



## BRIEFING PAPER

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# Mandatory life sentences for murder

By Sally Lipscombe  
Jacqueline Beard

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## Summary

Murder carries a mandatory life sentence. This can, but rarely does, mean that the offender will spend the rest of his natural life in prison. An offender given a mandatory life sentence who is released from prison will remain on licence for the rest of his or her life.

When sentencing an offender convicted of murder, the court will set a minimum term which must be served in custody before the offender can be considered for release on licence. This does not mean that the offender will be released automatically on expiry of the minimum term; instead the minimum term represents the earliest possible date at which the offender can be considered for parole.

A Law Commission report published in 2006 proposed that the offence of murder should be split into “first” and “second” degrees, with only first degree murder attracting a mandatory life sentence and second degree murder attracting a discretionary life sentence. These proposals received support from a number of academics, legal practitioners and human rights groups, who argued that the single sentencing option of a mandatory life sentence is too inflexible to reflect the broad range of conduct that murder can encompass. However, in response the Labour Government said that it remained committed to mandatory life sentences for murder, given its status as “a unique crime of particular moral and social significance”.

In October 2010, the Nuffield Foundation published the results of research it had conducted into public opinion towards sentencing in murder cases. The authors said they had found “no evidence of overwhelming or widespread public support for automatically sending all convicted murderers to life imprisonment”, although there was support for mandatory life sentences in more serious murder scenarios.

In its green paper *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, published in December 2010, the Coalition Government indicated that it would look at “simplifying” the current legislation on murder sentencing, although it emphasised that it had “no intention of abolishing the mandatory life sentence”. However, no substantive simplification or reform of the murder sentencing framework followed.

This briefing applies to England and Wales.

# 1. Background

Murder carries a mandatory sentence of life imprisonment under the *Murder (Abolition of Death Penalty) Act 1965*.<sup>1</sup> An offender who was under 18 years of age when the offence of murder was committed will be sentenced to detention during Her Majesty's pleasure.<sup>2</sup> For an offender who was between 18 and 21 when the offence was committed, the sentence is called custody for life.<sup>3</sup>

Murder carries a mandatory sentence of life imprisonment

When a life sentence is imposed it can, but rarely does, mean that the offender will spend the rest of his natural life in prison. It does always mean that he will either be in prison or on licence for the rest of his life. The court will set a minimum term (which used commonly to be referred to as a "tariff") for each offender who receives a mandatory life sentence:

A life sentence can, but rarely does, mean that the offender will spend the rest of his life in prison

1.58 All persons convicted of murder must be sentenced to imprisonment for life. A life sentence commonly consists of three periods or phases.

(1) The first phase is the 'minimum term': this is the period that the offender must spend in prison before he or she is eligible for release. Its length is meant to reflect the seriousness of the offence and hence the demands of retribution and deterrence. The length of the minimum term is set by the trial judge. In deciding upon the length of that term, the judge must refer to guidelines that Parliament has provided in the Criminal Justice Act 2003.

(2) When that minimum term has expired, the second phase begins (assuming that the offender is not released immediately). The second phase is the period in custody during which the offender may be considered for parole: the decision whether or not to release an offender is made by reference to considerations of public protection. The Parole Board will not release the offender if he or she still poses a danger to the public. Offenders may, therefore, spend considerably longer in prison than the minimum term recommended by the judge at trial.

(3) Finally, there is the third phase: being 'out on licence'. When the offender is deemed safe to release, he or she is released on licence until the end of his or her life. That means that he or she must comply with the conditions of the licence – conditions that may involve, for example, staying away from certain places – or risk recall to prison.<sup>4</sup>

Even after release, therefore, the offender will remain subject to the sentence for the rest of his life, and liable to be recalled into custody after he has been released. In a few particularly serious cases a "whole

<sup>1</sup> There are other serious offences, for example rape and manslaughter, that carry a maximum sentence of life imprisonment; however, life sentences for these offences are discretionary rather than mandatory.

<sup>2</sup> *Powers of Criminal Courts (Sentencing) Act 2000*, s90

<sup>3</sup> *Ibid*, s93

<sup>4</sup> Law Commission, [Murder, Manslaughter and Infanticide](#), Law Com No 304, November 2006, para 1.58

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life” minimum term has been set, which means the offender in question can never be considered for release.<sup>5</sup>

The machinery for setting the minimum term, and for deciding whether or not the prisoner should be released following the expiry of the minimum term, has been subject to considerable change over the last 25 years. Prior to 2003, the Home Secretary had a role to play in all life sentence cases, including setting the minimum term for mandatory lifers following recommendations made by the trial judge and the Lord Chief Justice; now she has none.<sup>6</sup> Minimum terms are now set by the courts using sentencing principles set out in the *Criminal Justice Act 2003*.

The minimum term (“tariff”) is set by the Court using principles set out in legislation

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<sup>5</sup> Section 30 of the *Crime (Sentences) Act 1997* provides that the Secretary of State has the power, in exceptional circumstances, to order the release of such an offender on compassionate grounds

<sup>6</sup> The transfer of the Home Secretary’s sentencing powers in relation to mandatory lifers came about largely as the result of jurisprudence from the European Court of Human Rights and the House of Lords: in particular the latter’s decision in [R v Secretary of State for the Home Department Ex Parte Anderson \[2002\] UKHL 46](#) in which it held that minimum terms set by the Home Secretary were incompatible with Article 6 of the European Convention on Human Rights (which requires criminal hearings to be conducted by “an independent and impartial tribunal established by law”).

## 2. Sentencing principles

### 2.1 The Criminal Justice Act 2003

Section 269 and Schedule 21 of the 2003 Act require the courts to apply the following sentencing principles to anyone convicted of murder.<sup>7</sup>

#### Setting the minimum term: starting points

When setting the minimum term component of a mandatory life sentence, the court must select one of the “starting points” specified in the 2003 Act. The appropriate starting point will depend on the seriousness of the offence and the age of the offender:

**Whole life** is the starting point for the following types of murder case:

- the murder of two or more persons where each murder involved a substantial degree of premeditation, the abduction of the victim prior to the killing, or sexual or sadistic conduct;
- the murder of a child following abduction or involving sexual or sadistic motivation;
- the murder of a police officer or prison officer in the course of his or her duty;<sup>8</sup>
- murder committed for the purpose of advancing a political, religious, racial or ideological cause; and
- murder by an offender who has previously been convicted of murder.

Whole life starting points only apply to offenders who were aged 21 or over when they committed the offence.

**30 years** is the second starting point and applies to the following types of murder case:

- murder involving the use of a firearm or explosive;
- murder for gain (e.g. a contract killing or murder during the course of a burglary);
- murder intended to obstruct the course of justice (e.g. murder of a witness);
- murder involving sexual or sadistic conduct;
- the murder of two or more persons (other than those for which a whole life starting point is appropriate);
- murder motivated by race, religion, sexual orientation, disability or transgender identity;<sup>9</sup> and
- a murder within the category of cases that would otherwise attract a whole life starting point committed by an offender aged under 21 at the time of the offence.

The 30 year starting point only applies to offenders aged 18 or over when they committed the offence.

<sup>7</sup> Where the offender is being sentenced on or after 18 December 2003

<sup>8</sup> Section 27 of the *Criminal Justice and Courts Act 2015*, increased the starting point for such murder from 30 years to whole life

<sup>9</sup> Murders motivated by disability or transgender identity were added to this list by [section 65 of the \*Legal Aid, Sentencing and Punishment of Offenders Act 2012\*](#). Please see Ministry of Justice press release, [Hate crime laws extended](#), 8 December 2011 and section 4.1 of [Library Standard Note 6293 The Legal Aid, Sentencing and Punishment of Offenders Bill: Lords amendments](#) for background.

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**25 years** is the third starting point and is used where the offender took a knife or other weapon to the scene intending to commit any offence or to have it available to use as a weapon, and then used that knife or other weapon in committing the murder.

The 25 year starting point only applies to offenders aged 18 or over when they committed the offence.

**15 years** is the fourth starting point, which applies to any murder not covered by the whole life, 30 year or 25 year starting points. Again, it only applies to offenders aged 18 or over when the committed the offence.

**12 years** is the starting point for any murder (whatever the circumstances) committed by an offender aged 17 years or under at the time of the offence.

### Aggravating and mitigating factors

Once the court has determined the appropriate starting point for the minimum term, it should take into account any aggravating or mitigating factors and may add to or subtract from the starting point to arrive at the appropriate minimum term for the particular offender being sentenced.

#### Aggravating factors may include:

- a significant degree of planning or premeditation;
- the fact that the victim was particularly vulnerable because of age or disability;
- mental or physical suffering inflicted on the victim before death;
- abuse of a position of trust;
- use of duress or threats against another person to facilitate commission of the offence;
- the fact that the victim was providing a public service or performing a public duty; or
- concealment, destruction or dismemberment of body.

#### Mitigating factors may include:

- an intention to cause serious bodily harm rather than to kill;
- lack of premeditation;
- the fact that the offender was suffering a mental disorder or disability which lowered his degree of culpability (falling short of a defence of diminished responsibility);
- the fact that offender was provoked (for example by prolonged stress);
- the fact that the offender acted to any extent in self-defence or in fear of violence;
- a belief by the offender that the murder was an act of mercy; and
- the age of the offender.

Detailed consideration of aggravating or mitigating factors may result in the court setting a minimum term of any length or in the making of a whole life order, whatever the starting point was under Schedule 21.

## Previous convictions, bail and guilty pleas

Finally, the court should consider what account to take of previous convictions, offences committed while on bail and guilty pleas. Previous convictions and offences committed while on bail may be treated as aggravating factors resulting in an increased minimum term, while a guilty plea may (in certain circumstances) result in a reduced minimum term.

The court must treat each previous conviction of the offender as an aggravating factor if the court considers that it is reasonable to do so.<sup>10</sup> When deciding whether it is reasonable to treat a previous conviction as an aggravating factor, the court must have particular regard to the nature of the offence to which the previous conviction relates and its relevance to the current offence, and the time that has elapsed since the previous conviction.

If the offence was committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor.<sup>11</sup>

If the offender has pleaded guilty, the court must take into account the stage in proceedings at which the offender indicated his intention to plead guilty, and the circumstances in which this indication was given.<sup>12</sup> Sentencing guidelines have been published setting out how the courts should take guilty pleas into account when setting the minimum term for offenders convicted of murder.<sup>13</sup>

## Announcing the minimum term

The judge must, in open court, either announce the minimum term the prisoner must serve before he is eligible to be considered by the Parole Board for early release on licence, or announce that the seriousness of the offence is so exceptionally high that the early release provisions should not apply at all (a “whole life order”). The judge must give reasons for the minimum term imposed, explain why a particular starting point has been chosen and give reasons for any departure from the principles.

The Attorney General may challenge any minimum term which he considers to be unduly lenient. For a general overview of the procedure for challenging unduly lenient sentences see [Library Standard Briefing SN00512, Review of unduly lenient sentences](#).

## 2.2 Practice Direction

Practical guidance as to the procedure for passing a mandatory life sentence, including an analysis of the provisions of the 2003 Act set out above, is provided in [chapter IV.49 \(Life Sentences\)](#) of the Consolidated Criminal Practice Direction.

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<sup>10</sup> *Criminal Justice Act 2003*, s143(2)

<sup>11</sup> *Ibid*, s143(3)

<sup>12</sup> *Ibid*, s144(1)

<sup>13</sup> See section 2.3 of this briefing below



## 2.3 Sentencing Guidelines: reduction for a guilty plea

The Sentencing Council is an independent body that issues sentencing guidelines for courts in England and Wales. The guidelines are intended to aid the sentencing decision-making process and to encourage consistency in sentencing. The definitive guideline [Reduction in Sentence for a Guilty Plea](#) includes specific guidance for the treatment of guilty pleas in murder sentencing.<sup>14</sup>

The guideline states that where a court determines that there should be a whole life minimum term, there will be **no** reduction for a guilty plea. In cases where the minimum term is a set number of years rather than whole life, the court should take the following approach when considering whether to reduce the minimum term following a guilty plea:

- (a) the Court will weigh carefully the overall length of the minimum term taking into account other reductions for which the offender may be eligible so as to avoid a combination leading to an inappropriately short sentence;
- (b) where it is appropriate to reduce the minimum term having regard to a plea of guilty, the reduction will not exceed one sixth and will never exceed 5 years;
- (c) the sliding scale will apply so that, where it is appropriate to reduce the minimum term on account of a guilty plea, the recommended reduction (one sixth or five years whichever is the less) is only available where there has been an indication of willingness to plead guilty at the first reasonable opportunity, with a recommended 5% for a late guilty plea;
- (d) the Court should then review the sentence to ensure that the minimum term accurately reflects the seriousness of the offence taking account of the statutory starting point, all aggravating and mitigating factors and any guilty plea entered.<sup>15</sup>

Where there is a whole life minimum term there will be no reduction for a guilty plea

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<sup>14</sup> Sentencing Guidelines Council, [Reduction in Sentence for a Guilty Plea: Definitive Guideline](#), 2007, Chapter F

<sup>15</sup> *Ibid*, para 6.6 (2)

## 3. Reviewing the law of murder

### 3.1 The Law Commission Review and the Labour Government's response

In June 2003, the then Home Secretary asked the Law Commission to consider and report on the two partial defences to murder, of provocation and diminished responsibility, with particular regard to the impact of the partial defences in the context of domestic violence.<sup>16</sup> That marked the start of what an editorial in the *Criminal Law Review* described as a "protracted review" of the law of murder.<sup>17</sup>

Following the Law Commission's review of partial defences, in October 2004 the Government announced a more wide-ranging review of the law of murder to look at various elements of the offence, including the defences and partial defences to it, and the relationship between the law of murder and the law relating to homicide (in particular manslaughter).<sup>18</sup> The first stage of the review was to be conducted by the Law Commission and the second stage by the Government. The review's terms of reference, set by the Government, required the Law Commission to proceed on the basis that murder would continue to attract a mandatory life sentence.

#### The Law Commission's proposals

The review's first stage saw publication of a Law Commission consultation paper in December 2005,<sup>19</sup> followed by a final report in November 2006.<sup>20</sup> In its final report, the Law Commission made a number of proposals, including amending the defences of diminished responsibility and provocation, reforming the law on duress and complicity and improving procedures for dealing with infanticide. The report's most radical proposal was to split the offence of murder into "first" and "second" degrees, with the partial defences of provocation, diminished responsibility, and failed suicide pact reducing first degree murder to second degree murder:

1.35 Under our recommendations, first degree murder would encompass:

- (1) intentional killing; or
- (2) killing through an intention to do serious injury with an awareness of a serious risk of causing death.

1.36 Second degree murder would encompass:

- (1) killing through an intention to do serious injury (even without an awareness of a serious risk of causing death); or

In 2006 the Law Commission proposed splitting the offence of murder into "first" and "second" degrees

<sup>16</sup> Law Commission, [Partial Defences to Murder: Final Report](#), August 2004

<sup>17</sup> "Adjusting the boundaries of murder: partial defences and complicity", [2008] *Crim LR* 829

<sup>18</sup> [HC Deb 21 July 2005 cc152-3WS](#)

<sup>19</sup> Law Commission, *A new Homicide Act for England and Wales*, Consultation Paper No 177, December 2005

<sup>20</sup> Law Commission, [Murder, Manslaughter and Infanticide](#), Law Com No 304, November 2006

(2) killing where there was an awareness of a serious risk of causing death, coupled with an intention to cause either:

- (a) some injury;
- (b) a fear of injury; or
- (c) a risk of injury.

1.37 Second degree murder would also be the result when a partial defence of provocation, diminished responsibility or killing pursuant to a suicide pact is successfully pleaded to first degree murder.

1.38 Manslaughter would encompass:

- (1) where death was caused by a criminal act intended to cause injury, or where the offender was aware that the criminal act involved a serious risk of causing injury; or
- (2) where there was gross negligence as to causing death.<sup>21</sup>

The Law Commission proposed that only “the most serious kinds of killing”, namely first degree murder, should attract a mandatory life sentence.<sup>22</sup> Manslaughter should continue to attract a discretionary life sentence (as is currently the case), and second degree murder should also be subject to a discretionary life sentence.

### The Labour Government’s response

In December 2007, the Ministry of Justice announced the second stage of the review of the law of murder. It stated that, having considered the Law Commission’s recommendations carefully, the Government had decided to proceed on a step-by-step basis. Rather than consulting on the Law Commission’s proposed three tier offence structure, the Government would therefore look first at the recommendations relating to reformed partial defences to murder of provocation and diminished responsibility, reformed law on complicity in relation to homicide, and infanticide.<sup>23</sup> The Government also stated that it remained “committed to retaining the mandatory life sentence and the sentencing principles for murder set out in the Criminal Justice Act 2003”.<sup>24</sup>

On 28 July 2008 the Government published a consultation paper,<sup>25</sup> followed in January 2009 by a summary of responses.<sup>26</sup> Although the consultation paper had not specifically asked for responses on murder sentencing, a number of consultees nevertheless took the opportunity to raise concerns regarding the 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

The Law Commission proposed that only first degree murder should continue to attract a mandatory life sentence. Second degree murder should be subject to a discretionary life sentence

<sup>21</sup> Ibid, paras 1.35-1.38

<sup>22</sup> Ibid, para 1.65. See Appendix A of the report for a more detailed discussion of the Law Commission’s proposals.

<sup>23</sup> [HC Deb 12 Dec 2007 c43WS](#)

<sup>24</sup> MoJ news release, [Government launches consultation into review of murder law](#), 12 December 2007

<sup>25</sup> MoJ, [Murder, manslaughter and infanticide: proposals for reform of the law](#), CP19/08, 28 July 2008

<sup>26</sup> MoJ, [Murder, manslaughter and infanticide: proposals for reform of the law - Summary of responses and Government position](#), CP(R) 19/08, 14 January 2009

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.

(...)

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.<sup>27</sup>

In its response to the consultation the human rights organisation Liberty stated:

7. Given the range of acts falling within the category of murder with vastly differing degrees of culpability, Liberty considers that the retention of the mandatory life sentence for murder cannot be justified. No other offence under the criminal law provides the courts with one sentencing option for such a broad range of acts. The replacement of the mandatory life sentence for murder with a discretionary life sentence would solve many of the problems addressed in the consultation, as the courts would have greater flexibility to take into account any factors that are relevant to the offender's culpability (for example, any premeditation, provocation and/or the mental state of the offender) at the sentencing stage.

...

9. We are concerned that the Government has not taken this opportunity to review the abolition of the mandatory life sentence for murder, or alternatively, the Law Commission's proposed offence structure. We suggest that, should the Government consider that the mandatory life sentence for murder be retained, the offence structure proposed by the Law Commission would provide a coherent and logical framework for the law, and is in line with public perception that "murder" requires an intention to kill. The proposed structure would also provide courts with the much-needed flexibility in relation to sentencing described above.<sup>28</sup>

And in its response the law reform organisation Justice stated:

The mandatory life sentence presents a very difficult problem: on the one hand it is regarded as politically very difficult to repeal; on the other, the law and actors in the criminal justice system have to

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<sup>27</sup> Ibid, paras 118 and 121

<sup>28</sup> Liberty, [Liberty's response to the Ministry of Justice consultation: "Murder, manslaughter and infanticide: proposals for reform of the law"](#), October 2008, paras 7-9

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develop creative ways of preventing injustice through the application of that sentence.

...the complexity and confusion of developing 'gateways' through which a defendant can escape a murder conviction in deserving but not in undeserving cases would be solved by making the issue one of sentencing.<sup>29</sup>

On the same day as it published the summary of responses, the Government brought forward a number of legislative proposals to reform certain elements of the law of murder. These were set out in the *Coroners and Justice Bill*, which was introduced to the House of Commons on 14 January 2009.<sup>30</sup> However, the proposals focused on amendments to the defences of diminished responsibility and provocation, and to the offences of infanticide and assisting or encouraging suicide. In line with the then Government's stated commitment to the mandatory life sentence, the Bill did not seek to make any amendments to the current sentencing framework for murder.

### 3.2 The Nuffield Foundation report

In October 2010, the research charity the Nuffield Foundation published the results of a public opinion survey it had conducted in relation to sentencing in murder cases.<sup>31</sup> The purpose of the research was "to test empirically the assumption that the British public is firmly opposed to any alternative to the current sentencing arrangements for murder".<sup>32</sup>

The report's authors said they had found "no evidence of overwhelming or widespread public support for automatically sending all convicted murderers to life imprisonment",<sup>33</sup> although there was support for whole life sentences in more serious murder scenarios. Pages 26 to 30 of the report detailed how members of the public responded when asked what sentence would appropriate in nine different murder scenarios. For example, when presented with the following scenario, 79% of participants thought a sentence of up to nine years in prison would be appropriate, with only 4% preferring a whole life sentence:

Graham was 6 years old and suffered from a series of untreatable extremely serious mental and physical disabilities. His mother Jane testified that she could not bear to see him suffer any more. One day she walked into a side ward in the hospital and disconnected the life-support machinery from Graham.<sup>34</sup>

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<sup>29</sup> Justice, Summary response to government consultation Murder, Manslaughter and Infanticide: proposals for reform of the law, October 2008, paras 5-6

<sup>30</sup> See Library Research Papers 09/06 [Coroners and Justice Bill: Crime and Data Protection](#) and 09/27 [Coroners and Justice Bill: Committee Stage Report](#) for further details. The Bill received Royal Assent as the [Coroners and Justice Act 2009](#) on 12 November 2009.

<sup>31</sup> Nuffield Foundation (Mitchell and Roberts), [Public Opinion and Sentencing for Murder: An Empirical Investigation of Public Knowledge and Attitudes in England and Wales](#), October 2010. See also Nuffield Foundation press release, [Public Survey of the Mandatory Life Sentence for Murder](#), 28 October 2010

<sup>32</sup> Ibid, p3

<sup>33</sup> Ibid, p5

<sup>34</sup> Ibid, p27

By contrast, when presented with the following scenario, 52% favoured a whole life sentence and only 1% a sentence of up to nine years in prison:

Jim decided to rob a bank. He bought a shotgun and was prepared to kill anyone who tried to prevent him. He entered the bank, pointed the gun at the cashier and demanded money. When the cashier pushed the alarm bell Jim shot him dead and fled.<sup>35</sup>

The report's main conclusions were as follows:

There is cause to doubt the assumption that the overwhelming majority of the public support the current law that *all* convicted murderers should *automatically* be sentenced to life imprisonment. Since the level of public support for the mandatory life sentence was greater in the more serious murder scenarios, we think that more research should be undertaken to determine whether there is a sufficient degree of public consensus that the mandatory sentence should be retained for a narrower and particular serious group of murders.

The extent of the public's misunderstanding and the inaccuracy of their beliefs about murder and the mandatory life sentence is significant. We think this should be addressed, and we would, for example, urge the Sentencing Council of England and Wales and other agencies which have responsibilities for promoting public awareness of sentencing, to include murder in public legal education initiatives. Greater awareness and better understanding of the State's response to murder is likely to produce greater confidence in the criminal justice system.<sup>36</sup>

### 3.3 The Coalition Government's policy

#### The Ministry of Justice review: Breaking the Cycle

In December 2010, the Ministry of Justice published the green paper [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#) (Cm7972). Chapter 4 of the paper set out the Coalition Government's proposals for "simplifying" the current sentencing framework, one of which involves murder sentencing:

A key part of simplification will involve Schedule 21 to the Criminal Justice Act 2003. It is essential that we preserve Parliament's role in setting the sentencing framework for murder. We have no intention of abolishing the mandatory life sentence or of prompting any general reduction in minimum terms imposed for murder. However, Schedule 21 is based on ill-thought out and overly prescriptive policy. It seeks to analyse in extraordinary detail each and every type of murder. The result is guidance that is incoherent and unnecessarily complex, and is badly in need of reform so that justice can be done properly in each case.<sup>37</sup>

Following publication of the green paper, the issue was raised in the Lords in a question asked by Lord Lloyd of Berwick, a former Law Lord:

To ask Her Majesty's Government whether they plan to reconsider their decision, announced in the Ministry of Justice Green Paper

<sup>35</sup> Ibid, p27

<sup>36</sup> Ibid, p6

<sup>37</sup> Ministry of Justice, [Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders](#), Cm 7972, December 2010, para 170

*Breaking the Cycle: Effective Punishment, Rehabilitation and the Sentencing of Offenders*, not to abolish the mandatory life sentence for murder.

**The Minister of State, Ministry of Justice (Lord McNally):** My Lords, the Government have no plans to abolish the mandatory life sentence for murder.

**Lord Lloyd of Berwick:** I thank the noble Lord for that Answer. Is he aware of recent research that shows that the public are not in favour of a life sentence in every case of murder, as is so often thought, especially not in cases where the conviction has been of a mercy killing? Seventy-nine per cent of those consulted in face-to-face interviews last May said that they thought that nine years or less would be sufficient in such cases, which corresponds almost exactly with a recent decision in the Court of Appeal that reduced the minimum term from nine years to five years. Against that background, why do the Government continue to think that a life sentence is necessary in every case of murder? Why not leave it to the judge to decide on the facts of the particular case? Why not at least consult the public on this in the consultation exercise that is currently taking place?

**Lord McNally:** My Lords, the noble and learned Lord is referring to the Nuffield Foundation report *Public Opinion and Sentencing for Murder*. I know that because he was generous enough to send me the report, which, in my reading, shows that there is a good deal of public confusion about the law of murder. Perhaps there is a need for greater education and explanation. The blunt fact is that the Government considered these and other proposals in the recent, or not so recent, Law Commission report on the matter. However, they came to the conclusion that the time was not right to take forward such a substantial reform of our criminal law.

**Lord Thomas of Gresford:** The noble Lord has referred to public confusion about the law of murder. Does he accept that a thoroughgoing review and reform of the law of murder, including the abolition of the compulsory, mandatory life sentence, would be a jewel in the crown of the coalition Government if it could be achieved in the next five years?

**Lord McNally:** I hear what my noble friend says and I am sure that many in the Government will concur with that assessment. Proposals to act now were given consideration, but we came to the conclusion that the time was not right to take forward such a substantial reform of our criminal law.<sup>38</sup>

The green paper's consultation period closed on 4 March 2011 and the Government published its response in June 2011.<sup>39</sup> Despite its statement in the consultation paper that Schedule 21 to the 2003 Act was "based on ill-thought out and overly prescriptive policy" and was "badly in need of reform", in its response to the consultation the Government made only the following passing reference to murder sentencing:

Mandatory life sentences for murder are an essential part of the sentencing framework. There are no plans to change this.<sup>40</sup>

No mention was made of Schedule 21.

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<sup>38</sup> [HL Deb 24 January 2011 c674](#)

<sup>39</sup> Ministry of Justice, [Breaking the Cycle: Government Response](#), Cm 8070, June 2011

<sup>40</sup> *Ibid*, p10

During the Lords Committee stage of the *Legal Aid, Sentencing and Punishment of Offenders Bill 2010-12*, Lord Lloyd of Berwick moved an amendment that would have removed reference to Schedule 21 from the murder sentencing provisions in section 269 of the 2003 Act. He said:

The attempt to control sentencing from the sidelines, as it were, has two very great dangers. The first is that you tie the judges down so tight that they cannot do justice in the particular case. The second, which perhaps is even more sinister, is that the level of sentencing will become a sort of political football, with each side wanting to appear tougher on sentencing than the other. That may to some extent have already started but if it were ever to become a reality it would spell an end to the idea of a just sentence for the individual convict.

Sentencing must always in the end depend on the view taken by the individual trial judge, which is why it is such an anxious process. In my view, the more we can leave it to the judge, subject to guidance by the Sentencing Council and with as little interference from Parliament as possible, the better. We can make a start by repealing Schedule 21.<sup>41</sup>

In response, Justice Minister Lord McNally said:

I take the point ... that it may seem an artificial framework, but in putting forward the 2003 Act Parliament allowed judges the necessary discretion to arrive at any minimum term from any starting point, which allows exceptional cases for minimum terms to depart from the norm. It is not as inflexible as is suggested. The 2003 Act puts in place arrangements for all minimum terms to be imposed judicially—something which I think has general approval. However, Parliament took the view at the time that it was right to have statutory guidance on sentencing for murder. The guidance provides for consistency of approach but still gives the court the necessary discretion to deal with each case appropriately.

I note what the noble and learned Lord, Lord Lloyd, said about the Sentencing Council and I pay tribute to its work, but the Government still believe, as Parliament believed in 2003, that it is right that Parliament should remain responsible for sentencing guidance for murder. It is for Parliament to reflect what circumstances should be considered as particularly or exceptionally grave for this, the most serious of crimes. With that explanation, I urge the noble and learned Lord to withdraw his amendment.<sup>42</sup>

The amendment was withdrawn.

The only provision the Bill ultimately included on murder sentencing once enacted was an amendment to Schedule 21 to increase the starting point for murders motivated by disability or transgender identity from 15 years to 30 years.<sup>43</sup>

The *Criminal Justice and Courts Act 2015* increased the starting point where a police or prison officer has been murdered in the course of his or her duty, from 30 years to whole life.<sup>44</sup>

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<sup>41</sup> [HL Deb 9 February 2012 cc426-7](#)

<sup>42</sup> [HL Deb 9 February 2012 c430](#)

<sup>43</sup> See footnote 9 above for further details

<sup>44</sup> Section 27



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