

# Equalities Statement

This Equalities Statement should be read alongside the following Statutory Instrument: “The Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2024”

## Policy Summary

The Instrument implements recommendations made in the independent Domestic Homicide Sentencing Review (the ‘Review’) undertaken by Clare Wade KC. The Review was published on 17 March 2023, accompanied by an interim response from the Government. The Government published its full response on 20 July 2023.

The Review made 17 recommendations for reform. The Statutory Instrument implements recommendations 5 and 8, which amend Schedule 21 to the Sentencing Act 2020, the sentencing framework for murder.

Recommendation 5 is: “*where there is a history of coercive control that this should be an aggravating or mitigating factor and that paragraphs 9 and 10 of schedule 21 should be amended accordingly*”. Recommendation 8 is: “*overkill should be defined in law as a specific legal harm and that it should be an aggravating factor in murder. Paragraph 9 of schedule 21 should be amended accordingly.*”

Schedule 21 sets out the principles which the court must have regard to in the determination of the minimum term in relation to the mandatory life sentence for murder. It contains a range of starting points for determination of the minimum term, and the particular circumstances of a murder will determine which of these starting points apply to a particular case. After identifying the starting point, the court will consider relevant aggravating and mitigating factors. The minimum term imposed can vary significantly upwards or downwards from the initial starting point, depending on the aggravating and mitigating factors in each case. Paragraphs 9 and 10 of Schedule 21 contain non-exhaustive lists of statutory aggravating and mitigating factors that may be relevant to the offence of murder.

These additions to the statutory aggravating and mitigating factors in Schedule 21 will ensure that domestic murders and the particular and wider harms that arise in these cases will be given specialist consideration in the framework.

## Equality Duty

Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;

- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying ‘due regard’ needs to be proportionately considered against the nine “protected characteristics” under the Equality Act 2020 – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity. This Statement considers the potential effects of this Statutory Instrument on the protected characteristics for which we have data: race, sex and age.

## Equality Data

The Terms of Reference for the Review provided for the examination of cases of domestic homicide (prosecuted as either murder or manslaughter) where an individual has caused the death of an intimate partner or former intimate partner. Before the appointment of an independent reviewer, an Initial Case Review was undertaken.

In considering the potential effect of the Review’s recommendations being implemented by this Statutory Instrument on the protected characteristics, we have analysed the relevant available data of the 120 cases from the Initial Case Review (‘the case sample’). This data relates to the protected characteristics of race, sex and age (see Appendix A in the Government’s response to the Review).<sup>1</sup> Where relevant, data on the general population, prison population and sentencing are provided for comparison.

Additionally, within the sample of 120 murder and manslaughter cases, we have identified a subset of 63 murder cases likely to be impacted by the Statutory Instrument.<sup>2</sup> This is because the particular circumstances of these cases have relevance to the additional aggravating and mitigating factors. We have stated where this subset of 63 cases may be affected differently, in comparison to the potential effect of a change which would apply to the whole sample of 120 cases.

This analysis is subjective in nature, relying upon an evaluation of the sentencing remarks. It is not possible to determine the specific adjustment that may be made for

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<sup>1</sup> [Domestic Homicide Sentencing Review - Government Response to the Independent Review by Clare Wade KC \(publishing.service.gov.uk\)](#). As set out in Appendix A, data on sex was identified via sentencing remarks, whilst data on ethnicity and age was taken from the Home Office Homicide Index (two cuts of the data were received - as at 15 December 2020 and as at 2 December 2022; figures are subject to revision as cases are dealt with by the police and by the courts, or as further information becomes available).

<sup>2</sup> As set out in the Impact Assessment (IA) for the Statutory Instrument, further analysis of the case file review has informed the IA and this equalities statement. See paragraphs 31 to 34 in the IA for details on the case file review and its limitations.

individual aggravating or mitigating factors, and therefore, how sentences will be impacted and the consequential outcomes on those with particular protected characteristics. Sentencing depends on the facts of the case, and it is for the court to determine how much weight should be assigned to aggravating or mitigating factors, and the resulting minimum tariff.

### **Data availability and limitations**

Details on the case sample review and data on their protected characteristics, including limitations, are set out in Appendix A of the Government's response to the Review.<sup>3</sup> 115 of the 120 cases have data on race available. This data is categorised using officer-identified classification and, as such, may not be directly comparable to an individual's self-identified ethnicity. 115 of the 120 cases have data on the ages of the perpetrator. For the analysis of race and age, cases where data are unavailable have been excluded from the analysis. All 120 cases have data on sex available.

The scope of the Review and therefore the 120 cases in the case sample was limited to cases where the victim was a partner or ex-partner of the offender. However, the legislative changes are such that implementing them will involve amendments to Schedule 21 that will apply to other relationships within a domestic context (for the aggravating and mitigating factor in relation to controlling or coercive behaviour) and to all cases, whether in a domestic context or not (for the aggravating factor related to overkill). We do not currently have data on the prevalence of overkill in non-domestic murders and therefore we have not been able to consider the potential effects of the changes on the protected characteristics of this wider cohort. However, we consider that to the extent the proposed changes have an indirectly discriminatory impact on other groups, any such impact would be a proportionate means of achieving the legitimate policy aim of ensuring the particular harms associated with overkill are appropriately recognised in the sentencing framework for murder.

### **Protected characteristics**

#### *Race<sup>4</sup>*

92 (80% of those with data on ethnicity available) of the perpetrators in the case sample were white or white British, 12 (10%) were Asian or Asian British, 8 (7%) were black or black British, and 3 (3%) were classed as other.

People of ethnic minorities make up 27% of the prison population,<sup>5</sup> including 12% black or black British, 8% Asian or Asian British, 5% mixed ethnic group. In the

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<sup>3</sup> [Domestic Homicide Sentencing Review - Government Response to the Independent Review by Clare Wade KC \(publishing.service.gov.uk\)](#)

<sup>4</sup> Figures for specific ethnic groups are not all directly comparable across different sources due to different categorisation approaches.

<sup>5</sup> Annual Prison Population: 2022, [Offender management statistics quarterly: January to March 2022 - GOV.UK \(www.gov.uk\)](#)

general population, 18% belong to an ethnic minority group,<sup>6</sup> including 9% Asian, 4% black, 3% mixed and 2% other. In the case sample, ethnic minorities make up 20% of perpetrators. In 2022, 21% of those convicted of an offence were from an ethnic minority group<sup>7</sup> (where ethnicity was recorded).

When considering the 63 specific murder cases likely to be impacted by the proposed changes, there is a difference in ethnicity when compared to the whole case sample: the proportion of ethnic minority perpetrators rises from 20% to 23%. However, this is lower than seen for murder convictions overall. In 2022, 45% of those convicted of murder were from an ethnic minority group.<sup>8</sup>

### Sex

99 of the 120 (83%) perpetrators in the case sample were male, and 21 of the 120 (18%) were female<sup>9</sup>. In comparison, men make up 49% of the general population,<sup>10</sup> 96% of the prison population<sup>11</sup> and 78% of offenders convicted in 2022.<sup>12</sup>

For murder, 81 of the 89 (91%) perpetrators in the case sample were male, and 8 (9%) were female.<sup>13</sup> Similarly, 94% of convictions for murder in 2022 involved male defendants.<sup>14</sup>

When considering the 63 specific murder cases likely to be impacted by the proposed changes, 62 (98%) of the perpetrators were male. Of these male perpetrators, the likely impact for 61 of the 62 cases (98%) is an increase in sentence as a result of the proposed additional aggravating factors. For the 1 (2%) female perpetrator, the likely impact on this case is uncertain due to the presence of both an additional aggravating and mitigating factor.

Although the proposed changes will only apply to murder cases, we are aware that, should the independent Sentencing Council make the equivalent changes in response to the recommendations which relate to manslaughter, the impact of this in

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<sup>6</sup> 2021 Census data, [Ethnic group, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/ethnicity/articles/ethnicgroupenglandandwales2021)

<sup>7</sup> Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022)

<sup>8</sup> Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022)

<sup>9</sup> Percentages do not add to 100% due to rounding.

<sup>10</sup> 2021 Census data, Population and household estimates, England and Wales: Census 2021, unrounded data, 2 November 2022, [Population and household estimates, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/populationandhousehold/populationandhouseholdestimatesenglandandwales2021)

<sup>11</sup> At end of June 2022, Annual Prison Population: 2022, [Offender management statistics quarterly: January to March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2022)

<sup>12</sup> Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022)

<sup>13</sup> Appendix D, [Domestic Homicide Sentencing Review \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/114444/domestic-homicide-sentencing-review)

<sup>14</sup> Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022)

relation to the protected characteristic of sex may differ. For manslaughter, 18 of the 31 (58%) perpetrators in the case sample were male, and 13 (42%) were female.<sup>15</sup>

### *Age*

The average perpetrator age across all cases in the sample is 43. At the time of the latest census,<sup>16</sup> the median age in England and Wales was 40, and more than half (52%) of the sentenced prison population is aged between 30 and 49.<sup>17</sup>

The range of perpetrator ages in the case sample spans from 17 to 84.

When considering the 63 specific murder cases that would have been impacted by the proposed changes, the age profile is slightly younger, with an average age of perpetrators of 39, primarily due to there being fewer cases with perpetrators over 60. This is also seen in murder convictions more widely. In 2022, 70% of those convicted of murder were aged between 18 and 39, with only 3% aged 60 or over.<sup>18</sup>

### *Sexual orientation*

Whilst no data is available on the sexual orientation of perpetrators or victims, all 99 cases with male perpetrators had female victims.<sup>19</sup> 20 of the 21 cases with female perpetrators had male victims, and the remaining one case had both a female perpetrator and victim. As such, most victims (n=100, 83%) were female.

## **Equality Considerations**

### **Direct discrimination**

Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that the legislative changes implemented by the Statutory Instrument are not directly discriminatory within the meaning of the Equality Act.

Application of the proposed changes will be dependent on the particular circumstances of a case which relate to the seriousness and wider harms of domestic homicides and will apply equally to all offenders regardless of their protected characteristics. We therefore do not consider that the proposals would result in people being treated less favourably directly because they possess any particular protected characteristic.

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<sup>15</sup> Appendix D, [Domestic Homicide Sentencing Review \(publishing.service.gov.uk\)](#)

<sup>16</sup> 2021 Census data, Population and household estimates, England and Wales: Census 2021, unrounded data, 2 November 2022, [Population and household estimates, England and Wales - Office for National Statistics \(ons.gov.uk\)](#)

<sup>17</sup> At end of June 2022, Annual Prison Population: 2022, [Offender management statistics quarterly: January to March 2022 - GOV.UK \(www.gov.uk\)](#)

<sup>18</sup> Outcomes by Offence data tool, [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](#)

<sup>19</sup> Appendix D, [Domestic Homicide Sentencing Review \(publishing.service.gov.uk\)](#)

### **Indirect discrimination**

Indirect discrimination occurs when a policy applies equally to all individuals but would put those with a particular protected characteristic at a particular disadvantage compared to those who do not share that characteristic. Our assessment is that the legislative changes implemented by the Statutory Instrument are not indirectly discriminatory within the meaning of the Equality Act.

By virtue of the overrepresentation of this group in the cohort of offender to which these changes will apply, we acknowledge that these changes are more likely to affect male offenders. In general men are overrepresented at most stages throughout the criminal justice system, including in relation to homicide offences. Additionally, the majority (98%) of the 63 specific murder cases likely to be impacted by the proposed changes had male perpetrators.

We do not, however, consider that this overrepresentation will likely result in any particular disadvantage for male offenders or for any other offenders with particular protected characteristics. Our assessment is that the legislative changes implemented by the Statutory Instrument are a proportionate means of achieving the legitimate policy aim of ensuring that the seriousness of domestic murders and the particular and wider harms that arise in these cases is reflected in the sentencing framework. Overall, therefore, we do not consider that this Instrument is likely to result in any unlawful indirect discrimination.

### **Harassment and victimisation**

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of this Instrument.

### **Advancing equality of opportunity**

The Instrument is considered likely to advance equality of opportunity for women through enabling greater protection through the strengthening of sentences for domestic homicide cases.

### **Fostering good relations**

We do not consider that this Instrument would have any significant impact on the achievement of this objective.

### **Monitoring and evaluation**

We will continue to pay due regard to the Public Sector Equality Duty and will review the feedback to this legislation in relation to equalities impacts.