

# Proposed Whole Life Custody (Scotland) Bill

## Introduction

A proposal for a Bill to give Scottish courts the power to sentence the worst criminals to custody for the rest of their lives. The consultation runs from 29 May 2019 to 30 August 2019. All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document. Questions marked with an asterisk (\*) require an answer. All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response. Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded. Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here: [Consultation document](#) [Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice attached to this consultation which explains how my personal data will be used

## About you

Please choose whether you are responding as an individual or on behalf of an organisation. Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

an individual

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

Member of the public

Please select the category which best describes your organisation

*No Response*

Please choose one of the following:

I would like this response to be published anonymously

Please choose one of the following:

**If you have requested anonymity or asked for your response not to be published, please give a reason (Note: your reason will not be published):**

Please provide your name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

## Aim and approach

Q1. Which of the following best expresses your view of giving Scottish courts the power to sentence the worst criminals to custody for the rest of their lives?

Fully opposed

**Please explain the reasons for your response.**

I am fully opposed to whole life sentences as proposed in this Bill for several reasons: a) Currently courts may, given their knowledge of an accused's age etc. sentence in such a way that ensures the accused could effectively remain in custody for his/her whole life: e.g.: Angus Sinclair case. b) The statement in the consultation document relating to the case Hutchinson v. the United Kingdom (application no. 57592/08) is only partly correct i.e.: 'The application of the system of Whole Life Orders that exists in England and Wales has been held to comply with the ECHR by the European Court of Human Rights .... the Court ruled that because the Secretary of State for Justice has the power to release a whole life prisoner on compassionate grounds, the Whole Life Order was in keeping with the Convention and did not constitute 'inhuman or degrading treatment or punishment'. Examination of the case Vinter and others v. United Kingdom (Applications nos. 66069/09, 130/10 and 3896/10) that pre-dates the Hutchinson case further expands the considerations necessary to comply with Article 3 of the ECHR given the lack of clarity that gave rise to the case: 'A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration.' The court held that for a life sentence to remain compatible with Article 3 there had to be both a possibility of release and a possibility of review. The case Hutchinson v. the United Kingdom (application no. 57592/08) reiterated that the ECHR did not prohibit life sentences. But stated that to be compatible with the ECHR there had to be both a prospect of release for the prisoner and a possibility of review of their sentence. The case considered the Vinter judgement and in particular the issues in that case of clarity regarding the provisions contained in the Crime (Sentences) Act 1997, S30 and the Lifer Manual. The finding in the case was no violation in Article 3 ECHR after consideration of the decision in the appeal case R v. McLoughlin [2014] EWCA Crim 188 which clarified the statutory duty of the Secretary of State to exercise the power of release for life prisoners in such a way that it was compatible with the ECHR. As for the published policy, the Lifer Manual could not restrict the duty of the Secretary of State to consider all circumstances relevant to release under section 30; nor could the policy fetter his discretion by taking account only of the matters stipulated in the manual. The Court therefore concluded that whole life sentences in the United Kingdom could now be regarded as reducible, in keeping with Article 3 of the European Convention for those reasons not simply compassionate grounds.

Q2. How would introducing Whole Life Custody Sentences affect your level of confidence in the Scottish justice system?

Neither more nor less confident in the justice system

**Please explain the reasons for your response**

Introduction of whole life custody sentences would not affect my confidence in the justice system. I am familiar with the robust systems in place to assess any risk attached to the release of 'life sentence' prisoners. If, as the tenor of the consultation seems to suggest, the Bill is designed to address public opinion it possibly may create an unfounded increase in public confidence as the general public are, in the majority of instances, unaware of the extensive assessments made prior to releasing 'life sentence' prisoners.

Q3. Which types of murder should have a Whole Life Custody Sentence as the starting point for sentencing? (Choose all that apply)

None of the above

**Please explain the reasons for your response**

I am entirely opposed to the proposal of whole life custody sentences as considered in the proposed Bill.

Q4. Which sexual offences should have a Whole Life Custody Sentence as the starting point for sentencing? (Choose all that apply)

None of the above

**Please explain the reasons for this response.**

I am entirely opposed to the proposal of whole life custody sentences as considered in the proposed Bill.

Q5. Are there any other types of offence (other than murder or certain sexual offences) which should attract a Whole Life Custody Sentence as a 'starting point' for sentencing?

No- no offences (including murder or sexual offences) should attract a Whole Life Custody Sentence

**Please explain the reason for your response.**

I am entirely opposed to the proposal of whole life custody sentences as considered in the proposed Bill.

Q6. Which of the following best expresses your view on whether whole life custody should be a sentencing option for younger offenders?

Whole life custody should not be an option for any offender, regardless of age

**Please explain the reasons for your response.**

I am entirely opposed to the proposal of whole life custody sentences as considered in the proposed Bill.

## Financial Implications

Q7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have? Please explain the reasons for your response.

I consider there is potential for increased costs but no savings should the Bill became law for the following reasons:

- a) The increased cost of managing such offenders during their lifetime beyond the current sentencing provisions.
- b) Currently the prison estates are overcrowded. Inevitably introduction of whole life custody sentences would place some strain on prisons and prison staff despite the small numbers envisaged. By the nature of their prior offending behaviour the type of prisoners subject to whole life custody sentences often present difficult management issues for prison staff.
- c) I cannot identify any financial savings available by introducing whole life custody sentences.

## Equalities

Q8. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation?

Negative

**Please explain the reasons for your response.**

Given the majority of the prison population is male the legislation would apply to a greater degree on male prisoners.

## Sustainability

Q9. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Unsure

## General

Q10. Do you have any other comments or suggestions on the proposal?

I consider this proposed legislation unnecessary given the safeguards currently in place regarding release of those prisoners that could be affected in Scotland. I also consider the information regarding compliance with Art.3 ECHR misleading in the consultation document.