

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".)

Academic with expertise in a relevant subject

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

I am a doctoral researcher at the University of Glasgow, and my PhD is on indeterminate/life sentences in Scotland.

Please select the category which best describes your organisation

No Response

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

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).

Elaine Ferguson

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?

Neutral (neither support nor oppose)

Please explain the reasons for your response.

The High Court of Justiciary already has this power in the form of the mandatory life sentence for murder, and the Order for Lifelong Restriction for high-risk offenders convicted of an offence other than murder. In addition, it is possible to sentence mentally disordered persons convicted of serious, imprisonable offences to detention in hospital and treatment for an indefinite period of time. On the matter of the punishment part of the OLR and the MLS, it is competent for this to exceed the natural life expectancy of the offender: see s.2(3A)(b) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, and *HM Advocate v Boyle* 2010 J.C. 66. Additionally, prisoners are very rarely released on licence at the point the punishment part expires. This is because, as the consultation document says, the decision to release is taken by the Parole Board only when it is satisfied that the offender's risk can be managed in the community. In some cases, the Board may never be so satisfied. Where release on licence is granted, the offender is subject to lifelong powers of recall to prison. The question is, therefore redundant since the power already exists.

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

Please see my response to question: the power to impose a sentence of imprisonment that exceeds the life expectancy of the offender already exists. A life sentence, by definition, does last for the whole of the offender's life even if a portion of that it served in the community under supervision.

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

Please see my prior responses: judges in the High Court of Justiciary all ready have the power to fix a punishment part that exceeds the life expectancy of the offender if they consider it to be warranted. In addition, it should also be noted that a whole life sentence without the possibility of review or release will be likely to contravene Art. 3 of the ECHR: see. *Vinter v United Kingdom* (2012) 55 EHRR 34. My understand though, is that this is not what is being proposed.

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.

See my prior responses.

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.

Please see my prior responses.

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.

Again, the question doesn't make sense because whole life custody is an option. Please see my prior responses.

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 have no comment to make on the financial implications of the Bill.

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?

Unsure

Please explain the reasons for your response.

I have no comment to make on this aspect of the Bill.

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?

No

Please explain the reasons for your response.

Please see my prior responses.

General

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

As indicated, the premise of the Bill appears to me to be fundamentally flawed to the extent that it seems to be seeking to create a power that already exists, though it is difficult to be more specific without seeing the Bill in draft.