

REVIEWING THE LAW OF HOMICIDE

TERMS OF REFERENCE

- 1.1 The Law Commission will review the law relating to homicide offences, including full and partial defences to those offences, and the existing sentencing framework for murder.

Offences

- 1.2 To review the various elements of homicide offences, and the relationship between those offences. In particular to update and revise the Law Commission's 2006 report *Murder, Manslaughter and Infanticide*.
- 1.3 The review will consider the implications of the current law on joint enterprise (following the Supreme Court decision in *Jogee*¹) for any reform of the law of homicide.

Defences

- 1.4 To review the defences and partial defences to homicide offences. This will include, but is not limited to:
- consideration of defences for victims of abuse who kill their abuser in light of modern understanding of domestic abuse on victims (see the Terms of Reference appended below);
 - consideration of the role of the defence of duress; and
 - a review of the operation of the partial defences of loss of control and diminished responsibility.

Sentencing framework

- 1.5 To review the sentencing framework for murder, to ensure that it operates justly, and enables those convicted to be appropriately punished. This will include, but is not limited to:
- a complete review of Schedule 21 to the Sentencing Code (Determination of minimum term in relation to mandatory life sentence for murder etc), and other relevant legislation where necessary to conduct that review;
 - the operation of the statutory starting points and aggravating and mitigating factors, and the impact these have on the sentencing exercise;
 - the extent to which the framework adequately reflects a modern understanding of culpability where murder is committed within a domestic context; and
 - whether the framework is logically presented, easy to navigate and enables consistent sentencing outcomes.

¹ *R v Jogee* [2016] UKSC 8.

- 1.6 The review will not consider the sentencing guidelines for manslaughter, which remain the responsibility of the Sentencing Council.

Assumptions

- 1.7 This review will assume the continuing existence of the mandatory life sentence for murder (or the most serious form of murder if a tiered structure for the offence is recommended).
- 1.8 This review will assume that the sentencing framework for the mandatory life sentence will continue to be set out in primary legislation.

Exclusions

- 1.9 The review will only consider the areas of euthanasia and involvement in suicide inasmuch as they form part of the law of homicide, not the issues associated with their possible legalisation and regulation which would need separate debate.
- 1.10 The review will not consider offences relating to harm caused to a fetus.

TERMS OF REFERENCE: DEFENCES IN DOMESTIC HOMICIDE

- 1.11 Most deaths that occur in the context of domestic abuse involve male abusers who kill their female victims. A much smaller number of (almost entirely female) victims of domestic abuse kill their (almost entirely male) abusers. Domestic abuse, as defined in sections 1 and 2 of the Domestic Abuse Act 2021, includes a single act or course of conduct of physical or sexual abuse; violent or threatening behaviour; controlling or coercive behaviour; economic abuse; and psychological, emotional or other abuse from one person (aged 16 or over) towards another person where they are “personally connected”. This includes domestic abuse between relatives and people currently or previously in intimate partner relationships.
- 1.12 Despite reforms to the partial defences of provocation (now loss of control) and diminished responsibility, concerns continue to be raised that the existing defences to murder and their application in the courts do not achieve just outcomes for this group of victims of domestic abuse who become defendants.
- 1.13 The current defences to murder include, but are not limited to:
- (1) the full defence of self-defence including the householder defence (section 76 of the Criminal Justice and Immigration Act 2008);
 - (2) the partial defence of loss of control (sections 54 to 56 of the Coroners and Justice Act 2009); and
 - (3) the partial defence of diminished responsibility (section 2 of the Homicide Act 1957).

If a so-called “partial defence” is accepted, a defendant is not guilty of murder but guilty of manslaughter.

- 1.14 Although not a defence, defendants may also argue that they did not possess the requisite intent for murder (intention to cause death or grievous bodily harm).
- 1.15 The Law Commission will review the use of defences in domestic homicide cases in the light of modern understandings of the effects of domestic abuse on victims. The project will consider, but is not limited to, the following:
- (1) whether the existing defences to murder, and arguments as to lack of requisite intent for murder, operate satisfactorily in the context of a defendant who has suffered domestic abuse;
 - (2) if not, whether reform of the existing defences or a new bespoke defence or defences are needed for the group identified at paragraph 1.2 above, while ensuring that reformed or new defences are appropriately limited, for example, to avoid unintended consequences for cases where the abuser has killed their victim;
 - (3) the operation of the applicable rules of evidence, procedure, and ways that the defences are considered from the beginning of the police investigation up to and including at trial, in this context;

(4) whether reform of the matters considered in (3) is needed.