

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT SENTENCING ACT 2020 (AMENDMENT  
OF SCHEDULE 21) REGULATIONS 2023

*Tuesday 23 January 2024*

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**The Committee consisted of the following Members:**

*Chair:* MARTIN VICKERS

Aiken, Nickie (*Cities of London and Westminster*)  
(Con)

† Anderson, Lee (*Ashfield*) (Con)

† Bacon, Gareth (*Parliamentary Under-Secretary of State for Justice*)

† Blomfield, Paul (*Sheffield Central*) (Lab)

† Brennan, Kevin (*Cardiff West*) (Lab)

De Cordova, Marsha (*Battersea*) (Lab)

† Duguid, David (*Banff and Buchan*) (Con)

† Foster, Kevin (*Torbay*) (Con)

Hamilton, Fabian (*Leeds North East*) (Lab)

† Hodgson, Mrs Sharon (*Washington and Sunderland West*) (Lab)

Hopkins, Rachel (*Luton South*) (Lab)

† Jenkin, Sir Bernard (*Harwich and North Essex*)  
(Con)

† Jones, Gerald (*Merthyr Tydfil and Rhymney*) (Lab)

† Kruger, Danny (*Devizes*) (Con)

† Morrissey, Joy (*Lord Commissioner of His Majesty's Treasury*)

† Simmonds, David (*Ruislip, Northwood and Pinner*)  
(Con)

† Wright, Sir Jeremy (*Kenilworth and Southam*) (Con)

Kevin Maddison, *Committee Clerk*

† **attended the Committee**

## Fourth Delegated Legislation Committee

Tuesday 23 January 2024

[MARTIN VICKERS *in the Chair*]

### Draft Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023

2.30 pm

**The Parliamentary Under-Secretary of State for Justice (Gareth Bacon):** I beg to move,

That the Committee has considered the draft Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023.

It is a pleasure to serve under your chairmanship, Mr Vickers. Last July, my right hon. and learned Friend the Lord Chancellor made a written statement to this House announcing the publication of the full Government response to the independent domestic homicide sentencing review undertaken by Clare Wade KC. The response announced a package of proposed reforms to ensure that the seriousness of domestic homicides is reflected in our sentencing framework. The draft regulations before us today are the first step in implementing those important changes.

In 2021, Clare Wade KC was commissioned to review sentencing in domestic homicide cases to establish whether the law and sentencing guidelines were fit for purpose. That followed concerns raised by a number of stakeholders, including the Domestic Abuse Commissioner and the Victims' Commissioner, and by Carole Gould and Julie Devey, the mothers of two young women, Ellie Gould and Poppy Devey- Waterhouse, who were tragically murdered by their former partners in 2018 and 2019 respectively. I would like to take this opportunity to pay tribute to Carole and Julie for their tireless campaigning following the deaths of their daughters, and to Clare Wade KC for her work on this important review.

About a quarter of all homicides in England and Wales are classed as domestic: that is, they are committed by the partner or ex-partner or a relative of the victim. Over the past 10 years, that represents an average of nearly 160 homicides a year, with almost 90 of those being committed by a partner or ex-partner. The majority of domestic homicides are committed by men against women. In many of these cases, the victim has been subjected to years of abuse before their death and many also involve sustained and excessive violence towards the victim, which I will refer to in this debate as "overkill". When female perpetrators commit domestic homicide, they have often, although not exclusively, been the victims of abuse and have killed their abuser.

The legal framework for sentencing for murder is primarily contained in schedule 21 to the Sentencing Act 2020. Schedule 21 was first introduced in the Criminal Justice Act 2003, more than 20 years ago, and contains the factors to which the court must have regard when assessing the seriousness of murder. Although it always remains open to judges to consider aggravating and mitigating factors not contained in schedule 21, the schedule does not include any specific consideration of the seriousness of domestic homicides and the abuse that often precedes such cases. Over the last 20 years

our societal and legal understanding of domestic abuse has evolved. The Government have made controlling or coercive behaviour in an intimate or family relationship a criminal offence under the Serious Crime Act 2015, and introduced the landmark Domestic Abuse Act 2021, which created a legal definition of domestic abuse for the first time and made non-fatal strangulation a criminal offence.

We are also delivering on our rape review action plan, tackling violence against women and girls strategy and tackling domestic abuse strategy, and more than quadrupling funding for victim and witness support services by 2024-25, up from £41 million in 2009-10. However, as Clare Wade KC highlights in her review, our sentencing framework for murder does not yet fully reflect the increased seriousness that society now recognises in offending committed in a domestic context. Nor does it adequately account for the reduced culpability of a victim of abuse who snaps and kills their abuser. The measures that the regulations introduce will change that.

First, the draft regulations introduce both a statutory aggravating factor and a statutory mitigating factor for murder in relation to controlling or coercive behaviour. Cases of domestic murder are rarely isolated incidents. They are often the culmination of years of abuse underpinned by coercion and control. In the majority of cases, although not all, the abuse has been committed by the perpetrator of the murder, who is usually a man, against the victim, who is usually a woman. The new statutory aggravating factor will apply in those cases where an abusive partner or family member has killed their victim, in recognition of the seriousness of the preceding abuse and the experience of the victim before death.

However, a minority of cases involve a victim of abuse who has killed their abuser, often after years or even decades of abuse. In most of those cases, the perpetrator of the killing and the victim of the abuse is a woman. The new statutory mitigating factor will apply in those cases where a victim of abuse has killed their abuser, in recognition of their experience of abuse which preceded the killing and its impact on their culpability.

Secondly, the statutory instrument introduces a statutory aggravating factor for murder in relation to overkill, which it refers to as "sustained and excessive violence". The prevalence of overkill in domestic murders is striking. It was identified in more than half the murder cases analysed for the review. In all but one of those cases, the perpetrator was male, and in more than two thirds, the perpetrator had also exhibited coercive or controlling behaviour towards the victim. Overkill causes intense distress to victims' families. The horror of overkill, and the anguish that knowing that the body of their loved one was violated in such a way causes victims' families, will now be recognised in statute.

Although the SI is an important first step in the Government's response to the domestic homicide sentencing review, it forms part of a wider package of measures that we are taking forward in response to the recommendations made by Clare Wade KC.

The final legislative measure in the package is being taken forward separately in the Criminal Justice Bill. It will make the connection between a murder and the end

of a relationship, or the victim's intention to end a relationship, a statutory aggravating factor. In 40% of the murder cases analysed for the review, the murder occurred at the end, or perceived end, of the relationship. In all those cases, the perpetrator was male. Killing in those cases is the final controlling act of an abusive partner and its seriousness will now be recognised in law.

**Kevin Brennan** (Cardiff West) (Lab): When describing the overkill provision in the statutory instrument, the Minister referred to the body of the victim. That matter was raised in our recent consideration of the Victims and Prisoners Bill. Is the provision applicable when such desecration took place after death, or does it apply only if it happened during the course of the murder?

**Gareth Bacon:** It will be applicable if the desecration took place after death as well as during the course of the murder, because the state of the body causes anguish to the relatives who are left behind.

As part of the Government's response to the review, my right hon. and learned Friend the Lord Chancellor wrote to the independent Sentencing Council to propose that they revise their guidelines in the light of the recommendations and the Government's response to them. I am glad to inform hon. Members that in response, the Sentencing Council is consulting on amending the aggravating and mitigating factors in the manslaughter sentencing guidelines to include a history of controlling or coercive behaviour. That consultation also seeks views on adding an aggravating factor to the manslaughter sentencing guidelines for strangulation, suffocation or asphyxiation.

Finally, the Lord Chancellor has invited the Law Commission to undertake a review of the use of defences for murder in cases involving domestic abuse, and to consider in particular whether there is any evidence to suggest that defences are used in different ways, or to different effect, depending on the gender of the defendant.

Although I hope that hon. Members will support the Government's important changes in response to Clare Wade KC's review, I recognise that some Members may want us to go further. We have therefore launched a public consultation to ensure that all options are fully explored. We recognise that there are issues and options that would benefit from further consideration, beyond the recommendations made in the review. The consultation seeks views on a minimum term starting point for murders preceded by controlling or coercive behaviour against the victim, and for all murders committed with a knife or other weapon. The consultation will close on 4 March and the Government will carefully consider the responses to determine whether further reform is required. We will update the House on the outcome of the consultation in due course.

Murder is the most serious crime that a person can commit, and we must ensure that in every case the sentence is commensurate with the seriousness of the crime. Our sentencing framework must reflect the seriousness of violence and abuse committed by those closest to the victims.

I commend the regulations to the Committee.

2.39 pm

**Kevin Brennan:** I thank the Minister for explaining the statutory instrument that we are considering today, and I echo his comments about Carole and Julie and their campaign, which is partly responsible for this change in the law. It is a great pleasure to serve under your chairmanship for the first time, Mr Vickers.

As the Minister stated, the statutory instrument adds two aggravating factors and one mitigating factor to schedule 21 of the Sentencing Act 2020—the sentencing framework for murder—to recognise the seriousness of excessive violence and the preceding abuse that is so common in domestic abuse cases. It addresses some of the recommendations in Clare Wade KC's domestic homicide sentencing review to give, for the first time, domestic homicides specialist consideration in the sentencing framework for murder.

I will not repeat the statistics that the Minister gave about those, predominantly women, who are victims of domestic homicide and lose their lives annually at the hands of a current or former partner. The crime leaves families engulfed in profound grief, and it is high time that the law specifically addressed its magnitude.

We are grateful to Clare Wade KC for carrying out the independent review in 2021. It was a crucial and complex task. Labour supports moving forward with reforms aimed at ensuring that domestic homicides are distinctly recognised and appropriately addressed in murder sentencing guidelines. That includes acknowledging controlling and coercive behaviour as a factor that both exacerbates the severity of the crime and, in certain contexts, might mitigate sentencing.

The pattern of domestic abuse, which is often characterised by escalating violence and manipulation, predominantly affects women, but it is also crucial to recognise instances where women, after enduring prolonged abuse, sometimes resort to violence. It is therefore important that preceding abuse can be a mitigating factor in sentencing, as envisaged in the SI.

I want to probe the Minister on a few things and make a few general comments. The SI addresses recommendations 5 and 8 of Clare Wade's review with three measures: overkill, controlling and coercive behaviour as an aggravating factor, and the experience of such behaviour being a mitigating factor in killing by a victim.

The Minister has clarified that overkill would be applicable when sustained and excessive violence took place after the victim's death. I welcome that clarification because the hon. Member for Carmarthen East and Dinefwr (Jonathan Edwards) raised the matter during consideration of the Victims and Prisoners Bill. He had a particularly horrifying constituency case. Perhaps the Minister will confirm that overkill is applicable not just in the context of domestic abuse, but in all cases of murder. In the case that the hon. Member for Carmarthen East and Dinefwr mentioned, his constituent, Mr Michael O'Leary, was murdered in a carefully planned way in January 2020 and his body was subsequently desecrated. I will not go into the details this afternoon—it is a horrific case—but the family has campaigned to try to ensure that there is a specific crime in relation to that sort of activity. I hope that the SI will go some way towards meeting their concerns, even if they would like the law to go further.

[Kevin Brennan]

The review gave the Government 17 different recommendations, so will the Minister inform us about progress on all the other recommendations? He specifically mentioned one of the other recommendations. A fourth measure—to make murder at the end of a relationship an aggravating factor in sentencing—is covered in the Criminal Justice Bill. I would therefore be interested to know why that was not covered in this statutory instrument and why it required a separate piece of primary legislation. The Government are taking the recommendations forward, but that just means they will be implemented at a later date, should that Bill make its way through both Houses unamended. Will the Minister explain why we are not covering that off today with these other offences? Is there a specific reason?

Will the Minister also explain what is happening to the other 15 recommendations from Clare Wade's review? There is some concern out there that the Government have taken a bit of a piecemeal approach to sentencing—this might be evidence of that—which could have the potential to lead to unintended and unwelcome consequences. Page 40 of the “Domestic Homicide Sentencing Review” states:

“Schedule 21 remains a product of its time and frozen in 2003 since when it has been amended in a piecemeal fashion... There is an argument that there should be a wholesale reform of schedule 21, with guidance being issued by the Sentencing Council.”

That does raise the inevitable question as to why the Government are not undertaking a wholesale reform of schedule 21, rather than continuing with this piecemeal approach.

Our approach, expanding on that in new clause 6 which I tabled to the Sentencing Bill, would commission a review into the effectiveness of current legislation and sentencing policy. It would focus in particular on increasing sentences for domestic homicide and abuse, but also examine other areas of concern in the current framework, including sexual violence and other violent crime, assaults on frontline and emergency workers and offences against children, and tougher sentences, including minimum custodial sentences, a greater minimum custodial sentence for rape, and whole life orders for any adult offender found guilty of rape, abduction and murder of a stranger.

Sometimes these measures pass quite quickly in such Committees without a great deal of scrutiny, but it is important for all the members of the Committee to keep in mind that the Government's best estimate of how much this statutory instrument will cost, as contained in the impact assessment, is nearly £100 million. That is the middle estimate over the next 40 years. It is not an insignificant commitment of resource from the Government, albeit over a relatively long period of time. There is quite an interesting observation within the impact assessment, which states:

“All the cost estimates... have been assessed using HM Treasury guidance”

It then lists the conventions adopted in that process, one of which reads:

“Where appropriate, 20% optimism bias has been applied to future costs.”

Now, it might explain a thing or two about the former Chancellor and current Prime Minister if an automatic optimism bias is built into the estimates before us this afternoon, but that would be a trite point to make at

this stage in our proceedings. However, it is significant that we are talking about having to commit £100 million as the middle estimate for what this SI will cost.

A lot of that, of course, relates to the fact that, according to the impact assessment, between 66 and 190 additional prison places will be required to cater for longer sentences as a result of this measure. Even with those extra places, the impact assessment says that one of the non-monetised costs is

“a risk that offenders spending longer in prison... may compound prison capacity and overcrowding”.

That underscores the consequences of the profound neglect of our criminal justice system in recent years. It is a direct consequence of inadequate investment in our Prison and Probation Service, which is only now beginning to receive belated attention. That additional burden could have been averted with a more consistent, pragmatic emphasis on investing in our public infrastructure from the outset. How do those financial implications align with the current budget? Will the Minister say more about that?

What measures will the Minister take to monitor and evaluate changes in sentencing patterns, prison population, and the overall justice system? I accept that it will take considerable time before the full effects of the SI come into force. What is the Government's plan to monitor its effectiveness? I would be grateful if he informed the Committee when we can expect all the other recommendations from the review to be implemented and whether the views and concerns of victims' advocacy groups, legal professionals, and other relevant organisations will be considered in such changes.

Will the Minister clarify the position of the proposed exemption from new restrictions on parental responsibility for those who commit murder but are victims themselves of domestic abuse? That is not contained in the SI, but what is happening to that exemption? When and how will it be enacted? If he cannot tell me this afternoon, I would be happy for him to write to me. I accept that he may not have prepared that point.

We will support the adoption of the SI instrument today, but it falls short of the comprehensive and less piecemeal approach that the Government should take to support victims.

2.51 pm

**Gareth Bacon:** I thank the hon. Member for Cardiff West for the Opposition's support for an important SI. He raised several points, which I will attempt to answer in order.

We covered one aspect of overkill. The hon. Gentleman asked whether it would apply to all cases of murder. The short answer is that it will. All statutory aggravating factors in schedule 21 apply to all murders, and that will be the case for overkill. We anticipate that most cases captured by the change will be domestic murders, but the provision will apply in every case.

The hon. Gentleman asked about progress on the other recommendations. He specifically asked why all the measures in response to the DHR are not being introduced in the same legislative vehicle. The new aggravating factors in the SI were announced in the Government's interim response to the DHR last March. At that time, no primary legislative vehicle was available, so we committed to acting quickly and introducing the

legislation as soon as we could. The measure in the Criminal Justice Bill to make murder at the end of a relationship a statutory aggravating factor was announced in the Government's full response to the review in July and was included in the King's Speech. It was not possible to include the measure in the SI without delaying its introduction due to the consultation that is required. That is why we have done that in a slightly different way. We decided to proceed with the SI to ensure that important changes could be made as soon as possible, and to include the final measure in the Criminal Justice Bill.

The new statutory mitigating factor relating to controlling or coercive behaviour was announced in the Government's full response in July. Due to its similarity to the equivalent aggravating factor, it was possible to include it in the consultation with the Sentencing Council without delaying its introduction. That is a long way of saying that speed led to its inclusion.

The hon. Gentleman asked whether we should have wholesale rather than piecemeal reform. We do not accept that the SI represents a piecemeal change. It is part of a package of reforms that the Government are introducing at the same time to update schedule 21 in response to an independent review. As he knows, it was an in-depth review, which Clare Wade KC undertook, that involved extensive research and engagement with stakeholders across the sector. The review found that schedule 21 needed to be updated to reflect our improved societal and legal understanding of fatal domestic abuse. That is exactly what we are doing. That does not

preclude a future review of schedule 21, but the Government took the view that the priority was to change the law now, rather than delay.

The hon. Gentleman touched on cost and the £100 million. As he said, that is over 40 years. The Ministry of Justice's annual budget is £14 billion, so although £100 million sounds like a lot of money in isolation, compared with the overall budget, it is not as much as he suggests.

The hon. Gentleman asked about longer sentences and pointed out that the impact assessment estimates that the measures will require a set number of prison places. The good news is that that will not be for at least 15 years because the measure will not kick in as an aggravating factor until beyond the minimum term for a murder conviction, which is 15 years.

The hon. Gentleman also mentioned public infrastructure, particularly with regard to prison places. The Government are currently engaged in the largest expansion of the prison estate since the Victorian era, with £4 billion being invested in creating 20,000 additional prison places.

The hon. Gentleman was correct that I do not have a brief on his final point about parental responsibility because it is not within the confines of the SI. As he suggested, I will write to him by the end of next week with a full response on that.

*Question put and agreed to.*

2.56 pm

*Committee rose.*

