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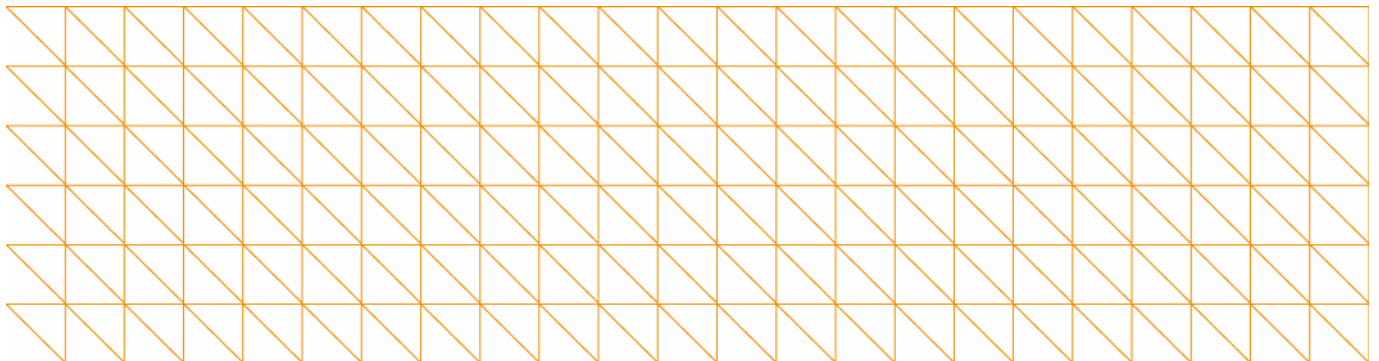
# **Murder, manslaughter and infanticide: proposals for reform of the law**

## Summary of responses and Government position

**Response to Consultation**

CP(R) 19/08

14 January 2009







Ministry of  
**JUSTICE**

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Summary of responses and Government position

**Response to consultation carried out by the Ministry of Justice.**

**This information is also available on the Ministry of Justice website:  
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Summary of responses and Government position

## **Introduction and contact details**

This document is the post-consultation report for the consultation paper, "Murder, manslaughter and infanticide: proposals for reform of the law".

It covers:

- the background to the report
- a summary of the responses to the report
- the Government position on points raised and the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting the address below:

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Alternative format versions of this publication can be requested by contacting the Murder Review Team.

## Background

1. The Law Commission published a report on “Partial Defences to Murder” in 2004 having been asked to review those defences following concerns in particular about how provocation works in domestic homicide cases. In October that year, the Home Secretary announced that the Home Office, the then 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. In December 2005, the Law Commission published a consultation paper: “A new Homicide Act for England and Wales?” Its final report, “Murder, Manslaughter and Infanticide” followed in November 2006.
2. The lead of the review passed from the Home Office to the Ministry of Justice in May 2007 and in December 2007 the Ministry of Justice announced the second stage of the review stating that, having considered the Law Commission’s recommendations carefully, the Government had 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.
3. In May 2008, reforms to the law on homicide were included in the Government’s Draft Legislative Programme (subject to the outcome of consultation).
4. The consultation paper “*Murder, manslaughter and infanticide: proposals for reform of the law*” was published on 28 July 2008. It sought views on proposals to reform the law in relation to the partial defences to murder of provocation and diminished responsibility, the law on complicity to murder and to infanticide.
5. The Murder Review Team also hosted a separate workshop with interested parties on each of the following issues: provocation; diminished responsibility; complicity. This provided an opportunity to explain the Government policy and allow the views of participants on the proposals to be discussed in depth – both on the merits of the policy and on the extent to which the draft clauses effectively expressed the stated policy. A list of those who attended these workshops and those who contributed in other ways to the consultation (other than by formal response) is at Annex C.

6. A separate consultation document covering the same material was issued by the Northern Ireland Office on 28 July 2008. The Secretary of State for Northern Ireland has responsibility for constitutional and security issues as they relate to Northern Ireland, in particular law and order, political affairs, policing and criminal justice. Whilst the Homicide Act 1957 does not extend to Northern Ireland, there are equivalent provisions for provocation and diminished responsibility within the Criminal Justice Act (NI) 1966. The common law position on complicity to murder is the same and equivalent provision for infanticide is contained within the Infanticide Act (NI) 1939. The comments by the England and Wales Law Commission and the problems identified therefore have equal validity in Northern Ireland. Accordingly, the Criminal Justice Minister for the Northern Ireland Office extended the consultation to Northern Ireland with the agreement of the Law Commission for Northern Ireland.
7. The consultation period for both England and Wales and Northern Ireland closed on 20 October 2008. This report summarises the responses to both consultation exercises, including how the consultation process influenced the further development of the proposals consulted upon.
8. A list of people and organisations who submitted formal responses to the consultations (both in England and Wales and Northern Ireland) is at Annex A. However, the list of people involved in informal consultation (meetings, workshops, etc.) is much wider (see Annex C). We have also added at Annex B a list of those who contributed to the earlier consultation process which gave rise to the consultation paper. We are very grateful to all those who have contributed to the consultation.
9. The proposals were as follows:

**Partial defences**

- To abolish the existing partial defence of provocation and replace it with two 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 the defendant’s functioning must be affected in order for the partial defence to succeed, and making clear 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.

## **Summary of responses**

10. A total of 73 responses were received to the consultation in England and Wales: 27 from individuals; 18 from academics; 18 from non-governmental organisations; six from professional organisations; two from legal practitioners; one from a psychiatrist; and also a response from the Senior Law Lord. The Northern Ireland Office conducted a separate consultation exercise, asking the same questions. They received 11 responses from a range of organisations: four public bodies; one professional organisation; and six non-governmental organisations.
11. We also received a number of letters which were prompted by the publication of the consultation paper but did not constitute formal responses to that paper. Some correspondents voiced support for the general direction of the proposals in supporting women who had suffered years of abuse before finally killing their partner. However, some of these letters demonstrated that the proposals had not been accurately understood by all. Common misconceptions included the idea that the Government intended to broaden the circumstances in which a defendant could plead the partial defence of provocation after killing in anger and that the provisions would not apply equally to men and women.
12. A consideration of the responses to the consultation is set out below, looking at each of the areas in which we have made proposals in turn. The Government response to particular points made follows after each section and is in bold type.

## **Review of murder generally**

13. Most of the respondents agreed with the Government and Law Commission that the law of homicide, at least in part, is in need of reform, and some respondents expressed strong support for the whole package of proposals, while others expressed support for particular aspects of the proposals rather than for the package as a whole.
14. However, there were some respondents who felt that the law in the areas identified for reform, is working adequately at present and should be left as it is. On the other side, there was a strong view from some that if reform was going to be taken forward it should cover the wider proposals to create a three tiered system as set out by the Law Commission.
15. There was much interest in the detail of the proposals we made. Many of the responses engaged with this and offered helpful suggestions on how to improve the clauses.

### Government response

16. We consider that there is a need for reform and good reasons to proceed broadly as proposed in the consultation paper. The particular rationale for our current proposals in each area is set out below after the summary of responses in each section.

### Reform of the partial defence of provocation

To abolish the existing partial defence of provocation and replace it with two 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.

17. There was strong support, especially from groups supporting victims of domestic violence, for the Government's proposal to abolish the common law defence of provocation.
18. By contrast, there were a number of respondents, including academics and legal practitioners, who believe that the current law is satisfactory and should be retained. There was also concern that the proposals would be more complex than the current law.
19. There were some respondents who believe that if the partial defence of provocation is to be reformed, it should be reformed in the wider context of the Law Commission's proposals. Others believe that the core of the problems with the partial defence lies with the mandatory life sentence for murder and that this should be abolished.

### Government response

20. As we set out in the consultation paper, we believe that the current law of provocation is too generous in cases where defendants kill in anger in response to provocative things said or done. We also agree with the Law Commission that the current law is complex and uncertain. We therefore do not agree that the current law is satisfactory and believe it needs to be reformed.
21. We also do not accept the argument that provocation should be reformed only in a context of wider reform. We believe that the principles of a new partial defence to murder should be able to stand on their own independently from any questions about the mandatory life sentence and consideration of the Law Commission's wider proposals regarding the structure of homicide offences.

### **Fear of serious violence**

22. There was significant support both in England and Wales and in Northern Ireland for a partial defence couched in the language of fear of serious violence. It was described as a welcome shift from the traditional model of provocation based around anger and noted that it helpfully recognises the realities of domestic abuse sustained over a long period of time. There was also support on the basis that the proposals improve the position for victims of domestic abuse and so appear to be acting in the interests of mothers and children.
23. Those who supported this limb of the partial defence made a number of suggestions which they thought could improve it:
- Some respondents (including organisations who support victims of domestic abuse) were keen to ensure that serious violence would be deemed to include sexual violence, and wanted to see it on the face of the Act.
  - A few respondents thought that the threshold of “serious” violence might exclude some deserving cases, for example long term oppressive behaviour from a partner.
  - There were suggestions for greater clarity of:
    - the boundary between serious and non-serious violence
    - imminence or otherwise of violence feared.
24. Some respondents (both in England and Wales and in Northern Ireland) were concerned about the requirement that the defendant must have lost self-control and how the partial defence would work in practice with the complete defence of self defence (this is discussed in detail below – paragraphs 60 to 65).
25. On the other hand, one or two respondents were concerned about the availability of this limb of the partial defence being abused by women who might unjustifiably claim that they were afraid of serious violence when they killed. There was a suggestion that there should be evidence that all other avenues had been pursued, such as police protection, before the defence should succeed. There was also some concern that the defence could be used in unmeritorious cases, such as by criminals who are confronted by law enforcers.

### **Government response**

26. The Government is pleased that there is widespread support for a partial defence to murder on the basis of a fear of serious violence.
27. In terms of sexual violence, the Government intends that fear of serious violence should cover sexual violence and we are satisfied that it is fully covered by the term “violence”. Indeed the Law Commission have made clear they believe “violence” includes sexual violence.

28. The Government believes that the threshold of “serious” violence is right and that it would be wrong to reduce a conviction for murder to manslaughter on the basis that the defendant feared less than serious violence – this could allow in many undeserving cases. The Government accepts that there may be cases on the borderline of serious and non-serious violence but we do not think it would be desirable to be more specific in the statute, especially as the seriousness of violence will partly depend on the circumstances of the victim and perpetrator. Instead we believe that the concept of serious violence is one that juries will be able to judge on the individual facts of a case and decide whether the violence feared was serious or not.
29. In terms of the imminence of the violence, the proposals allow for any circumstances where the victim fears serious violence, whether imminent or not. However, the jury will also have to be satisfied that the defendant lost self-control because of their fear and that a person of ordinary tolerance and self restraint in the defendant’s circumstances might have reacted in the same way. The imminence of the violence can therefore be taken into account when the jury is deciding those questions.
30. Questions such as whether or not the defendant had sought other protection from the violence feared would be matters of evidence, on the particular facts of any case, which would go to the issues of the fear experienced by the defendant and whether their response was reasonable. We believe that the tests in the defence, the fear of serious violence requirement and the reasonableness of the response, will rule out unmeritorious cases.
31. Having considered carefully the responses received, the Government proposes to continue with the fear of serious violence limb as set out in the consultation paper, as it is confident that we have built in sufficient safeguards to exclude undeserving cases.

### **Words and conduct**

32. The proposals for the second limb of the partial defence, loss of control in response to words or conduct, received a mixed response.
33. A small number of respondents considered that this limb of the defence should not be available at all. They reasoned that killing in response to words or conduct should always be murder; they could not conceive of any circumstances in which it would be a justifiable defence that the defendant had killed someone because they were wronged by what had been said.
34. However, other respondents including a number of academics, did not support the Government’s policy to restrict the current law. These respondents were concerned that deserving cases would be excluded, for example where the defendant killed out of grief or despair. Some of the concern about the injustice was linked to concerns about the mandatory life penalty.

35. In the middle there were a number of respondents who supported the Government's proposal to have a narrowly available partial defence, on the basis that it would be for exceptional circumstances. This group agreed with the Government that complete abolition could lead to injustices in a small number of cases.

### **Government response**

36. The Government recognises the diverging views about whether or not a partial defence should be available in exceptional circumstances where defendants kill in response to words or conduct. On balance, the Government believes that such a defence should remain.
37. In addition to the general views on the Government's policy, there were also concerns that the drafting would not achieve the policy as set out in the consultation document. The next few paragraphs look at comments on specific aspects of the definition of this limb of the proposed partial defence. Many respondents did not comment on any or all of them; the comments below are generally suggestions as to how the partial defence could be changed for the better.

### **Exceptional happening**

38. A number of respondents did not think that the meaning of the term "exceptional happening" is clear. Again, this view came both from England and Wales and from Northern Ireland. There was also a concern that it relates solely to the frequency of an event. Related to this was a fear that cumulative abuse cases might be ruled out because the very nature of the frequent and cumulative abuse would mean that any final act which led to the loss of self-control would not be "exceptional".

### **Government response**

39. It was always our intention that words and conduct which resulted in the loss of self-control might not be a single event but could be a series of words and/or conduct which, when taken together, amount to exceptional circumstances. We accept that the wording in the draft clause annexed to the consultation paper may not have conveyed this as well as desired.
40. We have therefore replaced the term "exceptional happening" with "circumstances of an extremely grave character". This formulation should ensure that the defence is only available in a very narrow set of circumstances in which a killing in response to things said or done should rightly be classified as manslaughter rather than murder.

### **Justifiable sense of being seriously wronged**

41. Some respondents thought that the test of whether the defendant had a justifiable sense of being seriously wronged was unclear as to whether this was a question of law or fact and whether it was objective.

42. A number of organisations and an individual considered that the test was insufficiently objective. One academic assumed that the test is objective but feared that it ran the risk of disadvantaging minorities and introducing juries' value judgments.
43. A few respondents commented on the phrase "seriously wronged" and thought this might allow in too many circumstances. One academic thought that it should be clarified to specify that the words or actions giving rise to this sense would usually be unlawful.
44. Some respondents also thought that the term should not include "justifiably", as this suggested the killing was justified.

### **Government response**

45. The Government adopted the Law Commission's test here and we believe it will be interpreted as an objective test in which the jury will be able to take into consideration the situation the defendant was in. We do not believe it is necessary to spell that out on the face of the statute. We believe that it is right to require the defendant had a justifiable sense of being seriously wronged – we believe removing the word "justifiable" would lower the threshold unacceptably.
46. We do not think it would be helpful to limit the words or actions to unlawful conduct, as that would cover a very wide range of conduct and might infer that any unlawful conduct would meet the threshold. We believe that the new wording mentioned above (paragraph 40) will be sufficient to rule out unmeritorious cases.

<p>To make clear that sexual infidelity on the part of the victim does not constitute grounds for reducing murder to manslaughter.</p>
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47. The proposal to ensure that sexual infidelity on the part of the victim cannot be used as a basis for reducing murder to manslaughter attracted a great deal of comment. There was strong support for the explicit exclusion from several organisations, including Justice for Women, Welsh Women's Aid, Broken Rainbow, Women's Aid (England), Victim Support and, in Northern Ireland, Women's Aid Federation Northern Ireland, the Committee for the Administration of Justice, Victim Support Northern Ireland and the Probation Board for Northern Ireland. There was also a view that the exclusion should be extended to include other types of behaviour that might incite violence from an abusive partner, such as a decision to leave the partner or indeed asserting autonomy.
48. On the other side, there was also significant concern about the exclusion from a number of respondents including from legal academics and lawyers. Some respondents believed that, as a matter of principle, the defence should succeed if the other tests in the defence were met: that the sexual infidelity amounted to an exceptional happening which gave the defendant a justifiable sense of being seriously wronged, and the jury

- accepted that a person of ordinary tolerance and self restraint might have acted in the same way. This concern was linked to opposition to the Government's policy to narrow the circumstances in which a partial defence should be available for those who kill in anger.
49. More than one women's group (both in England and Wales and in Northern Ireland) thought that the exemption might exclude a woman who killed after years of abuse, in response to a final act of sexual infidelity.
  50. A few respondents went so far as to say that they believed sexual infidelity should in principle be capable of providing a basis for reducing an offence of murder to manslaughter, since it might give rise to a justifiable sense of being seriously wronged.
  51. There was another more technical concern from an academic that lists are not helpful in statutes, because of the inference that might be drawn from them, and that the exclusion for sexual infidelity was in effect the beginning of a list.
  52. Some respondents thought that the drafting could have the effect that an act which should be capable of providing a basis for the defence might be excluded because it was also an act of sexual infidelity. For example, a partner raping a child should not be an act which is automatically excluded as a possible trigger for the loss of self-control on the basis that it was also infidelity.
  53. Finally, a number of respondents thought that if there was an exclusion for sexual infidelity specifically on the face of the Act, there ought also to be an exclusion for honour killings.

### **Government response**

54. The Government does not accept that sexual infidelity should ever provide the basis for a partial defence to murder. We therefore remain committed to making it clear – on the face of the statute – that sexual infidelity should not provide an excuse for killing.
55. We believe that where sexual infidelity is one part in a set of circumstances which led to the defendant losing self-control, the partial defence should succeed or fail on the basis of those circumstances disregarding the element of sexual infidelity. However, the Government has sought to improve the wording of the drafting in response to the concern raised in the paragraphs above.
56. The Government fully agrees that anyone involved in a so-called "honour killing" should not be able to reduce a charge of murder to manslaughter on the basis of the victim's behaviour. The Government believes that the high threshold for the words and conduct limb of the partial defence will have the effect of excluding situations which might be characterised as "honour killings" because such cases will not satisfy the requirements that the circumstances were of an extremely grave character and caused a

justifiable sense of being seriously wronged. In addition we intend to introduce an exemption for cases where there is a “considered desire for revenge” which will also have a role to play in ensuring that so-called honour killings do not benefit from a partial defence (paragraph 74 below).

To remove the existing common law requirement for loss of self-control in these circumstances to be “sudden”.

57. Many respondents, including academics, legal practitioners and organisations supporting victims of violence, supported the proposal to remove the requirement that the loss of self-control should be sudden. However there were concerns that the drafting would not change the current law simply by abolishing the common law and that suddenness could be read back into the defence.
58. On the other side, there was concern on the part of some that the removal of the requirement of suddenness may open the door to revenge killings.
59. A number of respondents (particularly those representing victims of domestic abuse both in England and Wales and in Northern Ireland) thought that the Government should go further and abolish the requirement for a loss of self-control completely. The concern was that the need to show a loss of self-control at all could prevent some cases where the defendant had suffered long term domestic abuse from accessing the partial defence.
60. In addition, some academics and legal practitioners believed that the retention of the loss of self-control did not fit well with the intention for the partial defence to apply to cases of where a person overreacts to what they perceived as an imminent threat of serious violence. They argued that a defendant acting in self defence does so in a way that he or she believes is rational and therefore is inconsistent with a loss of self-control.
61. There was also a suggestion that loss of self-control should be replaced with “extreme emotional disturbance”, as a better description.

### **Government response**

62. The Government believes that it is important that the partial defence is grounded in a loss of self control. We are not persuaded by the arguments for removing the requirement that the defendant must have lost self-control when they killed: we believe that the danger of opening this up to cold-blooded killing is too great.
63. In addition, we do not believe that the loss of self control requirement is inconsistent with situations where a person reacts to an imminent fear of serious violence. Indeed, loss of self control does not act as a bar to a full defence of self defence. This is particularly important where a loss of self

control impairs a person's ability to accurately assess the degree of threat posed. The law has the flexibility to accommodate genuinely held, if mistaken beliefs, the like of which may well feature in cases where there has been a loss of self control.

64. Under the current law, a person claiming self defence is given a considerable degree of latitude. Defendants are not expected to weigh to a nicety the exact level of defensive force necessary in the situation, and when they honestly and instinctively do what they believe is necessary that is strong evidence that they have acted reasonably. The degree of force used should be proportionate to the *perceived* level of threat. Where the force used is judged unreasonable by these standards, the Government believes that it is right that the partial defence should only be available where a person is not in control of themselves.
65. In contrast the Government believes that if a defendant kills in full control of him or herself, then even if he or she fears serious violence there are insufficient grounds to reduce a murder charge to manslaughter.
66. We continue to believe that the right approach is to retain the requirement for control to have been lost but to remove the requirement for the loss to have been "sudden" to make plain that situations where the defendant's reaction has been delayed or builds gradually are not excluded. However, we acknowledge the concerns that "suddenness" could be read back into the law and therefore have decided to put the matter beyond doubt on the face of the statute. We also do not believe that it will be a bar to the partial defence applying in deserving cases of long-term abuse.

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.

67. This proposal attracted little attention, but where it did there was support for it.

### **Government response**

68. As set out in more detail below, the Government considers that this exemption should be extended to the fear of serious violence limb of the defence, in order to ensure criminal gangs may not benefit from the defence if they have incited the violence in order to provide an excuse for killing.

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

69. Few respondents commented on this proposal. An academic was concerned that the defendant may have made a mistake about the source of the fear of violence.

#### **Government response**

70. The Government believes that, consistent with normal legal principles, the defendant will usually be entitled to be judged in accordance with any genuine mistake of fact and therefore does not think the concern is one which needs to be acted on.

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.

71. A number of respondents (including academics, legal practitioners and a campaigning organisation) were concerned that excluding all criminal conduct could lead to unjust outcomes in some cases, although they supported the underlying policy to exclude criminal gangs from the partial defence. The concern was that there are many criminal offences of varying degrees of seriousness and defendants could be excluded from the partial defence when that would be disproportionate to the criminality they were involved in. For example, there was a concern that a prostitute who killed an abusive and controlling pimp in response to a fear of serious violence might be excluded from the defence because of the very involvement in prostitution.
72. An alternative approach, suggested by one academic lawyer, would be to make criminal conduct a factor but not an absolute basis for exclusion from pleading the partial defence.

#### **Government response**

73. The Government believes that the drafting of the clause allowed for some flexibility in how criminal conduct would affect the defendant's access to the defence, as it excluded cases where the loss of self control was predominantly due to the criminality of the defendant. However, the Government accepts that there may be some cases where this test is met but it would nevertheless be disproportionate to bar the defendant from the defence, particularly where the criminality is at the lowest level of seriousness.
74. We therefore propose to remove this exclusion and replace it with two other safeguards to ensure that violence such as tit-for-tat gang killing is excluded from the defence:
- reinstating the exemption initially proposed by the Law Commission for those acting in considered desire for revenge;
  - ensuring that those who incite violence, or the threat of it, in order to have an excuse for killing cannot use the defence. This was already

exempted for the words and conduct limb of the defence but we will extend the exemption to the fear of serious violence limb also.

75. The Government recognises that there may be cases where individuals incite violence in legitimate circumstances. For example, the victim of a robbery might be said to incite violence from a robber by refusing to part with money. However, the extension will be to cases where the incitement was done for the purpose of providing an excuse for using violence, we therefore do not consider cases of legitimate incitement will be barred from the defence.

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.

76. There were a number of comments about the inclusion of a test of "reasonableness" in the partial defence. Some thought that the test for the partial defence should be entirely subjective, so that the fact that the defendant in fact lost self-control should be sufficient to form the basis of the defence. Others thought that the test was already too subjective.
77. Other views expressed were that the gender and age specific aspects are not helpful. One respondent was concerned that to include gender in the test could be seen as reinforcing sexism in the statute. Broken Rainbow, an organisation that provides support for lesbian, gay, bisexual and transgender people experiencing domestic violence, expressed concern about the ability of a "typical jury" (one that is likely to be composed of a majority of, if not entirely, heterosexual members) to empathise with a lesbian, gay, bisexual or transgender person. The concern about age was that it is arbitrary as not everyone matures at the same rate.

### **Government response**

78. The Government believes that a test of "reasonableness" is key to the partial defence, otherwise people with particularly short tempers could use that as an excuse for killing. On balance, and having considered carefully the views expressed, we are not persuaded of the arguments for removing references to gender and age in the test. These issues are considered in more detail in the Equality Impact Assessment for these proposals.<sup>1</sup>

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.

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<sup>1</sup> Equality Impact Assessment available at: <http://www.justice.gov.uk/publications/coroners-justice-bill.htm>.

79. A number of respondents commented on this area and were concerned that judges would be able to withdraw a defence based on loss of self control in circumstances where the decision should be left to the jury.

### **Government response**

80. These comments appear to show a misunderstanding of the Government's proposal. Under section 3 of the 1957 Act, where there is sufficient evidence that a person was provoked to lose their self-control, the defence of provocation must be put to the jury even in circumstances where no properly directed jury could reasonably conclude that the reasonableness requirement of the defence was made out. This is in contrast to the position that existed before the 1957 Act where the issue could be withdrawn from the jury if the judge considered that no reasonable jury could possibly conclude that a reasonable person would have done as the defendant did. An additional impact of the current law is that the judge must direct on provocation in circumstances where neither the prosecution nor defence have raised provocation as a defence, and indeed in cases where the defence would prefer for it not to be raised. This contrasts with the usual position whereby a judge need only direct on the defence when there is sufficient evidence that a jury might reasonably accept the defence. We think the general position for the defence, as it existed before the 1957 Act, is the appropriate one the new defence of loss of self control. We therefore accepted the Law Commission recommendation in this area to allow judges not to direct the jury on provocation where the evidence of the defence is very poor. Following concerns raised by the senior judiciary, we have amended the wording of the clause from that contained in the consultation paper to put the matter beyond doubt.

### **Other issues raised**

81. A number of respondents commented on the two-limbed nature of the proposed partial defence. Some considered that it is right to have one defence split into two parts; some took the view that the two limbed approach will improve fairness. One practitioner thought that it should not be possible to run the two limbs simultaneously.
82. Some respondents (both in England and Wales and in Northern Ireland) thought a change of label for the partial defence is welcome. It was argued that the term 'provocation' should be avoided, as it implies judgment of the victim; the expression 'excusable homicide' would be preferable. On the other hand, at least one respondent specifically said that the defence should continue to be known as provocation.
83. Some respondents expressed concern that there would be some cases which would fall between the new fear of serious violence and words and conduct partial defence(s) and the diminished responsibility partial defence. But most discussion about sympathetic cases focussed on how either the new partial defence(s) replacing provocation or the updated

partial defence of diminished responsibility could be improved so as not to miss deserving cases.

### **Government response**

84. The Government believes that any advantages of simplicity or specificity gained by separating the two limbs of the defence would be outweighed by the disadvantages that the two limbs could not be joined together in a single defence.
85. The label for the defence is important, but the Government believes a partial defence on the basis of loss of self-control adequately describes it and that any references to provocation are unhelpful.
86. The Government takes seriously the concerns that some deserving cases might fall in a “gap” between the partial defences of loss of self-control and diminished responsibility. But we believe that a defendant should not be able to benefit from a partial defence to murder when he does not meet the tests for either of the partial defences.

### **Partial defence of diminished responsibility**

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 the defendant’s functioning must be affected in order for the partial defence to succeed, and making clear the abnormality should cause, or be a significant contributory factor in causing, the defendant to kill.

87. There was broad agreement amongst respondents that the partial defence of diminished responsibility should be retained but that it needed updating. On the other hand, one academic lawyer thought that the current law worked and did not need to be changed. Another expressed the view that the current law is better than the proposals. Two academics considered that the effect of the proposals would be to make it harder to argue the defence.
88. Many respondents (both in England and Wales and in Northern Ireland) supported use of the expression “recognised medical condition” as a helpful way of enabling relevant medical opinion to be introduced. There were, however, a number of questions about how the clause would work in practice:
  - By whom would the condition need to be recognised?
  - At what stage would an ‘emerging’ condition (i.e. where a cluster of characteristics which might amount to a condition was only beginning to be raised or discussed by medics) be recognised?
  - How would the jury arbitrate between competing medical evidence about conditions?

There was also a concern that “recognised medical condition” might exclude some sympathetic domestic violence cases where the defendant was not diagnosed as suffering from battered person’s syndrome (which is included in a number of the classificatory lists of illnesses).

89. The responses exposed some competing views. Some organisations thought that the definition was too wide – it would allow in severe depression; it might make it possible to succeed with the defence in mercy killing cases. On the other hand, other organisations (representing female victims of domestic abuse) argued that the defence was too narrow – they were worried that it may not always cater for the psychological impact of trauma.
90. Others considered that the requirement that the defendant should be suffering from a “recognised medical condition” was unnecessary given the requirement that their ability to control themselves, understand the significance of their actions or make a rational judgment must have been substantially impaired.
91. A small number of respondents were especially concerned that those suffering from medical conditions brought on by long term abuse of alcohol or drugs should be excluded from running the partial defence, and were not so excluded.
92. On causation, most respondents at least implicitly accepted that it was necessary to require a causal link between the mental impairment and the actions or omissions which resulted in death. However, some respondents (including a number of academics) did not believe that there should be a requirement for a causal connection/link at all and were concerned that its presence would make it difficult to succeed with the partial defence. Indeed, they went as far as arguing that it would be more difficult to plead than insanity. Alternatively, one academic supported a “but for” test (in other words, that it should need to be established that, but for the impairment, the defendant would not have done the act).
93. Some considered that the clauses as currently drafted were unduly complex. For example, it was not considered necessary to have both the concept of abnormality of mental functioning and that of relevant mental impairment.

### **Government response**

94. We remain convinced that “recognised medical condition” is the concept best suited to bringing the law 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. We are mindful of the risk of opening the defence too wide should we dispense with this requirement. We are also confident that the courts will interpret the definition as including all conditions listed in the various classificatory lists. Where a new condition is emerging, but does not yet appear in the lists, the court will be able to hear evidence and reach a common sense

conclusion based on the evidence of those who advocate the inclusion of a particular condition. Even where the defendant is deemed to have a “recognised medical condition”, he will still need to convince the jury that an abnormality of mental functioning arising from this condition substantially impaired his ability to understand the nature of his conduct, form a rational judgment or exercise self-control.

95. With regard to the link between the impairment and the defendant’s conduct, we have carefully thought through the various comments made but have concluded that it is right to maintain the position set out in the consultation paper. We are satisfied that it is right that, while it need not be the sole cause of the defendant’s behaviour, it should be a significant contributory factor in causing the conduct – that is, more than a merely trivial factor. The partial defence should certainly not succeed where the jury believes that the impairment made no difference to the defendant’s behaviour – he would have killed anyway. Where diminished responsibility is raised at trial, the jury will hear expert evidence about the defendant’s mental state at the time of the killing and this is likely to include evidence about behaviours that would be consistent with a person suffering from the condition identified. It will be for the jury to decide on all the evidence whether they consider that the defendant was suffering from an abnormality of mental functioning which substantially impaired one or more of his relevant abilities and which caused or was a significant contributory factor in causing his conduct. The jury will be assisted in this by appropriate directions from the judge.
96. We consider that there is merit in the argument that the draft clauses are unduly complex and have re-drafted them so that a simpler formulation of the defence can be introduced to Parliament.

### **Developmental immaturity**

97. A number of respondents agreed with the Government’s view that this proposal of the Law Commission should not be included. Victim Support took the view that there is a risk that this would make the defence too easy to run if it was unrelated to a medical condition. If it was included as part of the partial defence of diminished responsibility, there was a risk that it would be run routinely in cases involving young defendants in homicide cases. As impairments such as learning difficulties and autistic spectrum disorders are included under “recognised medical condition”, another legal practitioner organisation doubted whether there is a need for such a clause. The Law Reform Committee and Criminal Bar Association of the General Council of the Bar previously supported the Law Commission on this but had changed their minds and now support the Government proposal.
98. Others (including the Senior Law Lord, the Royal College of Paediatrics and Child Health, Justice, Justice for Women, a specialist in adolescent forensic psychiatry from Greater Manchester and a number of academic lawyers and, in Northern Ireland, the Law Society of Northern Ireland and Women’s Aid Federation Northern Ireland) backed the Law Commission

recommendation that developmental immaturity should exist as a limb within the diminished responsibility partial defence. They made the following points:

- Under 18s mature at different rates; their ability to decide to engage in criminal activity in the clear knowledge of the full implications and consequences of this must be subject to the developmental level of the young person.
- As doli incapax is no longer available, any child over the age of 10 would be held to understand the significance of their actions unless they are suffering from a “recognised medical condition”. This is not realistic. Any reform of the partial defence of diminished responsibility needs to taken account of the abolition of doli incapax.
- Since knowing the difference between right and wrong, what is legal and illegal, is not intrinsic to the child and needs to be learned, in some cases, e.g. where a child is neglected, such learning opportunities are absent throughout childhood. It would be inappropriate to label such children as culpable criminals. A small group of vulnerable and abused young people would be at risk of being sentenced to a punishment rather than a treatment regime.
- The proposal may be in contravention of Article 40 of the UN Convention on the Rights of the Child – the right of every child alleged as, or accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, taking into account the child’s age; to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, taking into account his or her age.
- An adult of 40 years with the emotional maturity of a 10 year old can claim diminished responsibility as they may be diagnosed as having a “recognised medical condition”, yet a ‘normal’ 10 year old cannot succeed with the plea as their development has not been arrested. In this way, more is expected of children than adults. The fact that children develop consequential reasoning as they grow older is disregarded (unless they have a “recognised medical condition”).

### **Government response**

99. The Government is not persuaded that it would be appropriate to extend the partial defence of diminished responsibility to include a developmental immaturity limb.
100. The age of criminal responsibility is set at 10 years of age. A child who has reached this age is deemed to be criminally responsible for his actions. We believe that it should remain the case that a partial defence should only be available if a child meets the proposed conditions for a diminished responsibility defence (namely, that he or she is substantially less able to understand the nature of their conduct, form a rational

judgment or exercise self-control as the result of an abnormality of mental functioning arising from a “recognised medical condition”).

101. We did not receive any evidence in the consultation that the absence of a developmental immaturity provision in the existing law is causing any significant difficulties in practice, and so we remain unconvinced that it is needed.
102. We also remain of the view that including the provision would open up the defence too widely and catch inappropriate cases. We also consider that opening the door for young people to plead developmental immaturity would unnecessarily complicate the trial in many cases where a defence of diminished responsibility should not be available as the defendant is clearly in possession of all their faculties.
103. We are confident that obviously deserving cases, e.g. where the defendant is a child who has been diagnosed with autistic spectrum disorder and this has significantly impaired his ability to understand the nature of his conduct, form a rational judgment or exercise self-control (or any combination of the three), would fall within the diminished responsibility as proposed.

### **Complicity to murder**

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 (see page 6 for full details of proposals)

104. Many respondents broadly supported the proposed changes to the law of complicity in murder. One or two concerns were raised about the substantive proposals, particularly from Northern Ireland, where the Police Service of Northern Ireland was concerned that the proposals might mean that shootings and beatings by gangs might result in murder convictions for some protagonists but manslaughter for others. The Probation Board for Northern Ireland was also anxious that any legislation should take into account the special circumstances of Northern Ireland. There was widespread concern from academics and practitioners about the proposal to reform the law of complicity in murder without at the same time reforming the law on secondary liability more generally (i.e. in relation to all criminal offences). The main concern was that reform of secondary liability for murder alone would lead to complex jury directions in cases where other offences were also charged or there were possible alternative verdicts. This could mean that juries would have to be directed on the law of secondary liability twice, with perhaps only minor differences in the law. It was felt that the directions are already complicated for juries and that to add to the amount of information given to juries would be unhelpful. On the other side of the argument, one academic thought that the arguments for delay in relation to the complications of directing a jury were overstated by some.

### Government response

105. Given the strength of concern about reforming complicity to murder separately from complicity for the whole criminal law, the Government has decided not to proceed with the proposed changes at the present time.
106. We originally included complicity to murder in the first stage of the review. This followed the Law Commission's report on homicide which similarly singled out complicity in murder in advance of reporting on complicity as a whole. However we have now received their full report on complicity, and we accept the weight of opinion expressed in response to the consultation that any legislation in this area should address the Law Commission's proposals for a comprehensive reform of the law on secondary liability.

### Infanticide

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

107. Only 20 respondents from England and Wales and five from Northern Ireland commented on the issue of infanticide. The responses from Northern Ireland were broadly supportive of the proposal.
108. Of those who responded to the consultation in England and Wales, only five commented on the specific Government proposal to amend the law to make clear that infanticide cannot be charged in cases that would not currently be homicide at all. Four of these respondents supported the Government proposals. Among these, the Royal College of Paediatrics and the Institute of Legal Executives agreed that the judgement in *R v. Gore* may have inadvertently opened up liability for infanticide in cases that would not currently be homicide at all and therefore welcomed the amendment. A number of academics also supported the amendment; one commented that the proposal was a "practical response to the small number of cases which it may affect". On the other hand, ALERT (Alert against euthanasia), an organisation dedicated to defending vulnerable people's right to live, opposed the amendment on the grounds that it could "open the door to such well-known practices as deliberately starving a baby to death or intentionally exposing it fatally to the cold."
109. The majority of the responses to the consultation in England and Wales were more general in nature. While the greater part of those who responded supported the retention of infanticide, some argued that the defence should be abolished and that cases currently dealt with under infanticide should instead be dealt with under diminished responsibility. This was one of the options carefully explored and eventually dismissed

by the Law Commission in their report.<sup>2</sup> None of the arguments or evidence put forward in the responses to the consultation paper raised points which had not been already considered by the Government when deciding whether to accept the Law Commission recommendation to retain the offence/defence of infanticide.

110. Some respondents felt that the offence/defence should be retained, but that it should be amended. The Law Reform Committee and Criminal Bar Association of the General Council of the Bar suggested that the defence should not be restricted to 12 months after the birth of the child as this was an arbitrary cut-off point and the key factor is whether or not the balance of the mother's mind is disturbed through incomplete recovery from the effect of giving birth or of lactation. The Royal College of Paediatrics and Child Health questioned whether the law was potentially unfair to fathers and other carers, since the defence was not open to them although they could be profoundly affected by the birth of a child and may suffer from similar degrees of exhaustion, severe disruption of their sleep pattern, changed family dynamics, etc. These too were issues explored in detail by the Law Commission, who concluded: "based on the evidence supporting the psychological/psychiatric foundation of the offence/defence of infanticide...together with the reluctance of consultees to expand it beyond its current ambit, we are not recommending that the offence/defence of infanticide incorporate 'circumstances consequent upon birth'. Nor do we recommend that it be extended to fathers or other carers."<sup>3</sup> The Law Commission felt that fathers and other carers should look to the reformulated defence of diminished responsibility instead.
111. Finally, one respondent (the Law Reform Committee and Criminal Bar Association of the General Council of the Bar) agreed with the Law Commission's assessment that there is a problem in relation to women who fail to instruct their defence counsel to raise the possible defence of infanticide and suggested that "provision should be made to enable the judge to be proactive in raising this issue irrespective of any other defence and independently of D and her advisers". The Police Service for Northern Ireland also suggested that action should be taken during the trial. These views, however, were in opposition to all the feedback we received from stakeholders in the run up to the publication of the consultation paper. In addition one of the academics who responded to the consultation commented: "In my submission the Government is right to reject the Law Commission's procedural suggestion to allow a fast track procedure by the trial judge for the review of certain convictions where there is evidence, not before the court at trial, that the accused may have been mentally disordered. This is a matter which should be referred to the CCRC."

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<sup>2</sup> "Murder, Manslaughter and Infanticide" (Law Commission No. 304), paragraphs 8.35 – 8.39 (pages 164-165).

<sup>3</sup> "Murder, Manslaughter and Infanticide" (Law Commission No. 304), paragraph 8.31 (page 163).

### **Government response**

112. The Government believes it would not be right for the law to allow a mother who meets the conditions to benefit from the infanticide defence to be convicted of a homicide offence in circumstances where any other mother or, indeed, any other person could only be convicted of a lesser, non-homicide offence (e.g. child cruelty). We therefore believe it is right to put the law beyond doubt on this point.
113. We have carefully considered the particular nature of the offence/defence and on balance we agree with the Law Commission that the offence/defence of infanticide should be retained without amendment.
114. We are not convinced of the need for the procedural change proposed by the Law Reform Committee and Criminal Bar Association of the General Council of the Bar. So far no-one has produced evidence that there is a problem in practice. Additionally, even if such cases were apparent, we believe there would be substantial practical problems with the proposal. First, it is difficult to see how practicable the process would be given that, if the defendant was not prepared to undertake a psychiatric assessment, there would be no evidence to justify raising the defence. Secondly, on a point of principle, we think such a procedure would sit uneasily with the neutral role of the judge and runs the risk of eliding his role with that of the defence, if he is essentially making a decision on behalf of the defendant as to whether to run a defence.
115. Accordingly, we are not persuaded of the need to make any changes to the proposals.

### **Related issues on which we were not specifically consulting**

#### *Failure to implement the full Law Commission report: "Murder, Manslaughter and Infanticide"*

116. A number of respondents were unhappy that the Government had chosen to undertake a "piecemeal" review of murder rather than a comprehensive one taking in all of the recommendations of the Law Commission, in its report, "Murder, Manslaughter and Infanticide". It was argued that the Law Commission report was a comprehensive package of reform supported by thorough and careful research and that its parts were inter-dependent. It was not appropriate to lift some parts of the Law Commission proposals and graft them onto the existing law. To support this view it was contended that to attempt reform of partial defences without tackling underlying problems regarding the scope of, and mental element for, murder risked unfairly leaving some defendants to a full murder conviction where this was not merited. The Homicide Law Review Advisory Group called for a comprehensive review of the law of murder.
117. Some respondents were particularly disappointed that the review did not consider the merits of the Law Commission's proposal for a scheme

involving both first and second degree murder as well as manslaughter. In their view, seeking to restrict the application of partial defences without introducing the concept of first and second degree murder risks “substantial unfairness and potential injustice”.

#### *Mandatory life sentence*

118. We did not refer in the consultation paper to the existing statutory sentencing framework for murder, as this was not directly relevant to our proposals. Consideration of the mandatory life sentence was out of scope of the review. However, some respondents, including a number of academic lawyers, legal practitioners and lobby groups, raised concerns about the automatic imposition of the life sentence in cases where a defendant is convicted of murder. They were critical of the Government’s unwillingness to consider abolishing the mandatory life sentence for murder. In their view, many of the challenges around designing the partial defences would be eased by giving more discretion in sentencing to the judge in those cases where the partial defence does not succeed. It was argued that removing the mandatory life sentence would allow mitigating features of homicide cases to be dealt with more easily without resorting to ‘gateways’ through which a defendant can escape a murder conviction in deserving but not undeserving cases.

#### *Other policy issues raised*

119. A small number of points were made by respondents, covering other wider policy issues:

- One respondent argued that duress should be a full defence to murder.
- A non-governmental organisation suggested that self-defence should be reviewed so that those who are victims of abuse and kill are more often acquitted.
- An academic lawyer argued that excessive use of force in self-defence should be a partial defence to murder.
- A non-governmental organisation suggested that there should be a separate partial defence of killing a burglar in the course of a break-in.
- Dignity in Dying expressed disappointment that the Government has failed to grapple with the issues around mercy killing in declining to set up a review in this area; linked to this, an academic lawyer suggested there should be an additional partial defence of ‘despair leading to mercy killing’.

#### **Government response**

120. The Law Commission’s recommendations for this important and sensitive area of law are ambitious and wide-ranging; it is critical that we get this right and so we have proceeded on a staged basis. We will be looking at the Commission’s other recommendations, in particular those for a new

structure for homicide and complicity to murder, in due course, in the light of the effect of any changes arising from this stage of the work.

121. The mandatory life sentence reflects the seriousness of killing with an intention to at least cause serious harm and was supported by Parliament during the passage of the Criminal Justice Bill in 2003. The penalty for murder is an essential element in maintaining public confidence in the justice system which this government will maintain.
122. As regards mercy killing, this is a major issue that successive Governments have made clear is a matter of conscience for Parliament to decide. It therefore fell outside the scope of the review. The proposed partial defence of diminished responsibility will apply to defendants who kill in such circumstances where they meet the relevant tests for that partial defence.

#### *Impact Assessment*

123. Only one respondent commented specifically on the assumptions in the Impact Assessment, suggesting we have underestimated the likely terms of imprisonment that will be served by those who are convicted of murder rather than manslaughter as a result of any changes, with the result that the prison place needs will be greater than had been previously envisaged.

#### **Government response**

124. Our assessment was based on a detailed examination of a large number of case files. While the impact of proposals of this kind is always hard to quantify exactly our assessment is evidence-based and we believe it is the most reliable available at this stage.

## **Conclusion and next steps**

125. The Coroners and Justice Bill introduced today therefore contains provisions to change the law on the partial defences to murder of provocation and diminished responsibility, largely as proposed, but subject to the changes outlined above. The proposals to clarify the law on infanticide remain unchanged. We have decided not to proceed to change the law on complicity in murder at present for the reasons given at paragraphs 105 and 106 above. The proposed legislative changes will be extended to Northern Ireland and included in the Coroners and Justice Bill.

## **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 3334 4496), or email her at [consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk).

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

**Gabrielle Kann**  
**Consultation Co-ordinator**  
**Ministry of Justice**  
**7<sup>th</sup> Floor**  
**102 Petty France**  
**London SW1H 9AJ**

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 at page 3 above.

## **The consultation criteria**

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

**These criteria must be reproduced within all consultation documents.**

## **Annex A**

### **List of respondents to England and Wales consultation**

#### **Individuals**

Joe Anthony  
Richard Blaber  
Wendy Crompton and Clive Elliott  
Peter Chandler  
Simon Davis  
Keiran Dudden  
Alistair Dunn  
Tom Dymond-Andrews  
Laurence Elks  
DI Mark Flavell  
Will Foers  
Hannah Frankland  
Lee Grana  
Christopher Grove  
Alexander Groves  
James Haggett  
Georgina Hartnell  
Amelia Heathcote  
Ariel Ho  
Diggory Hunt  
Charles Knowles  
Mangali Murali  
Gary Nicholls  
Stewart R Rigby  
Alec Samuels  
Ms NH deSilva  
James Austen Williams

**Academics**

Professor Andrew Ashworth, All Souls College, University of Oxford

Dr Kate Cook, Manchester Metropolitan University

Georgina Dance, Bristol Law School, University of the West of England

Professor Ian Dennis, University College, London

Matthew Dyson, Jesus College, Cambridge

Professor L H Leigh, Honorary Professor, University of Birmingham

Joanna Miles, Trinity College, Cambridge

Professors Barry Mitchell, Coventry University, and R D Mackay, De Montfort University

Professor David Ormerod, Queen Mary, University of London

Simon E Parsons, Southampton Solent University

Dr Nicola Padfield, Fitzwilliam College, University of Cambridge

Dr Jonathan Rogers, University College, London

Professor J R Spencer QC, Selwyn College, University of Cambridge

Professor Victor Tadros, University of Warwick

Professor Graham Virgo, Downing College, University of Cambridge

Emma Waring, Affiliated Lecturer, University of Cambridge

Dr Rebecca Williams, Pembroke College, Oxford

I S Williams, Christ's College, Cambridge

**Professional organisations**

Criminal Sub-Committee of the Council of HM Circuit Judges

Institute of Legal Executives

Justices' Clerks' Society

Law Reform Committee and Criminal Bar Association of the General Council of the Bar

The Law Society of England and Wales

Royal College of Paediatrics and Child Health

**Non-governmental organisations**

ALERT

Broken Rainbow

Christian Concern for our Nation

Dignity in Dying

Homicide Law Review Advisory Group

Justice

Justice for Women

Liberty

Mothers Against Murder and Aggression (MAMAA)

Prison Reform Trust

Rape Crisis (England and Wales)

Refuge

Stonewall

Sunderland Domestic Violence Partnership

Victim Support

Victims' Voice

Welsh Women's Aid

Women's Aid (England)

**Psychiatrist**

Dr Enys Delmage

**Legal practitioners**

Edward Rees QC

25 Bedford Row Chambers

**Senior Law Lord**

Lord Phillips of Worth-Matravvers

## **List of respondents to Northern Ireland Office consultation**

### **Government departments and public bodies**

Lisburn City Council

Police Service of Northern Ireland

Probation Board of Northern Ireland

Northern Ireland Public Prosecution Service

### **Professional organisations**

Law Society of Northern Ireland

### **Non-governmental organisations**

Women's Aid Federation

Committee for Administration of Justice

British Irish Rights Watch

Northern Ireland Human Rights

Victim Support Northern Ireland

NIACRO

## **Annex B**

### **Persons and organisations that participated in and contributed to the initial consultation process (before publication of the consultation paper)**

#### **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 District Council

Standing Committee for Youth Justice

Victims' Advisory Panel

Youth Justice Board for England and Wales

**Non-governmental organisations**

Children's Rights Alliance for England

Dignity in Dying

Eaves Housing for Women, The Lilith Project

Homicide Review Advisory Group – Sir Louis Blom-Cooper

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 C**

### **Persons and organisations who participated in and contributed to the consultation (in ways other than formal submission to the consultation paper)**

ALERT

Attorney General's Office

British Psychological Society

Broken Rainbow

Children's Rights Alliance for England

Criminal Cases Review Commission

CPS

DCFS

Directorate of Judicial Offices for England and Wales

Home Office

Justice

Justice for William

Justice for Women

Law Commission

Law Commission for Northern Ireland

Lord Chief Justice of England and Wales

Mothers Against Murder And Aggression (MAMAA)

Metropolitan Police

Ministry of Defence

Prisons and Criminal Justice Programme, Sainsbury Centre for Mental Health

Public Prosecution Service for Northern Ireland

Refuge

Rethink

Royal College of Psychiatrists

Stonewall

Treasury Counsel at the Central Criminal Court

Victim Support

Victims of Crime Trust

Victims' Voice

Women's Aid (England)

**Murder, manslaughter and infanticide: proposals for reform of the law**  
Summary of responses and Government position

Sir Louis Blom-Cooper

Dr Kate Cook – Manchester Metropolitan University

Dr Ian Cummings – Oxleas NHS Trust/HMP Belmarsh

Professor Ian Dennis

David Hughes

Professor Barry Mitchell – Coventry University

Professor Terence Morris

Professor David Ormerod – University of London, Queen Mary

Professor John R Spencer – Cambridge University, Faculty of Law

Professor Ronnie Mackay – De Montfort University Law School

Professor Richard Taylor – University of Central Lancashire



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Murder Review Team at [Murder\\_Review@justice.gsi.gov.uk](mailto:Murder_Review@justice.gsi.gov.uk)