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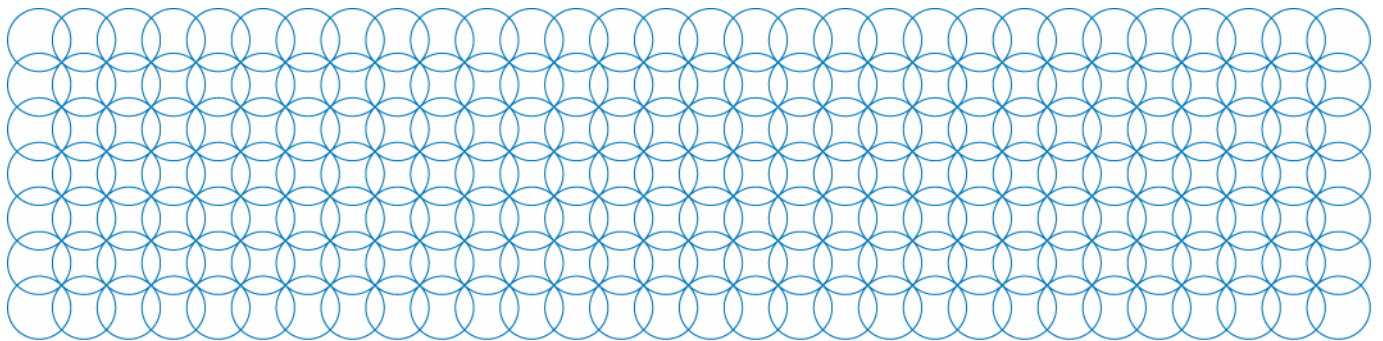
Home Office

Murder, manslaughter and infanticide: proposals for reform of the law

Consultation Paper CP19/08

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Murder, manslaughter and infanticide: proposals for reform of the law

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Foreword

The unlawful taking of the life of another human being is the most serious matter which our criminal courts have to deal with. It is an offence with devastating consequences for those involved and their families. It is also a matter of great public concern.

The role of the criminal law in these cases is to ensure that justice is done and that the punishment fits the crime. In order to do this, the law needs to be clear and consistent and in tune with current circumstances and attitudes.

It is over 50 years since the last comprehensive review of the law on homicide. The time is ripe for another one. That is why the Government asked the Law Commission to carry out a fundamental review of the various elements of murder and manslaughter to determine whether the law as it now stands meets the needs of the 21st century.

The conclusions of that review are set out in the report, "Murder, Manslaughter and Infanticide". We are extremely grateful to the Law Commission for this in-depth report and the thorough consultation and careful thought which has gone into it. It has provided us with a solid platform for the next stage of the process.

Given the breadth of the recommendations, we have decided to look first at those which we think touch on the areas of most pressing concern. We have been giving them careful consideration and our proposals for reform are set out in this paper, together with draft clauses which would give effect to them.

This area of the law, perhaps above all others, needs to work effectively and command the confidence of the criminal justice system and society as a whole. That is why we want to test out and refine the proposals now before introducing them to Parliament and why we hope to receive a wide range of comments on them. We need to get this right.

We welcome your views to help us to do this.



Maria Eagle

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Secretary of State at the
Ministry of Justice



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Summary of proposals

The Government proposes to reform the law on murder, manslaughter and infanticide in the following ways:

Partial defences

- To abolish the existing partial defence of provocation and replace it with new partial defences of:
 - killing in response to a fear of serious violence; and
 - (to apply only in exceptional circumstances) killing in response to words and conduct which caused the defendant to have a justifiable sense of being seriously wronged.
- To make clear that sexual infidelity on the part of the victim does not constitute grounds for reducing murder to manslaughter.
- To remove the existing common law requirement for loss of self-control in these circumstances to be “sudden”.
- To provide that the “words and conduct” partial defence should not apply where the words and conduct were incited by the defendant for the purpose of providing an excuse to use violence.
- To provide that the “fear of serious violence” partial defence should succeed only where the victim is the source of the violence feared by the defendant and the threat is targeted at the defendant or specified others.
- To provide that neither partial defence should apply where criminal conduct on the part of the defendant is largely responsible for the situation in which he or she finds him or herself.
- To provide that these partial defences should apply only if a person of the defendant’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of the defendant, might have reacted in the same or in a similar way.
- To ensure that the judge should not be required to leave either of these defences to the jury unless there is evidence on which a reasonable jury, properly directed, could conclude that they might apply.
- To introduce a new partial defence of diminished responsibility based on the concept of a “recognised medical condition”, spelling out more clearly what aspects of a defendant’s functioning must be affected in order for the partial defence to succeed, and making clear that the abnormality should cause, or be a significant contributory factor in causing the defendant to kill.

Complicity

- To reform the law of complicity in homicide with a view to reforming the law of complicity more generally at a later stage, guided by the same principles.
- To create a new statutory offence of intentionally assisting and encouraging murder.
- To create a similar statutory murder offence in circumstances where the main perpetrator is guilty of manslaughter (because he or she lacks the state of mind for murder) and the secondary party assists or encourages him or her, intending him or her to kill or cause serious injury.
- To retain a lower threshold of secondary liability for murders which occur in the context of a joint criminal venture and to put this on a statutory footing.
- To replace the common law fundamental difference rule with a more flexible statutory rule based on whether the perpetrator's act was within the scope of the joint criminal venture. This would be the case where the act did not go far beyond what was planned, agreed to or foreseen by the secondary party.
- To provide that this statutory rule should apply only where the secondary party foresees no more than serious injury.
- To create a statutory liability for manslaughter where the secondary party foresees only serious injury and the killing was outside the scope of the joint criminal venture.
- To introduce a new form of liability for manslaughter in circumstances where a murder is committed in the context of a joint criminal venture, the secondary party foresees only non-serious harm or the fear of harm, but a reasonable person would have foreseen an obvious risk of serious injury or death.

Infanticide

- To amend the law to make clear that infanticide cannot be charged in cases that would not currently be homicide at all.

Introduction

1. This paper sets out for consultation how the Government proposes to take forward the Law Commission's recommendations, set out in their 2006 report "Murder, Manslaughter and Infanticide" ("the Murder Report")¹, in relation to:
 - the partial defences to murder of provocation and diminished responsibility;
 - the law on complicity in relation to homicide; and
 - infanticide.
2. These proposals would require legislative change and this paper also includes draft clauses showing how we propose to give effect to them. Subject to the outcome of this consultation exercise, these clauses will be included in a Law Reform, Victims and Witnesses Bill in the next parliamentary session which formed part of the Draft Legislative Programme announced by the Prime Minister on 14 May 2008.
3. This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The consultation criteria, which are set out in annex K, have been followed.
4. This paper follows a long process of consultation and consideration by the Law Commission. At this stage of the process, we would particularly welcome views on the detail of what is now proposed, especially where that differs from what the Law Commission recommended, and on the draft clauses themselves. Responses should reach us by 20 October 2008 (see details in annex I and J).
5. An Impact Assessment has been completed and indicates that the proposals are likely to lead to some additional costs for the public sector. This Impact Assessment, which also includes an Equality Impact Assessment, can be downloaded from www.justice.gov.uk/publications/cp1908.htm and comments on this document are also welcome.

¹ *Murder, Manslaughter and Infanticide* (2006), Law Com No.304.

Background

6. Murder is a common law offence which has evolved over many years through developments in case law and statute, in turn reflecting other changes in the criminal justice system and society more widely. These developments have generally been beneficial and welcome in themselves. But they have occurred in a piecemeal fashion, without consideration of how the law as a whole fits together. That is why the Government asked the Law Commission to review, firstly, the partial defences to murder, which led to the report “Partial Defences to Murder” (“the Partial Defences Report”)², and, subsequently, the law of murder as a whole, which led to the Murder Report (see Annex F for full chronology).
7. The Murder Report recommends wholesale reform of the law in this area and, specifically:
 - a new offence structure for homicide, including new offences of first degree and second degree murder, as well as manslaughter;
 - reforms to the partial defences of provocation and diminished responsibility;
 - reforms to the law on duress and complicity in relation to homicide; and
 - improved procedures for dealing with infanticide.
8. The Murder Report was intended as the first stage in the review of the law, with the Government undertaking the second stage. In taking forward this second stage, the Government is proceeding on a step-by-step basis, looking first at the recommendations which relate to:
 - the partial defences of provocation and diminished responsibility;
 - complicity in relation to homicide; and
 - infanticide.
9. The Law Commission’s recommendations in these areas are predicated on their proposed new offence structure, but this paper considers them in the context of the existing structure. The wider recommendations in the Law Commission’s report may be considered at a later stage of the review.

² *Partial Defences to Murder* (2004), Law Com No.290.

10. Over the last few months, we have been considering the recommendations carefully and discussing them with key stakeholders (see Annex G). We have also analysed the sentencing remarks of murder and manslaughter cases in 2005 (for more details of this exercise see the Impact Assessment at www.justice.gov.uk/publications/cp1908.htm) to improve our understanding of how the law is working at the moment. Our aim is to ensure that the law in this area is just, effective and up-to-date, and produces outcomes which command public confidence. This paper sets out for wider public consultation the conclusions we have reached in each of the four areas and invites comments.
11. The proposals relate to England and Wales only.

The proposals

PARTIAL DEFENCE OF PROVOCATION

Introduction

12. Murder is committed when someone unlawfully kills another person with an intention either to kill that other person or to do him or her serious harm. A conviction for murder attracts a mandatory sentence of life imprisonment (or, in the case of an offender aged under 18, detention at Her Majesty's pleasure).
13. Currently, there are three partial defences to murder: provocation, diminished responsibility and killing in pursuance of a suicide pact (the latter is not considered in this paper). Defendants who have killed with the intention for murder described above are convicted of manslaughter rather than murder if they successfully plead one of these partial defences. Manslaughter carries a maximum, but not mandatory, life sentence.
14. The partial defence of provocation can be traced back at least to the 17th century. The statutory provision is section 3 of the Homicide Act 1957 which states:

“Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.”
15. But the partial defence has also evolved through case law, for example to allow for the cumulative effect of provocation and some time delay between the final provocative act and the killing itself (for a full analysis of the development of the law on provocation, see the Law Commission's consultation paper on partial defences³).
16. The burden of proof rests with the prosecution who must prove beyond reasonable doubt that the defendant was not in fact provoked.

³ *Partial Defences to Murder, A Consultation Paper* (2003) Law Com No.173, Part III.

What are the problems?

17. The Law Commission identify a general problem that “the defence is a confusing mixture of common law rules and statute”⁴ but they also identify some specific problems relating to the lack of judicial control over pleas, the requirement for a loss of self-control and the interpretation of the reasonable person requirement (for an assessment of the gender implications of these problems see the Equality Impact Assessment at www.justice.gov.uk/publications/cp1908.htm).

Lack of judicial control

18. Under the existing law, if there is any evidence – however trivial – that the defendant was provoked to lose his or her self-control, the judge must leave the defence to the jury (even if the defendant is not running a plea of provocation, for example because he or she is seeking a complete acquittal).

Loss of self-control

19. There is a tension between a continuing requirement for “a sudden loss of self-control”⁵ and an accommodation of the “slow-burn” responses associated with domestic abuse cases. It can also be difficult to apply an emotional response founded primarily on anger to situations where the predominant emotion is fear. This risks creating problems when defendants are deciding how to run their defences since it is hard to run the two in parallel. The Law Commission suggest that defendants sometimes plead guilty to manslaughter for fear that a plea of self-defence might fail and leave them with a murder conviction⁶.

The “reasonable man” requirement

20. The Law Commission identify disagreement in the courts over the extent to which a defendant’s own characteristics may be taken into account in judging how the “reasonable man” in section 3 of the 1957 Act might have responded to provocation, in particular whether the jury should be able to take account of characteristics which bear on the defendant’s capacity for control.

⁴ The Murder Report, para 5.6.

⁵ *Duffy* [1949] 1 All ER 932.

⁶ The Partial Defences Report, para 4.22.

What do the Law Commission recommend?

21. To address these concerns, the Law Commission propose a reformed partial defence of provocation. Their recommendation is set out in full at Annex E, but in summary they propose a new two-limbed test, removing the requirement for a loss of self-control and making it possible for provocation to be pleaded on the basis of:
- a fear of serious violence; and/or
 - gross provocation (meaning words or conduct which caused the defendant to have a justifiable sense of being seriously wronged).
22. They also suggest clarifying and updating the existing reasonable person requirement so that it tests the defendant's own reaction against the standards of someone of his or her age possessed of an ordinary temperament, who is neither intolerant nor lacking in a reasonable measure of self-restraint when facing provocation. Factors, such as alcoholism or a mental condition, which affect the defendant's general capacity for self-control, would not be relevant to this partial defence (though they might be to diminished responsibility). Characteristics (e.g. intoxication, irritability, excessive jealousy) which do not arise from a medical condition and do not satisfy the test for diminished responsibility should be disregarded altogether. (This broadly accords with the judgment in *A-G for Jersey v Holley*⁷.)
23. The Law Commission propose addressing the problem of lack of judicial control by removing the requirement for the judge to leave the defence to the jury unless there is evidence on which a reasonable jury, properly directed, could conclude that it might apply.

What is the Government proposing?

24. The Government accepts the Law Commission's analysis that the law on provocation is in need of reform but we propose a somewhat different approach. Essentially, **the Government proposes to abolish the existing partial defence of provocation** and to replace it with two new partial defences, based on the limbs of the Law Commission's proposal, which may be run either separately or in parallel:
- killing in response to a fear of serious violence; and

⁷ *A-G for Jersey v Holley* (Jersey) [2005] 2 AC 580.

- in exceptional circumstances, killing in response to words and conduct which caused the defendant to have a justifiable sense of being seriously wronged.

25. We also propose a slightly different approach in respect of the detail, particularly in respect of loss of self-control. This is explained in more detail below. The draft clauses which give effect to these proposals are set out at Annex A.

Fear of serious violence

26. The Law Commission's proposal for a new partial defence of killing in response to a fear of serious violence is intended to plug what they see as a loophole in circumstances when the defendant, fearing serious violence from an aggressor, overreacts by killing the aggressor in order to prevent the feared attack. We do not think that there is much of a loophole in practice, partly because the scope of the complete defence of self-defence is so wide and partly because of the way that the courts have over the years extended the application of the partial defence of provocation. Our analysis of cases from 2005 did not reveal any where a murder conviction appeared to have resulted inappropriately as a result of the absence of such a partial defence.

27. Nevertheless, we accept that it is not helpful for killings which are triggered primarily by fear to be shoehorned into a partial defence which is aimed at killings triggered by anger, and we agree that a tailored partial defence is needed. **The Government therefore proposes that there should be a partial defence of killing in response to a fear of serious violence.** Our discussions with stakeholders have revealed widespread support for this.

28. We do not see this partial defence as extending the application of the existing partial defence of provocation but as providing a more logical means of reaching outcomes which we think are generally being reached now. There are broadly two sets of circumstances in which such a partial defence might be relevant:

- where a victim of sustained abuse kills his or her abuser in order to thwart an attack which is anticipated but not immediately imminent; and
- where someone overreacts to what they perceive as an imminent threat.

29. Defendants in such cases would benefit from the partial defence only if they additionally fulfilled the other criteria set out later in this paper.

30. It is important to emphasise that the partial defence is not intended to encroach in any way on self-defence. Self-defence is, and will remain, a complete defence to murder or any other offence of violence, and the

burden of disproving the defence lies on the prosecution. The complete defence will succeed if the court finds that the defendant honestly believed it was necessary to use force to defend himself, and that the degree of force used was reasonable in the circumstances as he saw them. The test is thus based on the defendant's subjective view of the circumstances (the danger he sees himself in etc) as he honestly (even if mistakenly and unreasonably) believed them to be, but the degree of force used then needs to be objectively reasonable. This common law defence was recently given statutory backing in the Criminal Justice and Immigration Act 2008.

Gross provocation

31. The Law Commission propose an additional limb of the partial defence to cover "gross provocation". We have considered whether this is necessary. It could be argued that a partial defence which goes beyond "fear of serious violence" to cover killings carried out in anger would be an excessively lenient response to behaviour which society does not consider, or no longer considers, acceptable. We understand this. There are many situations where passions run high and where people feel a strong sense of having been wronged, especially within close personal relationships. But such situations, however devastating for the individuals concerned, are essentially commonplace and people need to be able to deal with them without resorting to violence. We agree that a partial defence is not appropriate in such circumstances.
32. This is particularly the case where sexual infidelity is concerned. It is quite unacceptable for a defendant who has killed an unfaithful partner to seek to blame the victim for what occurred. We want to make it absolutely clear that sexual infidelity on the part of the victim can never justify reducing a murder charge to manslaughter. This should be the case even if sexual infidelity is present in combination with a range of other trivial and commonplace factors.
33. However, we also agree with the Law Commission (whose views were in turn influenced by research into public attitudes to various scenarios⁸) that there will be a small number of cases where injustice might be done if "fear of serious violence" were the only available partial defence. We have in mind here situations which go far beyond what anyone could reasonably be expected to deal appropriately with and which may warrant a more sympathetic response in the form of a manslaughter rather than a murder conviction. An example cited by the Law Commission involves a rape victim who kills his attacker after being taunted about what happened⁹. Even in

⁸ Professor Barry Mitchell, "Brief Empirical Survey of Public Opinion Relating to Partial Defences in Murder", the Partial Defences Report, Appendix C.

⁹ The Murder Report, para 5.7.

these exceptional situations, sexual infidelity should not be a relevant factor: it should not prevent the partial defence from being run if other exceptional factors are also present but the defence should stand or fall on these exceptional factors rather than on the sexual infidelity.

34. We therefore want to provide a partial defence which has a much more limited application than the current partial defence of provocation. We propose to do this in the following ways:

- By abolishing the existing partial defence of provocation and the term “provocation” itself which, it is clear from our discussions with stakeholders, carries negative connotations. Instead **the Government proposes to introduce a new partial defence of killing in response to words and conduct which caused the defendant to have a justifiable sense of being seriously wronged.**
- **By making clear once and for all – and on the face of the statute - that a partner having an affair does not of itself constitute such conduct for the purposes of the partial defence.**
- By raising the threshold. **The Government proposes that words and conduct should be a partial defence to murder only in exceptional circumstances.**

Loss of self-control

35. The Law Commission propose to address the difficulties caused by the present requirement for a sudden loss of self-control by abolishing it completely in relation to both limbs of their proposed test. They recognise that this is a controversial suggestion but feel that the other safeguards which they propose would ensure that unsympathetic cases would be kept outside the scope of the partial defence.

36. We understand this reasoning but remain concerned that there is a risk of the partial defence being used inappropriately, for example in cold-blooded, gang-related or “honour” killings. Even in cases which are less obviously unsympathetic, there is still a fundamental problem about providing a partial defence in situations where a defendant has killed while basically in full possession of his or her senses, even if he or she is frightened, other than in a situation which is complete self-defence.

37. We have considered some of the alternatives floated by the Law Commission¹⁰ but share their reservations about them. Instead, the Government proposes a fresh approach which builds on the common law,

¹⁰ The Murder Report, para 5.32.

retains the requirement for control to have been lost but removes the requirement for the loss to have been “sudden”. This would allow for situations where the defendant’s reaction has been delayed or builds gradually. We think this strikes the right balance between addressing the problems identified with the current law whilst not creating new ones.

Other safeguards

38. We also propose the following safeguards:

- **The “words and conduct” partial defence should not apply where the words and conduct were incited by the defendant for the purpose of providing an excuse to use violence.**
- **For the “fear of serious violence” partial defence to succeed, the source of the violence feared by the defendant needs to be the victim whom the defendant kills and the threat needs to be targeted at the defendant or specified others.**
- **Neither partial defence will apply where criminal conduct on the part of the defendant is largely responsible for the situation in which he or she finds him or herself.**

Reasonable person

39. We agree with the Law Commission’s reasoning here and **propose that the partial defences should apply only if a person of the defendant’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of the defendant, might have reacted in the same or a similar way.**

Judicial control

40. We agree with the Law Commission that there is no justification for the current position and **we propose that the judge should not be required to leave either of these defences to the jury unless there is evidence on which a reasonable jury, properly directed, could conclude that it might apply.**

PARTIAL DEFENCE OF DIMINISHED RESPONSIBILITY

Introduction

41. Like provocation, diminished responsibility is a partial defence to murder. It enables those who kill with the intention for murder to be convicted of manslaughter if, at the time of the killing, they were suffering from a mental abnormality which reduced their responsibility for their action.
42. In comparison to provocation, diminished responsibility is a relatively recent concept in English criminal law and was introduced for the first time in section 2 of the Homicide Act 1957, which remains the basis for the partial defence. Section 2 states:
- (1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.
 - (2) On a charge of murder, it is for the defence to prove that diminished responsibility applies on the balance of probabilities.
 - (3) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.
 - (4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.
43. Section 2(2) makes clear that, unlike the position as regards provocation, the burden in a diminished responsibility case is on the defence who must prove on the balance of probabilities that diminished responsibility applies.

What are the problems?

44. The Law Commission identify two main problems with the partial defence:
- “First, the definition says nothing about what is involved in a ‘substantial impairment [of] mental responsibility’. The implication is that the effects of an abnormality of mind must significantly reduce the offender’s culpability. The Act neither makes this clear, nor says in what way the

effects of an abnormality of mind can reduce culpability for an intentional killing, such that a manslaughter verdict is the right result.”¹¹

- “Secondly, the definition has not been drafted with the needs and practices of medical experts in mind, even though their evidence is crucial to the legal viability of any claim of diminished responsibility. ‘Abnormality of mind’ is not a psychiatric term, so its meaning has had to be developed by the courts from case to case. Further, diagnostic practice in diminished responsibility cases has long since developed beyond identification of the narrow range of permissible ‘causes’ of an abnormality of mind stipulated in the bracketed part of the definition. In any event, the stipulated permissible causes never had an agreed psychiatric meaning.”¹²

45. The Law Commission also express concern about the application of this partial defence to offenders aged under 18 who kill, due to the difficulty of distinguishing between the effect of a mental abnormality and straightforward developmental immaturity.

What do the Law Commission recommend?

46. To address these concerns, the Law Commission propose a reformed partial defence of diminished responsibility. Their recommendation is set out in full at Annex E, but essentially it seeks to bring the law up-to-date, to ensure that defences are grounded in valid medical diagnoses, to clarify how the defendant’s capacities are to be impaired in order for the partial defence to succeed and to include “developmental immaturity” as a criterion upon which the partial defence can be based.

What is the Government proposing?

47. The Government accepts the Law Commission’s analysis that the partial defence of diminished responsibility should be retained but reformed, and broadly agrees with their recommendations for how this should be done except in relation to developmental immaturity. This is explained in more detail below. The draft clauses giving effect to this are set out at Annex B.

Need for a partial defence of diminished responsibility

48. Like the Law Commission, we have considered whether a partial defence of diminished responsibility is needed at all. We agree with them that it is and

¹¹ The Murder Report, para 5.110.

¹² The Murder Report, para 5.111.

that it is right to treat differently those who kill at a time when their responsibility is diminished by virtue of a mental condition. It is important to note that “differently” in this context does not necessarily mean more leniently: most cases of diminished responsibility result in a hospital order without limit on time or a sentence of life imprisonment. **The Government therefore proposes to retain a partial defence of diminished responsibility.**

Recognised medical condition

49. **The Government proposes to abolish the existing partial defence and replace it with a new partial defence based on the concept of a “recognised medical condition” as recommended by the Law Commission.** We agree that this would be helpful in bringing the existing terminology up-to-date in a way which would accommodate future developments in diagnostic practice and encourage defences to be grounded in a valid medical diagnosis linked to the accepted classificatory systems¹³ which together encompass the recognised physical, psychiatric and psychological conditions.

Impairment

50. **The Government proposes to adopt the Law Commission’s recommendation to spell out more clearly what aspects of an offender’s functioning must be affected in order for the partial defence to succeed.** The Law Commission recommendation clarifies that the following must be substantially impaired: the defendant’s capacity (i) to understand the nature of his or her conduct, (ii) to form a rational judgment or (iii) to control him or herself. We agree that this is helpful and have incorporated this wording in our draft clause.

Explanation for the killing

51. The Law Commission explored whether and to what extent the definition should include a requirement that the abnormality of mental functioning should be an explanation for the killing. We agree with their conclusion that it would be impractical to require abnormality to be the sole explanation: it is rare that a person’s actions will be driven solely from within to such an extent that they would not otherwise have committed the offence, regardless of the influence of external circumstances, and a strict causation requirement of this kind would limit the availability of the partial defence too much. On the other hand, there must be some connection between the

¹³ The World Health Organisation: *International Classification of Diseases* (ICD-10); and the American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders* (DSM-1V).

condition and the killing in order for the partial defence to be justified. **The Government therefore proposes that abnormality of mind should cause, or be a significant contributory factor in causing, the defendant's conduct.**

Developmental immaturity

52. As the Law Commission themselves acknowledge, the most controversial aspect of their proposal on diminished responsibility is that the definition should include, as a cause of impairment alongside abnormality of mental functioning arising from a medical condition, developmental immaturity in a defendant under the age of 18. The purpose of this is to address the problems highlighted above about the difficulty of distinguishing between mental conditions and differing stages of maturity where juveniles are concerned.
53. We have considered this carefully and encountered differing views amongst stakeholders with whom we have discussed this. We have the following concerns about the recommendation:
- We are not convinced that the absence of a provision along these lines is causing significant problems in practice – we are not aware of specific cases which have resulted in inappropriate verdicts.
 - We think there is a risk that such a provision would open up the defence too widely and catch inappropriate cases. Even if it were to succeed only rarely (as the Law Commission suggest), we think it likely that far more defendants would at least try to run it, so diverting attention in too many trials from the key issue.
54. The Government does not therefore propose to extend the definition of diminished responsibility in this way.
55. However, it is worth clarifying in this context what we envisage the term “recognised medical condition” covering. We understand that the accepted classificatory systems referred to above would cover conditions such as learning disabilities and autistic spectrum disorders which can be particularly relevant in the context of juveniles. We accept that some people would prefer not to describe these conditions in this way but we think the issue here is not one of labelling but of finding a suitable statutory mechanism for ensuring that those who have conditions of this kind have the opportunity to run the partial defence of diminished responsibility where appropriate. We are satisfied that the term “recognised medical condition” (with its implied links to the classificatory systems which in turn clearly cover these conditions) achieves this.

COMPLICITY TO HOMICIDE

Introduction

56. Under the current law, when a crime is committed by one person, other people may also be found guilty of that crime if they played a part in assisting or encouraging it. This is called secondary liability and it is governed by the law of complicity.
57. While the Accessories and Abettors Act 1861 provides a statutory foothold for secondary liability, much of it stems from the common law. It is now very complicated as case law since 1861 has interpreted and refined the statute so that it is difficult to state with certainty where the precise boundaries of secondary liability lie.
58. The general principle is that, where one person does a criminal act with criminal intent, anyone who assists or encourages him or her to commit the act may also be found guilty of the crime.
59. In practice secondary liability is often considered as having two routes:
- first, where there is no joint criminal venture but where a secondary party assists or encourages the principal offender, in the belief that he or she *will* commit the offence; and
 - secondly, where the secondary party is involved with the principal in a joint criminal venture, and thereby participates or lends at least moral support, if not actual assistance, to the criminality, with the foresight that the offence *may* be committed.
60. Joint criminal ventures involve agreements to commit offences. The agreement may be explicit or may take the form of shared common intentions where no words are spoken, such as when two people spontaneously join in an attack. Secondary parties may be found guilty of offences which are not necessarily agreed to as part of the joint criminal venture but which occur during the course of it and were foreseen as a possibility by the secondary party; these are often called collateral offences.
61. It is important to note that the secondary party is found guilty of the *same* offence as the main perpetrator, labelled in the same way and subject to the same penalty. This type of secondary liability is sometimes described as “parasitic” because the secondary party’s guilt rests on the acts and the mental state of the main perpetrator.

62. Part of the rationale for this form of liability is that those who help or encourage others to commit crime share their culpability so should also be guilty of the crimes committed. This is particularly clear when the secondary party wants the crime to be committed, for example by helping in a bank robbery in return for a cut of the goods. There are also circumstances where the secondary party may be more culpable than the perpetrator, for example a bully who pressurises a younger boy into stealing from a shop. In other circumstances it may be pure chance which of two offenders actually perpetrates the criminal act; for example, if two people shoot at a victim intending to kill or seriously harm him, it may be entirely down to chance which bullet kills him, in which case both offenders may be guilty of the murder.
63. Complicity is an important, as well as a long-standing, feature of the law. It ensures that groups of people who jointly engage in crime can all be brought to justice and that those behind the scenes of criminal activities can be found guilty alongside the people who actually commit the crimes. This is relevant to organised crime but also to ordinary criminality which very often involves more than one person.

The current law of complicity in homicide cases

64. The law of complicity is particularly important in relation to homicide, because of the gravity of the offence and the high proportion of homicide cases which involve more than one offender. In the murder cases examined from 2005, a little under half of all those convicted of murder were not acting alone¹⁴. It is in relation to homicide that much of the case law on complicity has developed, and some of the legal principles are specific to homicide cases.
65. The Law Commission has recently looked at the law of complicity both in general and specifically in the context of homicide. The Murder Report and “Participating in Crime” (the Participating in Crime Report)¹⁵ set out the Law Commission’s recommendations in this area.
66. The two reports provide a detailed analysis of the current law of complicity in respect of homicide. As the Law Commission point out, the law in this area is complicated and uncertain, but the following is intended to provide a rough summary of the current position.

¹⁴ See Impact Assessment for further details of this analysis.

¹⁵ *Participating in Crime* (2007), Law Com No 305.

Secondary liability for homicide

67. The following table summarises how secondary parties may be liable in homicide cases. The explanation of the law and examples set out in the table describe the law at the lowest level of culpability in order to attract secondary liability for murder and manslaughter.

Secondary liability for murder	Secondary liability for manslaughter
<p>A secondary party may be found guilty of a murder committed by the perpetrator:</p> <p>if the defendant encouraged or assisted the perpetrator realising that the perpetrator <i>would</i> intentionally seriously harm or kill the victim;</p> <p>Example 1:</p> <p>A man hands his neighbour a baseball bat, believing the neighbour will use it to seriously attack another neighbour. If the victim is killed, both offenders may be guilty of murder.</p> <p>or if the defendant and the perpetrator were joint participants in a criminal venture and the defendant realised that during the venture the perpetrator <i>might</i> intentionally seriously harm or kill the victim.</p> <p>Example 2:</p> <p>Two neighbours decide to attack a third. One of them does not intend to seriously harm the victim but realises that other neighbour might use a baseball bat to seriously harm him. If the victim is killed, both offenders may be guilty of murder.</p> <p>In cases of joint criminal venture, liability is not restricted to the offences agreed to (explicitly or implicitly) by the co-defendants; it also extends to collateral offences which happen during the course of the joint criminal venture. Liability for the secondary party stems from what he or she foresaw might happen during the criminal venture.</p> <p>Example 3:</p> <p>Two burglars decide to burgle a house. One of the burglars does not want to harm anyone in the course of the burglary but realises that his accomplice <i>might</i> violently assault and seriously harm the home owner if he disturbs the burglary.</p> <p>If the home owner is killed in such a violent assault, both burglars may be found guilty of murder.</p>	<p>A secondary party may be found guilty of manslaughter for a death caused by the perpetrator:</p> <p>if the defendant encouraged or assisted the perpetrator realising that the perpetrator <i>would</i> intentionally harm the victim;</p> <p>Example 4:</p> <p>A man encourages his neighbour to assault another neighbour, believing the neighbour will punch the victim but not intend to cause serious harm. If victim is killed by the assault, the secondary party may be guilty of manslaughter.</p> <p>or if the defendant and perpetrator were joint participants in a criminal venture and the defendant realised that during the venture the perpetrator might intentionally harm the victim.</p> <p>Example 5:</p> <p>Two neighbours decide to attack a third. One of them does not intend to harm the victim but realises that other neighbour <i>might</i> harm him. If the victim is killed, the secondary party may be guilty of manslaughter.</p> <p>Secondary parties may be liable for manslaughter if an assault which results in death is a collateral offence, which the secondary party foresaw might happen.</p> <p>Example 6:</p> <p>Two robbers approach a victim to demand money. One of the robbers intends to frighten the victim into parting with his wallet but foresees that his accomplice might use some physical force, although he does not expect the victim to be seriously injured.</p> <p>If the victim dies, the secondary party may be guilty of manslaughter.</p>

68. In general, for a secondary party to be guilty of murder, the main perpetrator must be guilty of murder. (To be guilty of murder the perpetrator must have killed the victim intending to kill or intending to cause serious injury.)
69. Similarly, in general, for a secondary party to be guilty of manslaughter, the main perpetrator must be guilty of at least manslaughter, although they may also be guilty of murder. (To be guilty of manslaughter the perpetrator must have killed the victim intending at least some harm.)
70. The examples in the table set out the lower limits of secondary liability for murder, but the most common examples of secondary liability in murder involve groups jointly killing victims where the main perpetrator and secondary parties are all involved in deliberate acts of serious violence.

Example 7:

Two people join in beating, stamping on and kicking a victim to death.

Although the evidence may not show which offender actually killed the victim, both may be guilty of murder.

71. Similarly, the examples for manslaughter given in the table set out the lower limits of secondary liability for manslaughter. Again, the more common examples are of joint intentional violence which unexpectedly results in death.

Example 8:

Two people punch a victim together, intending to harm the victim but not cause serious harm. The victim, who is vulnerable to serious injury because he is drunk, falls heavily and dies.

Both offenders may be guilty of manslaughter.

The fundamental difference rule

72. Because it is possible for defendants to be found guilty of murder (and thus liable for the mandatory life penalty) in circumstances where they neither agreed nor intended to harm the victim, but only foresaw the possibility of serious harm occurring, case law has developed the “fundamental difference rule” to prevent unfair convictions for murder when the violence has escalated beyond all expectations. The rule is that, if what was done by the perpetrator is fundamentally different from what was agreed to or foreseen by the secondary party, the secondary party should not be liable for those acts so is guilty of neither murder nor manslaughter.

Problems with the current law

73. The Law Commission identified two key problems with the law of complicity as it applies to homicide:

- the first is that it is both complex and uncertain (over recent years many cases in this area have gone to the Court of Appeal and House of Lords). While the uncertainty and complexity is also true for the general law of complicity, the Government believes it is of particular concern in homicide cases where the offending is of such a serious nature, and therefore the need for justice so important, and where secondary liability for murder results in the mandatory life penalty.
- the second is that the fundamental difference rule results in a law which is both too harsh and too lenient.

74. The courts have applied the fundamental difference rule specifically to the acts foreseen by the defendants. This has resulted in a situation where, as the Law Commission point out (D referring to the defendant and P the perpetrator):

“In one respect the law may now be too harsh on D. This may happen when the act done by P is the one D anticipated, but P intended the act to be lethal, whereas D anticipated only that P might intend it to cause serious harm. In such a case, D will be guilty of murder in spite of the fact that he or she did not anticipate the use of lethal force.

In another respect, the law may be too generous to D. This may happen when the act done by P is not the one anticipated by D, yet D appreciated not only that P might act with the intent to do serious harm, but also that V might die as a result. In such a case, D may escape liability for murder, in spite of the fact that he or she did anticipate the use of lethal force if, for example, P uses a weapon that D did not anticipate P using.”¹⁶

Example 9:

A gang goes out to attack a victim using blunt instruments intending to inflict serious harm. One member produces a knife which is used to kill.

Under the fundamental difference rule, the others may be able escape all liability for homicide by claiming that the use of a knife was not part of the agreement nor foreseen, despite all having decided to violently attack the victim.

¹⁶ The Participating in Crime Report, paras 2.94-2.95

75. In the example above, if the prosecution are unable to establish which defendant used the knife, then it is possible for all the defendants to escape liability not only for murder but for manslaughter too. (In such cases a verdict of conspiracy to commit grievous bodily harm could be an alternative outcome.)
76. The Government agrees with the Law Commission that the law in this area is unsatisfactory and can produce unjust outcomes.

The Law Commission proposals

77. In the Participating in Crime Report, the Law Commission propose a new statutory scheme to replace the Accessories and Abettors Act 1861. The Murder Report sets out a closely linked scheme for secondary liability in homicide (albeit in the context of the Law Commission's proposals for a new offence structure for homicide). The Government believes that the principles that the Law Commission sets out in the two reports are a sound basis for reforming the law of complicity as it applies to homicide cases.

78. The Government proposes to reform complicity to homicide with a view to reforming the law of complicity more generally at a later stage, guided by the same principles.

79. This section sets out the Law Commission's proposals on complicity in homicide and the Government's view about how these should be taken forward in the context of the current law of homicide.

80. The Law Commission recommend two new statutory offences to cover the assisting and encouraging of murder and to cover murder in the context of a joint criminal venture. They also recommend a new form of liability for manslaughter.

A new statutory offence of assisting and encouraging murder

81. The Law Commission recommend the creation of a new statutory basis of secondary liability for assisting and encouraging an offence; this would replace the existing law of aiding and abetting in cases where there is no joint criminal venture. Mostly the offence would codify and simplify the current law.

82. However, a key recommendation from the Law Commission in both the Participating in Crime and the Murder Reports is to limit secondary liability in cases of assisting and encouraging where there is no joint criminal venture between the killer and the helper; in other words, there is no agreement, express or implied, to commit a crime of any sort.

83. As set out above, under the current law, a defendant may be liable for murder (and the mandatory life penalty) if he or she assists or encourages someone else in the belief that the person will commit murder (that is act with an intention to kill or cause serious injury). This is the case even if the defendant does not want the offence to take place and helps the offender only out of fear¹⁷.
84. The Law Commission argue that this rule can be too harsh and inflexible, especially as at the lowest the secondary party need only foresee that the perpetrator will inflict serious harm, and the assistance or encouragement may not in itself be illegal. This level of culpability is markedly lower than the intention necessary to convict the actual perpetrator of murder, where it will need to be shown that he or she intended either to kill or to inflict serious injury.

Example 10:

A shopkeeper who sells a knife to a member of a local gang, believing he will use it to inflict a serious injury on a member of another gang, may be guilty of murder if someone in the gang is killed with the knife.

By contrast, in order for the gang member to be convicted of murder, it must be proved that he *intended* the victim to suffer at least serious injury.

85. While the behaviour of the shopkeeper is clearly reprehensible, it is debatable whether he should be guilty of murder or of another offence instead.
86. The Law Commission recommend limiting secondary liability in such cases, where there is no joint criminal venture, to circumstances where the secondary party *intended* the homicide.
87. Under this proposal “intended” would be given its usual legal meaning which includes both “purpose” and where the outcome is a virtual certainty. In this second meaning (virtual certainty), juries have the *option* to find that the defendant intended the offence to be committed, but they are not *obliged* to do so. In the example above, if the shopkeeper had sold the knife only because he feared the defendant, the jury could find that he did not “intend” the offence to be committed.
88. The Law Commission argue that in these circumstances the offender should be guilty of assisting or encouraging an offence (murder) under the Serious Crime Act 2007, rather than be guilty of murder. The maximum penalty for

¹⁷ Duress is no defence to murder.

assisting or encouraging the offence would be a life sentence, so that the judge would have maximum flexibility in sentencing according to the defendant's culpability.

89. **The Government** accepts the Law Commission's recommendation in this area and **proposes to create a new statutory offence of intentionally assisting and encouraging murder** (clause 1 in Annex C). However, it is not anticipated that this change would affect very many cases, because in the majority of circumstances those assisting and encouraging are likely to be involved in the criminal act itself.
90. In determining the liability of the secondary party in these cases, we think that it is his or her intention, not that of the main perpetrator, which is the crucial issue. **The Government therefore proposes to create a similar statutory murder offence in circumstances where the main perpetrator is guilty of manslaughter (because he or she lacks the state of mind for murder) and the secondary party assisted or encouraged them intending them to kill or cause serious injury** (clause 2 in Annex C).

A new statutory offence of murder in the context of a joint criminal venture

91. The Law Commission propose replacing the current law with a new statutory basis for liability of participating in a joint criminal venture. Secondary liability in relation to joint criminal ventures has developed to be a lower form of liability than secondary liability for simply assisting or encouraging an offender. Whereas those who help a murderer without being involved in joint criminality must be shown to have believed the murder *would* be committed, those who are involved in joint criminality need only have realised that the murder *might* be committed.
92. The Law Commission propose retaining the current legal position of a lower threshold for liability in cases of joint criminal venture. The Government agrees with this approach for the following reasons:
- those who engage in criminal activity aware of a risk of serious violence should be held to account if that risk materialises;
 - those acting in criminal groups are more disposed to act violently than those acting alone;
 - those going along with the violence of others implicitly encourage it, at the least; and
 - those claiming they did not intend an outcome should not be able to avoid liability for consequences of a risk they decided to run.

93. **The Government therefore proposes to retain a lower threshold of liability for murders which occur in the context of a joint criminal venture and to put this on a statutory footing (clause 3 of Annex C).**

The fundamental difference rule

94. In considering what that threshold should be and how it should be applied, we need to consider the fundamental difference rule.
95. The Murder Report recommends that secondary liability for murder in joint criminal venture cases should involve the secondary party foreseeing that the perpetrator *might* commit murder in the course of the venture. However, this is in the context of the overarching proposals to create two tiers of murder and the recommendation for a new form of manslaughter (see below), in which case the issues around the fundamental difference rule would largely fall away. The Government is not currently considering the proposals for two tiers of murder but believes that the fundamental difference rule can produce unjust outcomes, so considers that separate measures are needed in order to address it.
96. As set out above, under the current law, a secondary party may be found guilty of murder if he foresaw that the perpetrator *might* inflict serious harm during the criminal venture. Without the fundamental difference rule this could mean that a secondary party may be guilty of murder even though he did not want or agree seriously to harm anyone.

Example 11:

Two robbers approach a victim to demand money. One of the robbers intends to frighten the victim into parting with his wallet but foresees that his accomplice might punch the victim intending seriously to harm him.

In the event, the main perpetrator deliberately kills the victim by stabbing him with a knife of which the secondary party was completely unaware.

97. The fundamental difference rule limits the liability of the secondary party in this case so that he is not guilty if what the perpetrator did was fundamentally different from what the secondary party foresaw he might do. However, this can also mean that the secondary party may escape all liability, even when he or she actually intended to cause the victim serious harm but in a different way (see Example 9).
98. The Government agrees with the Law Commission that the current fundamental difference rule, by focusing solely on the *acts* foreseen by the secondary party, is too rigid.

99. The House of Lords recently looked at the fundamental difference rule¹⁸ in a case where a gang set out seriously to harm the victim, carrying wooden and metal poles. The victim was killed by a knife wound which was probably inflicted with an intention to kill. The House of Lords considered whether in that case the difference between the mental intention of the defendants and the perpetrator was sufficient to amount to a “fundamental difference”. The judgment was unanimous: that the difference in mental intention could not amount to a fundamental difference.
100. In addition, their Lordships suggested that the fundamental difference rule could be qualified as follows:
- “If B realises (without agreeing to such conduct being used) that A may kill or intentionally inflict serious injury, but nevertheless continues to participate with A in the venture, that will amount to a sufficient mental element for B to be guilty of murder if A, with the requisite intent, kills in the course of the venture *unless (i) A suddenly produces and uses a weapon of which B knows nothing and which is more lethal than any weapon which B contemplates that A or any other participant may be carrying and (ii) for that reason A’s act is to be regarded as fundamentally different from anything foreseen by B.*”
101. The Government believes that, while the qualification above is a step in the right direction, their Lordships were restricted in reforming the rule by its current state and that it continues to focus the jury too strongly on the acts that might be done, as opposed to the overall purpose of the criminal venture. The Government also believes that the uncertainty around the rule and its complexity would benefit from statutory clarification. **The Government therefore proposes to replace the common law fundamental difference rule with a more flexible statutory rule based on whether the perpetrator’s act was within the scope of the joint criminal venture. This would be the case where the act did not go far beyond that which was planned, agreed to or foreseen by the secondary party.**
102. Currently, the fundamental difference rule applies in all cases other than those where the secondary party intended death to occur. In the past, the rule applied only in cases where the secondary party did not foresee death as a possibility during the criminal venture¹⁹. Thus in cases where the secondary party intended the victim to die, or foresaw that the perpetrator might kill the victim intending to kill, or foresaw that the perpetrator might kill the victim intending to cause serious injury, the fact that the perpetrator acted in a fundamentally different way was irrelevant

¹⁸ *R v Rahman and others* [2008] UKHL 45

¹⁹ The Participating in Crime Report, pp 44-45

and the secondary party was guilty of murder. The Government believes that this was the correct position.

103. The rationale for the fundamental difference rule is that there may be a great difference between what the secondary party foresaw as a possible escalation of criminal activity and the murder itself. It would be wrong to attach liability to the secondary party for that murder in such circumstances. However, where the secondary party has actually foreseen death occurring in the criminal venture, the Government believes that the secondary party should not be able to escape liability for murder simply because the killing is done in a wholly unexpected way.
104. Therefore, the Government proposes that this statutory rule should apply only where the secondary party foresees no more than serious injury being caused.
105. In general, as set out above, the Government believes that if a secondary party joins with others in a criminal venture, foreseeing that serious harm might be caused to a victim, and a murder results, the secondary party should be held responsible for that murder. However, in exceptional circumstances the escalation of a criminal venture may go far beyond that which the secondary party foresaw.

Example 12:

Neighbours A and B decide to threaten another neighbour, because of the disturbance he is causing. Neighbour B recognises that neighbour A has a violent streak and might attack the victim causing him serious harm.

In the event, neighbour A unexpectedly produces a gun and shoots the victim in the head.

106. In such cases, the Government believes that, despite the secondary party joining a criminal activity realising serious harm might be caused, the secondary party should not be liable for that *murder*.
107. The Government believes that the jury should be able to weigh up all the facts of the case, including the type of weapons used and the way in which they were used and with what criminal intention, in considering whether what happened was within the scope of the joint venture.

Liability for manslaughter

108. Where a secondary party successfully argues that he or she foresaw only serious injury being caused and that what happened was outside the scope of the joint venture, he or she would not be convicted of murder under the proposals set out above.

Example: 13

Two robbers decide to rob a jeweller. The secondary party foresees that serious harm might occur to the jeweller through the use of fists, but has no intention of harming him.

In the event, the perpetrator pulls out a previously hidden gun and shoots the jeweller.

109. However, the Government does not believe that a secondary party should escape liability altogether for a death which has occurred within the context of a joint criminal venture; this would be too lenient. In these circumstances, **the Government** believes that manslaughter would be the appropriate conviction and **therefore proposes to create a statutory liability for manslaughter where a secondary party has foreseen only serious injury and the killing was outside the scope of the joint venture** (clause 4(2) in Annex C).
110. In addition, the Law Commission propose a new form of liability for manslaughter for secondary participants who foresaw less than serious harm but in circumstances in which a reasonable person would have foreseen an obvious risk of death. **The Government proposes to introduce a new form of liability for manslaughter which would apply when:**
- **the main perpetrator and the secondary party were involved in a joint criminal venture**
 - **the main perpetrator commits murder in the context of the venture;**
 - **the secondary party foresaw that non-serious harm or fear of harm might be caused, and**
 - **a reasonable person in the position of the secondary party would have foreseen an obvious risk of serious injury or death** (clause 4(3) in Annex C).

INFANTICIDE

Introduction

111. The current offence of infanticide dates back to 1938, though the practice of treating more leniently mothers who kill their babies while themselves in a state of vulnerability after childbirth goes back much further (for a fuller history, see the Law Commission's consultation paper²⁰). The Infanticide Act 1938 provides that:

“where a woman by any wilful act or omission causes the death of her child being a child under the age of 12 months, but at the time of her act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, she shall be guilty of infanticide, and may....be dealt with and punished as if she had been guilty of....manslaughter...”

112. Infanticide is also a partial defence: where the criteria listed above apply, and infanticide is raised by the defence, the jury can return a verdict of infanticide even if the initial charge was one of murder.
113. The maximum penalty for infanticide is life imprisonment, though in practice a non-custodial sentence (albeit often subject to a treatment or hospital order) is usually the result.
114. The burden of proof is on the prosecution to disprove a claim of infanticide beyond reasonable doubt.

What are the problems?

115. The Law Commission consider that “although the Infanticide Act 1938 has been subject to criticism, it is a practicable legal solution to a particular set of circumstances” and they recommend no change to the offence itself.
116. The one issue which they do identify is a theoretical problem of a mother who might fulfil the criteria for infanticide but deny having killed her child at all, her denial being a symptom of her mental disorder. She may therefore end up with a murder conviction, and a mandatory life sentence.

²⁰ *A New Homicide Act for England and Wales?* (2005), Consultation Paper No.177, para 9.5.

She could subsequently appeal, but this would be a lengthy process and she would be held in custody in the meantime.

117. Since the Law Commission published the Murder Report, the Court of Appeal, in the case of *R v Gore*²¹, has raised a further issue. The Court of Appeal has ruled that it is unnecessary to show the intention for murder in order for a charge or defence of infanticide to succeed; it is sufficient that a wilful act or omission on the part of the mother caused the death. This interpretation differs from the understanding of some stakeholders and raises the question as to whether the statute needs to be amended to take account of it.

What do the Law Commission recommend?

118. The Law Commission recommend retaining the offence/defence of infanticide unamended.
119. But they do recommend that a truncated appeal process should be made available to defendants in the situation described above. Specifically the trial judge would be able to order a medical examination of the defendant after conviction, with a view to establishing whether or not there was evidence that at the time of the killing, the requisite elements of a charge of infanticide were present. The procedure would enable the judge to refer the application to the Court of Appeal, postpone sentence and, if appropriate, grant bail, pending the determination of the application.

What is the Government proposing?

120. We recognise that some stakeholders think that the separate offence of infanticide should be abolished and that such cases should be dealt with under diminished responsibility instead. We have considered this carefully but are not convinced that diminished responsibility would provide an appropriate response to all of these cases; in particular, those mothers (often themselves very young) who kill their babies after a clandestine birth might struggle to meet the evidential requirements of diminished responsibility (where the burden of proof rests with the defendant). We therefore agree with the Law Commission's conclusion that the offence works satisfactorily in practice in the very small number of cases (fewer than one a year) to which it applies.

²¹ *R v Gore* [2007] EWCA Crim 7289

121. However, we have also considered the implications of the ruling in *R. v Gore*. The Court of Appeal argued that it was never the intention of the law to restrict infanticide to the ingredients of murder and that clarifying that a mother can be charged with infanticide on the basis of the ingredients for manslaughter is in keeping with the desire to treat such cases with compassion, in particular the desire not to force a mother to be brought face to face with the admission of whether or not she intended to kill her child. We are content to accept the Court of Appeal's interpretation in this regard, which we do not think will be problematic in practice.
122. However, a second (and we think unintended) effect of the *Gore* judgment is to make it possible for infanticide to be charged in cases that would not currently be homicide at all. This is because the interpretation of "wilful act or omission" might include negligence below the level of the "gross negligence" necessary for a manslaughter offence to be charged.
123. The practical effect of this widening is debatable. Some suggest that it is not problematic as in practice it is unlikely that there would be any such cases. However, the possibility remains that a birth mother could be charged and convicted of a homicide offence, whereas the father, or any other responsible adult in a similar position, would be charged with the lesser offence of child cruelty which carries a maximum sentence of 10 years.
124. We do not think that this is appropriate and **propose to amend the law to make clear that infanticide cannot be charged in cases that would not currently be homicide at all.**
125. As far as the Law Commission's procedural recommendation is concerned, we have not found evidence that this is a problem in practice so do not propose to take forward this recommendation.

ANNEX A - Provocation: draft clauses

1 Partial defence to murder: loss of control resulting from fear of violence etc

- (1) Where a person (“D”) kills or is a party to the killing of another (“V”), D is not to be convicted of murder if -
 - (a) D’s acts and omissions in doing or being a party to the killing resulted from D’s loss of self-control,
 - (b) the loss of self-control had a qualifying trigger, and
 - (c) a person of D’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.
- (2) On a charge of murder, where sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (3) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.
- (4) A loss of self-control had a qualifying trigger if subsection (5), (6) or (7) applies.
- (5) This subsection applies if D’s loss of self-control was attributable to D’s fear of serious violence from V against D or another identified person.
- (6) This subsection applies if D’s loss of self-control was attributable to a thing or things done or said (or both) which -
 - (a) amounted to an exceptional happening, and
 - (b) caused D to have a justifiable sense of being seriously wronged.
- (7) This subsection applies if D’s loss of self-control was attributable to a combination of the matters mentioned in subsections (5) and (6).
- (8) But subsection (1) does not apply if the qualifying trigger to which the loss of self-control is attributable is itself predominantly attributable to conduct engaged in by D which constitutes one or more criminal offences.
- (9) For the purposes of subsection (6) -
 - (a) an act of sexual infidelity is not, of itself, an exceptional happening;
 - (b) a sense of being seriously wronged by a thing done or said is not justified if D incited the thing to be done or said for the purpose of providing an excuse to use violence.
- (10) In subsection (1)(c) the reference to “the circumstances of D” is a reference to all of D’s circumstances other than those whose only

relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint.

(11) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

2 Abolition of common law defence of provocation

(1) The common law defence of provocation is abolished and replaced by section 1.

(2) Accordingly, section 3 of the Homicide Act 1957 (c. 11) (questions of provocation to be left to the jury) ceases to have effect.

3 Saving for offences committed before commencement

(1) Nothing in section 1 or 2 affects the operation of -
(a) any rule of the common law, or
(b) any provision of an Act or of subordinate legislation, in relation to offences committed wholly or partly before the commencement of those sections.

(2) An offence is partly committed before the commencement of those sections if -
(a) a relevant event occurs before commencement, and
(b) another relevant event occurs on or after commencement.

(3) "Relevant event" in relation to an offence means any act or other event (including any consequence of an act) proof of which is required for conviction of the offence.

ANNEX B - Diminished responsibility: draft clauses

1 Persons suffering from diminished responsibility

(1) In section 2 of the Homicide Act 1957 (c. 11) (persons suffering from diminished responsibility), for subsection (1) substitute-

“(1) A person (“P”) who kills or is a party to the killing of another is not to be convicted of murder if P was suffering from a relevant mental impairment which provides an explanation for P’s acts and omissions in doing or being a party to the killing.

(1A) “Relevant mental impairment” means an abnormality of mental functioning which -

- (a) arises from a recognised medical condition, and
- (b) substantially impairs P’s ability to do one or more of the following -
 - (i) to understand the nature of P’s conduct;
 - (ii) to form a rational judgment;
 - (iii) to exercise self-control.

(1B) For the purposes of subsection (1), a relevant mental impairment provides an explanation for P’s conduct if it causes, or is a significant contributory factor in causing, the person to carry out that conduct.”

(2) In section 6 of the Criminal Procedure (Insanity) Act 1964 (evidence by prosecution of insanity or diminished responsibility), in paragraph (b) for “abnormality of mind” substitute “mental impairment”.

2 Saving for offences committed before commencement

(1) Nothing in section 1 affects the operation of-

- (a) any rule of the common law, or
- (b) any provision of an Act or of subordinate legislation, in relation to offences committed wholly or partly before the commencement of that section.

(2) An offence is partly committed before the commencement of that section if-

- (a) a relevant event occurs before commencement, and
- (b) another relevant event occurs on or after commencement.

(3) “Relevant event” in relation to an offence means any act or other event (including any consequence of an act) proof of which is required for conviction of the offence.

ANNEX C - Complicity: draft clauses

Assisting or encouraging

1 Assisting or encouraging the offence of murder

Where a person (“P”) has committed the offence of murder, another person (“D”) is guilty of the offence if –

- (a) D did an act which assisted or encouraged one or more other acts to be done by another person,
- (b) P’s criminal act was that act or one of those acts, and
- (c) D’s act was intended to assist or encourage a person to kill, or cause serious injury to, another person.

2 Assisting or encouraging the offence of manslaughter

(1) This section applies where a person (“P”) commits the offence of manslaughter in circumstances where P acts without the state of mind required for conviction of the offence of murder.

- (2) Another person (“D”) is guilty of the offence of murder if-
- (a) D did an act which assisted or encouraged one or more other acts to be done by another person,
 - (b) P’s criminal act was that act or one of those acts, and
 - (c) D’s act was intended to assist or encourage a person to kill, or cause serious injury to, another person.

Joint criminal ventures

3 Murder in the context of a joint criminal venture

- (1) Where –
- (a) two or more persons participate in a joint criminal venture, and
 - (b) one of them (“P”) commits the offence of murder in the context of the venture, another participant (“D”) is guilty of the offence of murder if subsection (2) or (3) applies.

(2) This subsection applies if D foresaw that in the context of the venture a person might be killed by a participant acting with intent to kill, or to cause serious injury to, a person.

- (3) This subsection applies if-
- (a) D foresaw that, in the context of the venture, serious injury might be caused to a person by a participant acting with intent to cause such injury, and
 - (b) P’s criminal act was within the scope of the venture.

- (4) P's criminal act was within the scope of the venture if it did not go far beyond that which was planned or agreed to, or which was foreseen, by D.
- (5) The existence of a joint criminal venture, and that which was planned, agreed or foreseen as part of such a venture, may be inferred from the conduct of the participants (whether or not there is an express agreement).
- (6) D does not escape liability under this section for an offence of murder committed by P at a time when D is a participant merely because D is at that time -
 - (a) absent,
 - (b) against the venture's being carried out, or
 - (c) indifferent as to whether it is carried out.
- (7) "Participant" means a participant in the joint criminal venture.

4 Manslaughter in the context of a joint criminal venture

- (1) Where-
 - (a) two or more other persons participate in a joint criminal venture, and
 - (b) one of them ("P") commits the offence of murder in the context of the venture, another participant ("D") is guilty of the offence of manslaughter if subsection (2) or (3) applies.
- (2) This subsection applies if D foresaw that, in the context of the venture, serious injury might be caused to a person by a participant acting with intent to cause such injury.
- (3) This subsection applies if-
 - (a) D foresaw that in the context of the joint criminal venture harm (other than serious harm), or the fear of harm, might be caused to a person by a participant, and
 - (b) a reasonable person in D's position with D's knowledge of the relevant facts would have foreseen an obvious risk of serious injury being caused to a person, or of a person being killed, by a participant in the context of the venture.
- (4) The existence of a joint criminal venture may be inferred from the conduct of the participants (whether or not there is an express agreement).
- (5) D does not escape liability for manslaughter under this section in relation to an offence of murder committed by P at a time when D is a participant merely because D is at that time -
 - (a) absent,
 - (b) against the venture's being carried out, or
 - (c) indifferent as to whether it is carried out.
- (6) "Participant" means a participant in the joint criminal venture.

Proceedings for offence under section 1, 2 or 3

5 Person who is either a perpetrator or an encourager etc

A person may be convicted of the offence of murder if, although it is not proved whether-

- (a) the person is guilty of the offence on the basis that the person committed it and has no defence, or
- (b) the person is guilty of the offence under section 1, 2 or 3, it is proved that the person must be one or the other.

Defences

6 Defences

Nothing in this Chapter prejudices-

- (a) any defence available, at common law or otherwise, to a charge of murder, or
- (b) any defence available, at common law or otherwise, to a charge of manslaughter.

Interpretation

7 Assisting and encouraging

- (1) This section applies for the purposes of this Chapter.
- (2) A reference to an act which encouraged or assisted a person to do an act includes a reference to an act which threatened or otherwise put pressure on the person to do it.
- (3) Assistance or encouragement given to a person to do an act may take the form of -
 - (a) the taking of steps to reduce the possibility of criminal proceedings being brought in respect of the act's being done;
 - (b) a failure to take reasonable steps to discharge a duty.
- (4) But a person ("D") is not to be regarded as assisting or encouraging another person to do an act merely because D fails to respond to a constable's request for assistance in preventing a breach of the peace.

8 Indirectly assisting or encouraging

If a person ("D1") arranges for a person ("D2") to do something that will assist or encourage another person to do an act, and D2 does that thing, D1 is also to be treated for the purposes of this Chapter as having done it.

9 Committing an offence

(1) For the purposes of this Chapter, a reference to a person who commits an offence is to a person who -

- (a) acts with the state of mind required for conviction of the offence,
- (b) is over the age of 10, and
- (c) does not have a defence of insanity.

(2) For those purposes, it is immaterial whether the person has any other defence.

10 Acts and criminal acts

(1) A reference in this Chapter to an act includes a reference to a course of conduct, and a reference to the doing of an act is to be read accordingly.

(2) A reference in this Chapter to a criminal act is, in relation to an offence, a reference to an act (or a failure to act) that falls within the definition of the act (or failure to act) that must be proved in order for a person to be convicted of the offence.

(3) A reference in this Chapter to the doing of a criminal act includes a reference to the continuation of an act that has already begun.

Jurisdiction

11 Liability under sections 1, 2, 3 and 4

(1) If P commits the offence of murder in England or Wales, D may be guilty under section 1 or 3 of the same offence, or under section 4 of manslaughter, no matter where D was at any relevant time.

(2) If P commits the offence of manslaughter in England and Wales, D may be guilty under section 2 of the offence of murder no matter where D was at any relevant time.

(3) If P commits the offence of murder outside England and Wales, D is not guilty under section 1 or 3 of the same offence, or under section 4 of manslaughter, unless subsection (5) or (7) applies.

(4) If P commits the offence of manslaughter outside England and Wales, D is not guilty under section 2 of murder, unless subsection (5) or (7) applies.

(5) This subsection applies if –

- (a) D's relevant behaviour takes place wholly or partly in England or Wales, and
- (b) either-
 - (i) P's offence is triable under the law of England and Wales, or

(ii) if there are relevant conditions which P does not satisfy, it would be so triable if P satisfied the conditions.

- (6) "Relevant condition" means a condition that-
- (a) determines (wholly or in part) whether an offence committed outside England and Wales is nonetheless triable under the law of England and Wales, and
 - (b) relates to the citizenship, nationality or residence of the person who commits it.
- (7) This subsection applies if -
- (a) D's relevant behaviour takes place wholly outside England and Wales, and
 - (b) D could have been tried under the law of England and Wales if D had committed P's offence in the place where P committed it.
- (8) For the purposes of subsection (7) it does not matter whether P could be tried under the law of England and Wales.
- (9) No proceedings for an offence triable by reason of subsection (3) or (4) may be instituted except by, or with the consent of, the Attorney General.

Consequential provision

12 Abolition of common law etc replaced by this Chapter

- (1) The rules of the common law relating to the circumstances in which a person is liable for the offence of murder because the person aided, abetted, counselled or procured the commission of the offence are abolished (and replaced by provisions of this Chapter).
- (2) Section 8 of the Accessories and Abettors Act 1861 (c. 94) (aiders, abettors etc to be tried, indicted and punished as principal offenders) ceases to have effect in relation to the offence of murder.
- (3) The Secretary of State may by order make such modifications of -
- (a) an Act passed before the end of the session in which this Act was passed, or
 - (b) an instrument made before the end of that session, as the Secretary of State considers appropriate in consequence of this Chapter.
- (4) An order under this section is to be made by statutory instrument.
- (5) No order may be made under this section unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

13 Saving for offences committed before commencement

- (1) Nothing in this Chapter affects the operation of -
 - (a) any rule of the common law, or
 - (b) any provision of an Act or of subordinate legislation, in relation to offences committed wholly or partly before the commencement of this Chapter.

- (2) An offence is partly committed before the commencement of this Chapter if-
 - (a) a relevant event occurs before commencement, and
 - (b) another relevant event occurs on or after commencement.

- (3) "Relevant event" in relation to an offence means any act or other event (including any consequence of an act) proof of which is required for conviction of the offence.

ANNEX D - Infanticide: draft clauses

1 Infanticide

- (1) Section 1 of the Infanticide Act 1938 (c. 36) (offence of infanticide) is amended as follows.
- (2) In subsection (1) –
 - (a) for “notwithstanding that” substitute “if”,
 - (b) after “murder” insert “or manslaughter”.
- (3) In subsection (2) -
 - (a) for “notwithstanding that” substitute “if”, and
 - (b) after “murder” insert “or manslaughter”.
- (4) Nothing in subsection (2) or (3) affects the operation of that section in relation to offences committed wholly or partly before the commencement of this section.
- (5) An offence is partly committed before the commencement of this section if -
 - (a) a relevant event occurs before commencement, and
 - (b) another relevant event occurs on or after commencement.
- (6) “Relevant event” in relation to an offence means any act or other event (including any consequence of an act) proof of which is required for conviction of the offence.

ANNEX E - Law Commission recommendations on provocation, diminished responsibility, complicity and infanticide:

Provocation

We recommend that provocation should be a partial defence, with a successful plea having the effect of reducing first degree murder to second degree murder.

We are recommending that the defence of provocation be reformed as follows:

(1) Unlawful homicide that would otherwise be first degree murder should instead be second degree murder if:

(a) the defendant acted in response to:

(i) gross provocation (meaning words or conduct or a combination of words and conduct) which caused the defendant to have a justifiable sense of being seriously wronged; or

(ii) fear of serious violence towards the defendant or another; or

(iii) a combination of both (i) and (ii); and

(b) a person of the defendant's age and of ordinary temperament, i.e., ordinary tolerance and self-restraint, in the circumstances of the defendant might have reacted in the same or in a similar way.

(2) In deciding whether a person of the defendant's age and of ordinary temperament, i.e., ordinary tolerance and self-restraint, in the circumstances of the defendant, might have reacted in the same or in a similar way, the court should take into account the defendant's age and all the circumstances of the defendant other than matters whose only relevance to the defendant's conduct is that they bear simply on his or her general capacity for self-control.

(3) The partial defence should not apply where:

(a) the provocation was incited by the defendant for the purpose of providing an excuse to use violence; or

(b) the defendant acted in considered desire for revenge.

(4) A person should not be treated as having acted in considered desire for revenge if he or she acted in fear of serious violence, merely because he or she was also angry towards the deceased for the conduct which engendered that fear.

(5) A judge should not be required to leave the defence to the jury unless there is evidence on which a reasonable jury, properly directed, could conclude that it might apply.

Diminished responsibility

We recommend that diminished responsibility should be a partial defence, with a successful plea having the effect of reducing first degree murder to second degree murder.

We recommend that the definition of 'diminished responsibility' should be modernised, so that it is both clearer and better able to accommodate developments in expert diagnostic practice.

We recommend adoption of the following definition:

(a) a person who would otherwise be guilty of first degree murder is guilty of second degree murder if, at the time he or she played his or her part in the killing, his or her capacity to:

(i) understand the nature of his or her conduct; or

(ii) form a rational judgement; or

(iii) control him or herself, was substantially impaired by an abnormality of mental functioning arising from a recognised medical condition, developmental immaturity in a defendant under the age of eighteen, or a combination of both; and

(b) the abnormality, the developmental immaturity, or the combination of both provides an explanation for the defendant's conduct in carrying out or taking part in the killing.

Complicity

We recommend that D should be liable to be convicted of P's offence of first or second degree murder (as the case may be) if:

- (1) D intended to assist or encourage P to commit the relevant offence;
or
- (2) D was engaged in a joint criminal venture with P, and realised that P, or another party to the joint venture, might commit the relevant offence.

We recommend that D should be liable for manslaughter if the following conditions are met:

- (1) D and P were parties to a joint venture to commit an offence;
- (2) P committed the offence of first degree murder or second degree murder in relation to the fulfilment of that venture;

- (3) D intended or foresaw that (non-serious) harm or the fear of harm might be caused by a party to the venture; and
- (4) a reasonable person in D's position, with D's knowledge of the relevant facts, would have foreseen an obvious risk of death or serious injury being caused by a party to the venture.

Infanticide

We recommend that the offence/defence of infanticide be retained without amendment (subject to 'murder' being replaced with 'first degree murder or second degree murder').

We recommend that in circumstances where infanticide is not raised as an issue at trial and the defendant (biological mother of a child aged 12 months or less) is convicted by the jury of murder [first degree murder or second degree murder], the trial judge should have the power to order a medical examination of the defendant with a view to establishing whether or not there is evidence that at the time of the killing the requisite elements of a charge of infanticide were present. If such evidence is produced and the defendant wishes to appeal, the judge should be able to refer the application to the Court of Appeal and to postpone sentence pending the determination of the application

ANNEX F - Chronology of Murder Review

- 2004 - Publication of Law Commission report, "Partial Defences to Murder", following concerns about how provocation works in domestic homicides.
- October 2004 – Announcement by the Home Secretary that the Home Office, the Department for Constitutional Affairs and the Attorney General's Office would jointly review the law of murder with the first stage of the review being undertaken by the Law Commission and the second stage by the Government.
- December 2005 – Publication of the Law Commission consultation paper, "A new Homicide Act for England and Wales?"
- November 2006 – Publication of the Law Commission final report, "Murder, Manslaughter and Infanticide".
- May 2007 – Lead of the review passes from the Home Office to the Ministry of Justice.
- December 2007 – Announcement by the Ministry of Justice of the second stage of the review, stating that having considered the Law Commission's recommendations carefully the Government has decided to proceed on a step-by-step basis, looking first at the recommendations relating to:
 - reformed partial defences to murder of provocation and diminished responsibility;
 - reformed law on complicity in relation to homicide;
 - infanticide
- May 2008 – reforms to the law on homicide included in the Government's Draft Legislative Programme (subject to the outcome of consultation).

ANNEX G - Persons and organisations that participated in and contributed to the consultation process

Academics

Professor Ian Brockington, Professor Emeritus, Department of Psychiatry, University of Birmingham

Dr Kate Cook, Manchester Metropolitan University

Professor R D Mackay, De Montfort University

Professor Barry Mitchell, Coventry University

Professor Richard Taylor, University of Central Lancashire

Government Departments and Public Bodies

Attorney General's Office

Criminal Cases Review Commission

Crown Prosecution Service

Department for Children, Schools and Families

Government Equalities Office

HM Prison Service

Home Office, Crime Strategy Unit

Home Office, Police Powers Protection Unit

Home Office, Public Order & Police Cooperation Unit

Home Office, Violent Crime Unit

Ministry of Justice, Mental Health Unit

Ministry of Justice, Legal Advice Team

Ministry of Justice / Department for Children, Schools and Families, Youth Justice Children's Unit

Office of Criminal Justice Reform, Better Trials Unit

Rotherham Metropolitan Borough Council

Standing Committee for Youth Justice

Victims' Advisory Panel

Youth Justice Board for England and Wales

Non-Governmental Organisations

Children Rights Alliance for England

Dignity in Dying

Eaves Housing for Women, The Lilith Project

Homicide Review Advisory Group - Sir Louis Blom Cooper QC

Justice for Women

NSPCC

Refuge

Support After Murder and Manslaughter

Professional Organisations

The Association of Chief Police Officers

British Psychological Society

The Law Society

The Royal College of Paediatrics and Child Health

The Royal College of Psychiatrists

Voice UK - Learning Disabilities in the CJS

Women's National Commission

Women's Aid

Judiciary

We are also grateful to the individual members of the judiciary who gave us the benefit of their practical experience in some of the areas under consideration.

ANNEX H - Impact Assessment

The impact assessment for the proposals can be downloaded from:
<http://www.justice.gov.uk/publications/cp1908.htm>

ANNEX I - About you

When responding to the consultation, it would be helpful if you could complete this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

ANNEX J - Contact details and how to respond

Please send your response by 20 October to:

**Murder Review Team
Ministry of Justice
Criminal Law and Policy Unit
2nd Floor, Fry Building
2 Marsham Street
London
SW1P 4DF**

**Tel: 020 7035 4211
Fax: 0870 336 9141
Email: Murder_Review@justice.gsi.gov.uk**

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/publications/cp1908.htm>

Alternative format versions of this publication can be requested by contacting the Murder Review Team (see details above).

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

ANNEX K - The consultation criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

ANNEX L - Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 020 7210 1326, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Gabrielle Kann
Consultation Co-ordinator
Ministry of Justice
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under **the How to respond** section of this paper.

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Review Team at Murder_Review@justice.gsi.gov.uk