. The IRTL also has routine oversight of the operation of the relevant Terrorism Acts and post-legislative scrutiny will be conducted on this Bill.
- Below, the Department draws on the existing EA and have also considered the impact of the new clauses on offenders that fall into the protected characteristic groups and put in place plans to mitigate any disproportionate impact.
- The eligibility of individuals falling within the scope of this measure is determined by offence type, sentence length and risk assessment, not by any individual's protected characteristic/s.

### **Disability and the duty to make reasonable adjustments**

- Other than the issues discussed above, the Department does not consider that there is likely to be any discrimination in relation to disability and will continue to make reasonable adjustments for disabled people impacted by the policy proposals.

### **Harassment and victimisation**

- The Department does not consider there to be a risk of harassment or victimisation as a result of these provisions when they are implemented.

### **Advancing Equality of Opportunity**

- Consideration has been given to how the bill impacts on the duty to have due regard to the need to advance equality of opportunity by meeting the needs of prisoners and offenders in

the community who share a protected characteristic, where those needs are different from the needs of those who do not share that particular characteristic. The proposals are not considered likely to have an impact on equality of opportunity.

### **Fostering Good Relations**

- The Department does not consider that these measures would have any significant impact on the achievement of this objective.

## **Length of terrorism sentence with fixed licence period: Northern Ireland**

### **Introduction**

- The sentencing and release regime for terrorists who commit offences attracting a maximum penalty of over two years' imprisonment is designed to be consistent throughout the UK.
- The Bill will deal with an issue identified through a recent criminal case in Northern Ireland (*R v Perry*). This change will ensure that the terrorism sentence with a fixed licence period in Northern Ireland is handed down consistently with the equivalent sentence in England and Wales (the 'sentence for offenders of particular concern' (SOPC)).
- In NI, sentences under Article 15A of the Criminal Justice (Northern Ireland) Order 2008 can be longer and less proportionate than those in England and Wales under the SOPC. The Department's proposed change will ensure that when a court in Northern Ireland is handing down this type of sentence, the length of the sentence must be commensurate with the seriousness of the offending. Action is necessary to ensure consistency, fairness, and legal compliance across UK jurisdictions.

### **Policy summary**

- This change will amend Northern Ireland legislation to ensure that judges may only pass a terrorism sentence with fixed licence period, under Article 15A of the Criminal Justice (Northern Ireland) Order 2008, that is commensurate with the seriousness of the original offence.
- Article 15A of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order") was introduced by the Counter-Terrorism and Sentencing Act 2021 ("the CTSA") to create a new terrorism sentence with fixed licence period. This sentence was intended to replicate an equivalent sentence in England and Wales, the SOPC, which is found in section 278 of the Sentencing Code.
- The SOPC is structured so that the sentence must be commensurate with the seriousness of the original offence. In a 2024 case heard in the Court of Criminal Appeal in Northern Ireland (*R v Perry*) the court held that the terrorism sentence under Article 15A of the 2008 Order permits, in suitable cases, sentences which are not commensurate with the seriousness of the original offending.
- The Department is seeking to amend the 2008 Order to restrict the handing down of this terrorism sentence in Northern Ireland to a length which is, in every case, commensurate with the seriousness of the offending for which the sentence was given. This will ensure that sentencing for terrorist offenders in Northern Ireland remains consistent with England and Wales.

### **Evidence and analysis**

- The measure involves a narrow legislative amendment to align sentencing provisions for terrorist offenders in NI under Article 15A of the Criminal Justice (Northern Ireland) Order

2008 with those in E&W under the Sentencing Act 2020 (as amended by the Counter-Terrorism and Sentencing Act 2021).

- Any impacts are expected to be minimal, as this is a minor legislative amendment. The main affected groups are the Government (specifically the Ministry of Justice) and the judiciary in Northern Ireland. The Government publishes annual statistics on the use of terrorism powers, including data on convictions; there is not readily available data on particular protected characteristics of those convicted.
- The Department has used available data on the Northern Ireland prison population<sup>32</sup> as a proxy but it should be noted that this data is not specific to the cohort that will be affected by this measure:
  - a. Sex – The male population increased from 1,607 to 1,787 while the female population increased from 78 to 90 during 2023/2024.
  - b. Age - Prisoners aged between 30 and 39 years made up the largest proportion (37.7%) of the average daily immediate custody prison population and the remand population (37.6%).
  - c. Religion and belief - During 2023/24, those identifying as Catholic represented the largest proportion of the average daily prison population at 51.5% (967), while Protestant denominations and Other Christians accounted for 31.8% (596).

### **Age**

- It is possible that the majority of people who will be in scope under this measure will be aged between 30 and 39 which reflects the make-up of the Northern Ireland prison population.
- However, there is not readily available data on the age of those who would be affected by this change. Any impacts are expected to be minimal, as this is a minor legislative amendment.

### **Sex**

- It is likely that the majority of people who will be in scope under this measure will be legally recorded as male which reflects the make-up of the Northern Ireland prison population.
- However, there is not readily available data on the sex of those who would be affected by this change. Any impacts are expected to be minimal, as this is a minor legislative amendment.

### **Religion and belief**

- It is possible that the majority of people who will be in scope under this measure will be Catholic which reflects the make-up of the Northern Ireland prison population.
- There is not readily available data in relation to the religion and belief of those who would be affected by this change. Any impacts are expected to be minimal, as this is a minor legislative amendment.

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<sup>32</sup> <https://www.justice-ni.gov.uk/publications/northern-ireland-prison-population-2023-24>

## **Other protected characteristics**

- The Department is currently not able to identify the likely impacts of this policy on the other protected characteristics of disability, gender reassignment, race, sexual orientation, marriage, and civil partnership and pregnancy and maternity. This is due to the lack of data for the cohort of individuals likely to be affected.

## **Eliminating unlawful discrimination, harassment, etc.**

### **Direct Discrimination**

- Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic.
- The Department assesses that this amendment will not be directly discriminatory within the meaning of the Equality Act 2010. The Department does not consider that this amendment would result in anyone being treated less favourably as a result of any protected characteristic.

### **Indirect Discrimination**

- Indirect discrimination occurs when a policy applies equally to all individuals but would put those with a particular protected characteristic at a particular disadvantage compared to those who do not share that characteristic.
- The Department assesses that this amendment will not be indirectly discriminatory within the meaning of the Equality Act 2010. Despite offenders in general being more likely to have protected characteristics of sex, race, disability than the general population, the Department does not consider that this provision would result in anyone with a protected characteristic being put at a particular disadvantage because of their protected characteristic. The Department assesses that any particular disadvantage to people with protected characteristics is justified due to the need to manage the public safety risks posed by specific offenders.
- The impact of the changes will be monitored closely by MoJ and HMPPS jointly. The IRTL also has routine oversight of the operation of the relevant Terrorism Acts and post-legislative scrutiny will be conducted on this Bill.

## **Disability and the duty to make reasonable adjustments**

- The Department does not consider that the proposed changes will result in any discrimination in relation to disability for perpetrators and victims. The Department will continue to make reasonable adjustments for perpetrators and victims with disabilities.

## **Harassment and victimisation**

- The Department does not consider there to be a risk of harassment or victimisation as a result of these provisions, when they are implemented.



**Advancing Equality of Opportunity**

- The Department does not consider that this measure would have any significant impact on the achievement of this objective.

**Fostering Good Relations**

- The Department does not consider that this measure would have any significant impact on the achievement of this objective.

## **Additional offence within scope of terrorism sentencing, release, and management regime**

### **Introduction**

- The Terrorist Offenders (Restriction of Early Release) (TORER) Act 2020 ended the automatic early release of individuals who committed a terrorism offence carrying a maximum penalty of more than two years' imprisonment and changed determinate offenders' release eligibility from automatically at the halfway point of their sentence/custodial term to discretionary Parole Board release at the two-thirds point. The Counter-Terrorism and Sentencing Act 2021 made further changes relating to the sentencing, release, and management of TORER offenders.
- The offence of breaching a foreign travel restriction order (FTRO) is not currently included in this regime, despite having a maximum penalty of five years' imprisonment and being a terrorism-specific offence and offences for breaching other terrorism related orders (e.g., TPIMs) being within scope of TORER.

### **Policy summary**

- This amendment will add breaching a FTRO to the terrorism sentencing, release, and management regime to ensure consistency in the sentencing and management of individuals convicted of a terrorism offence with a maximum penalty of more than two years' imprisonment.
- In keeping with other terrorism offences covered by TORER, the Department is also ensuring that the offence of breaching an FTRO is capable of attracting a SOPC (and the equivalent sentence in Northern Ireland and Scotland): makes the offender eligible for certain specialist management on licence, including eligibility for personal search conditions (UK wide) and polygraph conditions (in England and Wales only); and is incapable of being found by the court at the point of sentencing to have been committed with a terrorist connection.

### **Evidence and analysis**

- The overrepresentation of some groups within scope of the Bill reflects the makeup of the England and Wales prison population. Groups overrepresented in the prison population compared to the general population are as follows:
  - those who are male;
  - those aged between 30 and 39;
  - those with a Black or Black British ethnicity, or from a mixed ethnic group; and,
  - those who are Muslim.
- The HMPPS Offender Equalities 2023/24 report contains the latest information on progress and achievements pertaining to equalities objectives, as stated in the Equality Act 2010.

- When evaluating the impact of these measures on individuals with protected characteristics, the Department has considered the following protected characteristics where data are collected and are of sufficient quality for statistics to be meaningful.

**Table 5: Protected Characteristics**

Protected characteristic	Data
Age	As at 31 March 2024, a third (33.4% or 29,339) of prisoners were in the 30 to 39 age group, the second largest age group was the 40 to 49 age group, which covered 20.7% (18,175) of the prison population. The younger prison population has been falling since 2013 whereas the over 30 prison population has been steadily rising. Prisoners that were under 25 made up 13.1% (11,509) of the population.
Gender Reassignment	There were 295 transgender prisoners in the 2024 data collection.
Race	In England and Wales, as at 31 March 2024, white prisoners made up 68.3% (10,809) of the remand prison population and 73.7% (52,000) of the sentenced prison population. At this same point in time, prisoners who self-declared as being from a black or black British ethnic background made up 12.9% (2,047) of the remand prison population and 12.1% (8,534) of the sentenced population. Prisoners who declared their ethnicity as Asian or Asian British represented 9.5% (1,506) of remand and 7.8% (5,530) of sentenced prisoners.
Religion or belief	In England and Wales, as at 31 March 2024, white prisoners made up 68.3% (10,809) of the remand prison population and 73.7% (52,000) of the sentenced prison population. At this same point in time, prisoners who self-declared as being from a black or black British ethnic background made up 12.9% (2,047) of the remand prison population and 12.1% (8,534) of the sentenced population. Prisoners who declared their ethnicity as Asian or Asian British represented 9.5% (1,506) of remand and 7.8% (5,530) of sentenced prisoners.
Sex	On 31 March 2024, males made up 95.9% (84,234) of the total prison population and females 4.1% (3,635).
Sexual orientation	On 31 March 2024, 97.0% (88,032) of prisoners who declared a sexual orientation reported that they were heterosexual.

- There are currently no individuals serving a sentence for breaching an FTRO, so the change would not apply to any individual in the immediate term.
- FTROs can only apply to terrorist offenders who are subject to notification requirements. The Department has used available data<sup>33</sup> in relation to the terrorist offender cohort in

<sup>33</sup> As of 30 September 2024 - <https://www.gov.uk/government/statistics/operation-of-police-powers-under-tact-2000-to-september-2024/operation-of-police-powers-under-the-terrorism-act-2000-and-subsequent-legislation-arrests-outcomes-and-stop-and-search-great-britain-quarterly-u#s4>

prison, and available data<sup>34</sup> on the wider prison population as a proxy. It should be noted that this group are not subject to notification requirements in prison, but the vast majority are subject to notification requirements when they are released.

- However, there is no data available to suggest that this measure is more or less likely to affect individuals with particular protected characteristics.

### **Age**

- It is possible that the majority of people who will be in scope under this measure will be aged between 30 and 39 which reflects the make-up of the prison and probation population.
- However, there is not readily available data on the age of those who would be affected by this change. Any impacts are expected to be minimal, as this is a minor legislative amendment.

### **Race**

- It is possible that the majority of people who will be in scope under this measure will be Black or Black British ethnicity, or from a mixed ethnic group which reflects the make-up of the prison and probation population.
- However, there is not readily available data on the race of those who would be affected by this change. Any impacts are expected to be minimal, as this is a minor legislative amendment.

### **Sexual orientation**

- It is possible that the majority of people who will be in scope under this measure will be heterosexual which reflects the make-up of the prison and probation population.
- However, there is not readily available data on the age of those who would be affected by this change. Any impacts are expected to be minimal, as this is a minor legislative amendment.

### **Sex**

- It is likely that the majority of people who will be in scope under this measure will be legally recorded as male which reflects the make-up of the prison and probation population.
- However, there is not readily available data on the sex of those who would be affected by this change. Any impacts are expected to be minimal, as this is a minor legislative amendment.

### **Religion and belief**

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<sup>34</sup> <https://www.gov.uk/government/statistics/hmpps-offender-equalities-annual-report-2023-to-2024>

- Of the 254 persons in custody<sup>35</sup> for terrorism and terrorism-connected offences in Great Britain with a self-declared religion, 161 were Muslim (63%). It is possible that the majority of people who will be in scope under this measure will be Muslim which reflects the make-up of this cohort in prison.
- However, there is not readily available data in relation to the religion and belief of those who would be affected by this change. Any impacts are expected to be minimal, as this is a minor legislative amendment.

### **Other protected characteristics**

- The Department is currently not able to identify the likely impacts of this policy on the other protected characteristics of disability, gender reassignment, marriage, and civil partnership and pregnancy and maternity. This is due to the lack of data for the cohort of individuals likely to be affected.

### **Eliminating unlawful discrimination, harassment, etc.**

#### **Direct Discrimination**

- Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic.
- The Department assesses that this amendment will not be directly discriminatory within the meaning of the Equality Act 2010. The Department does not consider that this amendment would result in anyone being treated less favourably as a result of any protected characteristic.

#### **Indirect Discrimination**

- Indirect discrimination occurs when a policy applies equally to all individuals but would put those with a particular protected characteristic at a particular disadvantage compared to those who do not share that characteristic.
- Any impacts are expected to be minimal, as this is a minor legislative amendment.
- The rationale for making this amendment is to ensure consistency in the sentencing and management of individuals convicted of a terrorism offence with a maximum penalty of more than two years' imprisonment.
- The Department assesses that this amendment will not be indirectly discriminatory within the meaning of the Equality Act 2010. The Department does not consider that this provision would result in anyone with a protected characteristic being put at a particular disadvantage because of their protected characteristic. The Department assesses that any particular disadvantage to people with protected characteristics is justified due to the need to manage the public safety risks posed by specific offenders.
- To mitigate indirect discriminatory impacts, operational guidance will be updated to incorporate this offence, which will be completed in time for it coming into force to help

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<sup>35</sup> As of 30 September 2024 - <https://www.gov.uk/government/statistics/operation-of-police-powers-under-tact-2000-to-september-2024/operation-of-police-powers-under-the-terrorism-act-2000-and-subsequent-legislation-arrests-outcomes-and-stop-and-search-great-britain-quarterly-u#s4>

ensure the application of the offence is always necessary and proportionate and in accordance with the law.

- The impact of the changes will be monitored closely by MoJ and HMPPS jointly. The IRTL also has routine oversight of the operation of the relevant Terrorism Acts and post-legislative scrutiny will be conducted on this Bill.

#### **Disability and the duty to make reasonable adjustments**

- The Department does not consider there to be a risk of discrimination arising from disability and/or a duty to make reasonable adjustments as a result of these measures.

#### **Harassment and victimisation**

- The Department does not consider there to be a risk of harassment or victimisation as a result of these provisions, when they are implemented.

#### **Advancing Equality of Opportunity**

- The Department does not consider that this measure would have any significant impact on the achievement of this objective.

#### **Fostering Good Relations**

- The Department does not consider that this measure would have any significant impact on the achievement of this objective.

## **Retail Crime – Low Value Shoplifting**

### **Introduction**

- This policy is to repeal section 22A in the Magistrates' Court Act (MCA) 1980 which was inserted by section 176 of the Anti-social Behaviour, Crime and Policing Act (ASBCPA) 2014 on 13 May 2014.
- The policy objective is to repeal section 22A of the MCA (and also section 176 of the ASBCPA), which states that shop thefts of £200 or less must be tried summarily in magistrates' courts. Repealing this measure aims to ensure the police take low value shoplifting offences more seriously, to encourage shopkeepers to report incidents and to alter the public perception that perpetrators face minimal consequences for low value shoplifting.

### **Policy summary**

- Under section 22A of the MCA, shoplifters who steal goods equal to or below £200 are tried summarily in the magistrates' court unless they elect trial in the Crown Court. The measure was introduced to streamline the prosecution process for low value cases of shoplifting, enabling the police to deal with cases swiftly and prosecute them directly. However, the measure has negatively impacted the perception among retailers that perpetrators of low-value shoplifting will go unpunished, and that the offence is not being taken seriously. Lord Foster of Bath was quoted as saying that the measure was "serving in practice to decriminalise shop theft where the value of goods does not exceed £200".<sup>36</sup>
- According to Police Recorded Crime statistics, shoplifting has increased by 29% in the year to June 2024, yet the BRC say that it is also underreported – possibly because of the perception that if the goods stolen are worth under £200 the police will not take any action. The BRC's Crime Survey (2024) showed that incidents of customer theft increased from 8 million to 16.7 million. This figure is about 40 times higher than the latest Police Recorded Crime statistics for shop theft, which were 469,788 cases.
- The aim of the policy is to repeal the ineffective legislation and change the perception that shop theft of £200 and under will not be taken seriously by the police. Another objective of the policy is to encourage increased reporting of shop theft of all amounts.

### **Evidence and analysis**

- The proposed change will have a direct impact on those defendants who are convicted of theft from a shop. Under section 22A of the MCA, any shop theft of £200 or less may only be tried summarily in the magistrates' court and subject to a maximum custodial sentence of 6 months' imprisonment unless the defendant elects Crown Court trial. By repealing this measure, theft from a shop will be tried as theft (general) – an either way offence with a maximum penalty of 7 years imprisonment.

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<sup>36</sup> [CHowdleinvitationltr-160118](#)

- This group of defendants could be affected by longer periods of custody due to the classification of the offence changing from summary only to triable either way, and thereby an increase in the maximum custodial sentence under theft (general).

#### *Sources of information*

- The data included below shows the number of defendants who would be affected by this change when applied to defendant statistics for 2023. Detailed data on Crown Court and magistrates' court outcomes is only available for three of the nine protected characteristics – age, sex, and race (which the Department has used for our analysis). Due to limitations in data collection, the Department is not currently able to identify the like impacts of this policy on other protected characteristics. Some data are not available, whereas some other sources of data are available but are not sufficiently reliable.
- The Department's analysis below is based on the most recent data available from 2023. The main source of information used for this analysis is the MoJ's Criminal Court Statistics Quarterly – Accredited Official Statistics. The latest census with detailed ethnicity statistics in the UK is the 2021 Census, which was published in December 2022.

#### **Availability of data**

- Data are presented where known, therefore where an individual's sex, ethnicity or age is not stated or unknown, they are omitted from analysis.

#### **Sex**

- There is a higher proportion of males in the affected group for the theft from shop offence than females. Of the 30,472 defendants prosecuted in the magistrates' court for theft from shop in 2023, 74.1% were male and 25.9% female. The proportion of female defendants is higher for theft from a shop than general theft, where male defendants represent 80.7% of those proceeded against in the magistrates' court compared to 19.3% female.

#### **Race**

- Where ethnicity was known (9,706 of the 31,242 defendants proceeded against for theft from shop in the magistrates' courts were recorded as unknown in 2023), the proportion of white defendants in the affected group is greater than the proportion of the general population for England and Wales (they comprise of 90.5% of theft from shop defendants but 81.7% of the general population). There is an underrepresentation of Asian people as a proportion of the defendants (2.4%) relative to the total population (9.3%). Defendants that identify as black (3.5% of defendants, and 4% of the population) or other (1% of defendants, and 2.1% of the population) are also underrepresented in the affected group. Defendants who identify as mixed are generally proportionate to the population (2.7% of defendants, and 2.9% of the population).
- The latest ethnicity data about the general population produced by the Office for National Statistics is the 2021 United Kingdom Census, which could be outdated and no longer representative of the population in 2024. Therefore, the comparisons between the defendant population and the general population could draw inaccurate conclusions.<sup>37</sup>

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<sup>37</sup> [Ethnic group, England and Wales - Office for National Statistics](#)



## Age

- Adult defendants make up most theft from shop defendants proceeded against in the magistrates' courts in 2023. Defendants aged 25 to 29 (11.2%), 30 to 39 (40.3%) and 40 to 49 (28.2%) accounted for a combined 79.7% of theft from shop defendants in 2023. Children (under 18) accounted for 2.8% and young adults (18-20 years old) accounted for 2.8% of theft from shop defendants in 2023.

## Other protected characteristics

- The Department is not currently able to identify the likely impacts of this policy on the other protected characteristics of disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, or sexual orientation. This is due to the lack of data for the cohort of defendants likely to be affected. Some data are not available, whereas some other sources of data are available but are not sufficiently reliable. The Department is, however, looking at ways to obtain relevant new data, improve the reliability of other data sources, and make better use of unpublished data to provide additional evidence with regard to equality in the criminal justice system.

## Victims, witnesses, and the general public

- The Department is not able to identify by protected characteristics the victims or witnesses involved in the cases of the specific cohort of defendants affected by this change. However, most victims of low-level shoplifting are retail businesses.
- Given that the policy rationale behind this change is that it will alter the perception of shoplifting by repealing the financial threshold (thereby increasing the maximum custodial penalty for a theft from shop offence to 7 years), the Department considers that the policy will have a positive impact on victims and witnesses. Tougher sanctions on low level retail crime could act as a deterrent for offending and encourage more reports from retailers and a more effective response from the police (61% of retailers rated police response as poor or very poor according to the BRC Crime Report 2024).<sup>38</sup>

## Eliminating unlawful discrimination, harassment, etc.

### Direct Discrimination

- Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. The Department's assessment is that these changes are not directly discriminatory within the meaning of the EA, as they apply in the same way to all individuals regardless of their protected characteristics. No defendant will be treated less favourably in relation to any protected characteristic.

### Indirect Discrimination

- 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

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<sup>38</sup> [brc-crime-survey-report-media-2024.pdf](#)

do not. The Department's initial assessment is that these changes are not indirectly discriminatory within the meaning of the EA as explained below.

- In general, non-white ethnic groups appear to be over-represented at most stages throughout the CJS, compared with the white ethnic group, and among non-white ethnic groups, black and mixed individuals are often the most over-represented. This trend is not reflected in the statistics for theft from shop defendants proceeded against in the magistrates' court in 2023. Furthermore, the Department believes any risk is mitigated as this policy change does not alter a defendant's right to elect for a jury trial in the Crown Court nor should it affect where a case is heard.
- There is a higher proportion of males (74.1%) in the affected group for the theft from shop offence than female (25.9%). However, the Department does not consider that this overrepresentation will likely result in any particular disadvantage for defendants with these protected characteristics. The Department's assessment is that the changes described by this policy proposal are a proportionate means of achieving the aim to better protect retail businesses and workers by altering the perception that low level retail crime goes unpunished. Overall, therefore, the Department does not consider that these policy changes are likely to result in any unlawful indirect discrimination.

#### **Disability and the duty to make reasonable adjustments**

- The Department does not consider that there is likely to be any discrimination in relation to disability and will continue to make reasonable adjustments for disabled people impacted by the policy proposals.

#### **Harassment and victimisation**

- The Department does not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act 2010 as a result of this change.

#### **Advancing Equality of Opportunity**

- The Department has had regard to this aspect of the equality duty but do not consider that these changes will affect the advancement of equality of opportunity, although there will be positive impacts for victims which may affect certain groups more.

#### **Fostering Good Relations**

- The Department's assessment is that these changes are unlikely to impact on fostering good relations between groups with different protected characteristics.