

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:

Program Director, LLM in Human Rights; Chair, Association of Human Rights Institutes

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).

Dr Kasey McCall-Smith, University of Edinburgh Law School

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 adopt the response of the Howard League Scotland and reiterate the following comments. Whole life sentences are highly controversial and have been described as 'death by incarceration', 'a death sentence without an execution date', or 'the other death penalty'. The prospect of release at some point in the future is often the single glimmer of hope for a prisoner. This glimmer is what may keep the individual from further criminal endeavours while in prison. Hope provides an incentive for good behaviour which is why many European states including Portugal, Spain and Norway do not impose life sentences and why others, including Germany and Switzerland, have strict review mechanisms for lifelong sentences. Scots law already provides the option of whole life sentences if not expressly, then in practice and policy. The Prisoners and Criminal Proceedings (Scotland) Act 1993 permits that following fulfilment of the punitive portion of a sentence, a convicted prisoner can be considered for release on parole. This is subject to the caveat that the prisoner's release is conditioned by a licence in the community for the duration of their life. Any breach of the licence conditions and the individual can be returned to detention. Scottish courts also have the option of imposing an Order for Lifelong Restriction (OLR), where the convicted person's sentence for serious violent or sexual offences is based on the likelihood of future high-risk offending, rather than the offence itself. This involves a punitive dimension and parole can only be granted when imprisonment is no longer necessary for public protection. Upon release, the individual must adhere to a lifelong Risk Management Plan. Therefore, Scottish legal system has ample existing power to keep individuals who are convicted of serious offences and represent a continued risk to public safety in custody for the duration of their lives. Life-long public license conditions continue after release and the potential return to detention remains until death as they will remain subject to a level of surveillance for the duration of their lives.

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

Significantly less confident in the justice system

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

Please explain the reasons for your response

I adopt the views of the Howard League Scotland.

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 adopt the position of Howard League Scotland.

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 adopt the position of Howard League Scotland.

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 adopt the position of Howard League Scotland with the following comment: Whole life sentences should never be a starting point for sentencing. As Lord Justice Laws stated: 'a prisoner's incarceration without hope of release is in many respects in like case to a sentence of death'. (R (Wellington) v Secretary of State for the Home Department, [2008] UKHL 72, [2007] EWHC 1109, para 6). The suggestion that a whole life sentence could apply to other types of offences not covered by the current life sentence option would be an up-tariffing which goes against the recognition of human dignity.

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.

In line with the UN Convention on the Rights of the Child (article 37(a)), to which the UK is a party, life sentences for children (18 years and under) are prohibited. Therefore, Scotland, as a devolved nation, has an obligation to not impose life sentences on children. As the Children's Rights Committee has reiterated: 'The use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society. In this regard, article 37 (b) explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured.' (CRC General Comment No 10, para 11). 'For all sentences imposed upon

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

children the possibility of release should be realistic and regularly considered. In this regard, the Committee refers to article 25 of CRC providing the right to periodic review for all children placed for the purpose of care, protection or treatment. The Committee reminds the States parties which do sentence children to life imprisonment with the possibility of release or parole that this sanction must fully comply with and strive for the realization of the aims of juvenile justice enshrined in article 40 (1) of CRC. This means inter alia that the child sentenced to this imprisonment should receive education, treatment, and care aiming at his/her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his/her possible release. Given the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.' (CRC General Comment No 10, para 77)

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 adopt the views of Howard League Scotland.

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.

Research and practice in other jurisdictions, and in particular the US, has demonstrated that whole life sentences are applied to individuals suffering from some pre-defined vulnerability more often than individuals suffering from no vulnerability. This is undoubtedly true for individuals from minority groups or with disabilities. Thus, any move toward up-tariffing could have a negative response for vulnerable groups including those identified under the Equality Act 2010.

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

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?

Please explain the reasons for your response.
I adopt the position of Howard League Scotland.

General

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

I adopt the position of Howard League Scotland.