Law Commission
Reforming the law

Homicide Offences

Summary of the Consultation Paper

Responding to our summary

Who are we?	The Law Commission of England and Wales is an independent body established by statute to make recommendations to Government to reform the law in England and Wales.
What is this paper about?	The Law Commission is conducting a review of the law of homicide and considering the need for reform with a view to improving its fairness, effectiveness, consistency, and coherence. Our review is split into three strands: homicide offences, defences (including partial defences to murder and full defences applicable to homicide) and sentencing. This consultation paper considers the homicide offences, particularly the offences of murder and manslaughter.
Why are we consulting?	We are seeking views on whether and how the law should be reformed. Consultation is a crucial pillar of our work. We want any recommendations we ultimately make to have as strong an evidence base as possible.
Where is the full consultation paper?	The full consultation paper is available at our website, along with other documents relevant to the project: https://lawcom.gov.uk/project/law-of-homicide/#4-Documents
Who do we want to hear from?	We would like to hear from as many stakeholders as possible. This includes legal professionals, judges, voluntary sector organisations, law enforcement, offenders convicted of homicide offences, prison staff, academics and researchers, people bereaved by homicide and anyone else affected by homicide law. Whilst we are keen to hear from individuals, we are unable to become involved in individual cases.

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How do I respond?	We would appreciate responses to the consultation paper using the online response form available at: https://consult.justice.gov.uk/law-commission/homicide-offences Otherwise, you can respond: by email to: **homicide@lawcommission.gov.uk** by post to: **Homicide Team, Law Commission, 1st Floor, 52 Queen Anne's Gate, London, SW1H 9AG.** (If you send your comments by post, it would be helpful if, whenever possible, you could also send them electronically.) We are happy to provide a printed form on which written responses to the questions in this summary can be submitted for those who are unable to respond electronically. Please request a "homicide response form" using the address or email address above. It is up to you which consultation questions you choose to answer – there is no need to answer every question.
What is the deadline?	The deadline for responses is **30 September 2026**.
What happens next?	We will also publish a separate consultation paper considering reform to partial defences to murder, full defences applicable to homicide offences and sentencing for murder. After analysing all the responses to both consultation papers, our final recommendations for the reform of homicide law will be included in the final report. It will be for Government to decide whether to implement the recommendations. For further information about how the Law Commission conducts its consultations, and our policy on the confidentiality and anonymity of consultees' responses, please see the full homicide offences consultation paper.

About this summary

This summary is intended to provide an overview of the key issues that we discuss in our consultation paper on homicide offences. It explains what the consultation paper is about and the issues that we address.

In the consultation paper, we set out a number of consultation questions to which we are seeking responses. We include the consultation questions within this summary. Some questions set out provisional proposals for law reform and ask whether or not you agree. Others are open questions in which we ask for your views. We will only reach our final conclusions and make recommendations for reform once we have received and considered all responses to the consultation paper. Our aim is that anyone should be able to read this summary and engage with the key issues we address.

Where individuals or organisations have particular interest or expertise in any or all of the areas we examine then we would encourage them to read the consultation paper. It has a more detailed discussion of the issues.

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Glossary

Below are the definitions of some key terms we use throughout this summary. A more comprehensive glossary can be found in the consultation paper.

We acknowledge that the words used to describe murder, homicide, and death more generally can be emotive. The terminology used throughout this summary and the consultation paper has been chosen to reflect and be consistent with the legal process.

Culpability: how blameworthy someone is for their conduct. Culpability can depend on various factors, including the person's overall responsibility in the particular circumstances and the person's fault element at the time the offence was committed. The criminal law reflects levels of culpability through different criminal offences, defences and sentences.

Deceased person: someone who has died when it is not clear that the cause of their death amounts to an offence.

Defendant or "D": someone who has been charged with committing a criminal offence but has not been convicted. To be charged with committing a criminal offence means that the person is formally accused of committing the offence and the court proceedings can start.

Fault element: this refers to the state of mind required for the defendant to be guilty of an offence. Different fault elements include, from highest to lowest culpability: intention, recklessness and negligence.

Homicide law/the law of homicide: a collective term for the homicide offences, defences to homicide offences, and sentencing for homicide offences.

Offender: someone who has been convicted of a criminal offence. A conviction is a formal finding made by a court that a person accused of an offence is guilty.

Seriousness: seriousness is a combination of the harm caused by the conduct, the culpability of the offender, and any other wider societal factors that impact how we respond to the criminal conduct.

Verdict: a decision, made by a jury, at the end of a prosecution as to whether the defendant is guilty or not guilty of the criminal offence charged by the prosecution.

Victim or "V": someone who has been killed when the cause of their death amounts to a criminal offence. Family and friends of the deceased person are also victims of homicide.

Overview of the project

In December 2024, the Law Commission was asked by the Government to review the law of homicide. We agreed the Terms of Reference for the project. In August 2025 we published a Call for Evidence in which we invited evidence on the range of issues that we might consider within the project.

The law of homicide was also reviewed by the Law Commission in the early 2000s. First, we recommended reform of partial defences to murder in 2004. Second, we recommended reform of homicide law in 2006 ("2006 Report"). Our 2004 recommendations on the reform of partial defences to murder were implemented for the most part by the Coroners and Justice Act 2009. The Government decided not to implement our 2006 recommendations on homicide offences. Many of the issues with the homicide offences which existed at the time of the 2006 Report remain today, alongside some new issues which have emerged since. In our current project, we look at all the relevant issues afresh, using our earlier work as part of the evidence base.

Principles of law reform

We believe that the following five key principles should guide our review of homicide law:

Coherence

Homicide law should reflect a clear and logical rationale, explaining how different conduct resulting in death is criminalised.

Consistency

Homicide law should facilitate a consistent application of the law.

Clarity

Homicide law should be understandable and accessible for everyone it affects.

Fairness and proportionality

Homicide law should reflect the harm caused by the conduct and the culpability of the offender. This includes:

Fair labelling: fair labelling ensures that the structure and labelling of criminal offences accurately and fairly reflects differences in the nature and gravity of the offender's wrongdoing. For example, it would be wrong to label someone a murderer if they have committed a different offence entirely, such as a robbery, or they have caused someone's death but are not culpable enough for the label of murderer. Fair labelling is important to offenders, victims and their families, and wider society.

Proportionate consequences: homicide law should respond in a proportionate way to the wrongdoing of the offender. This means that the most severe sentences should be saved for the most culpable offenders and that individuals should only be convicted of offences which reflect their culpability.

Human rights: homicide law must be compliant with the human rights of all affected.

Practicality

Homicide law should operate effectively in practice, including by allowing for effective investigation of homicide offences, ensuring the defendant receives a fair trial and ensuring jurors can understand the law.

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Current homicide offences

The two-tier structure

A person commits a homicide offence when their unlawful act or omission results in the death of another person. Homicide offences are the most serious criminal offences since they involve the most serious harm, the loss of human life.

In England and Wales, there are currently two general homicide offences: murder and manslaughter, which are defined at common law (by courts) rather than in legislation. These offences form what we refer to as the "two-tier structure" of homicide offences.

Murder is the most serious homicide offence. Under the current law, murder is committed when a person (the defendant, or "D") unlawfully kills another person (the victim, or "V") with the intention either to kill or to cause grievous bodily harm ("GBH"). GBH is physical or psychiatric harm that is really serious. Murder carries a mandatory life sentence. Manslaughter covers other types of unlawful killings which are generally less culpable than murder. There are four types of manslaughter which we explain further below in this summary. Manslaughter carries a discretionary life sentence.

Outside of the two-tier structure, there are other specific homicide offences which we discuss in the consultation paper and in this summary.

Life imprisonment does not mean that the offender will never be released from prison. In cases of exceptionally serious murders, the judge can impose a "whole life order", so the offender will spend the rest of their life in prison. In most cases, however, the judge will set a "minimum term" (a minimum number of years) which the offender must serve before they can be considered for release from prison. If the offender is released at any point after the minimum term has passed, they remain subject to certain conditions (known as being on "licence") for the rest of their life. They can be recalled to prison if they fail to comply with those requirements.

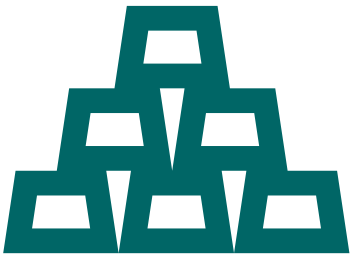
The mandatory life sentence is unique to murder. It requires judges to sentence anyone convicted of murder to life imprisonment. We have agreed with the Government that the mandatory life sentence will continue to be imposed for the most serious types of murder.

A discretionary life sentence means that judges have the power to sentence someone to life imprisonment in deserving cases, but it is not mandatory to do so. Instead, the judge may choose to sentence them to a determinate sentence of a fixed number of years.

A new structure

The two-tier structure of murder and manslaughter has been widely criticised for failing to differentiate appropriately between the wide range of conduct and culpability that different killings involve.

We provisionally conclude that the criticism of the current two-tier structure would be best addressed through the introduction of a three-tier structure for the general homicide offences.



In this three-tier structure, the most culpable killings would be at the top and the less culpable killings at the bottom. The “specific homicide offences” would remain outside of these three tiers. We believe this approach would make homicide law clearer and more coherent, whilst facilitating fairer labelling and more proportionate sentencing than the current two-tier structure offers.

We also provisionally conclude that a structure with more than three-tiers would be unjustifiably complicated. We are satisfied that our proposed structure best balances the need for fairness and accuracy with practicality considerations. We are reassured by the fact that the majority of responses to our Call for Evidence supported a three-tier structure.

A visual guide to our proposed three-tier structure is set out on the next page.

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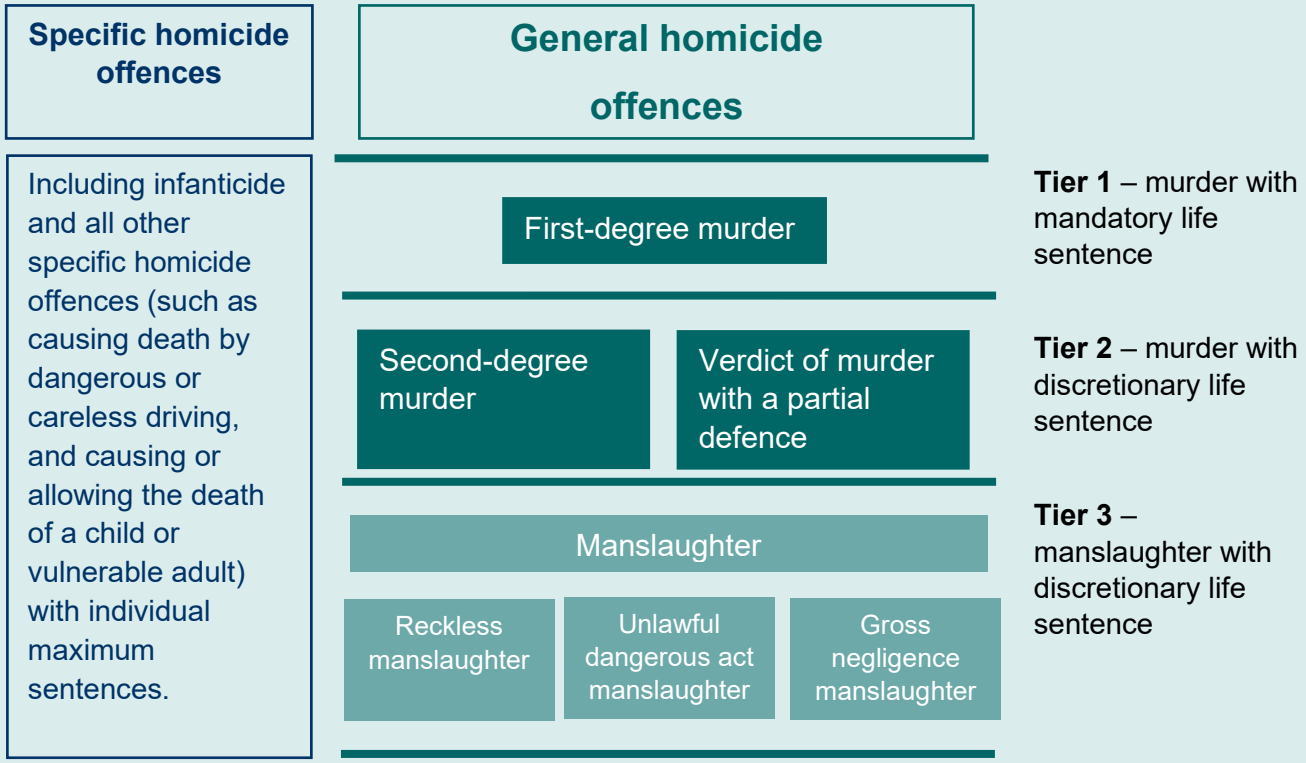
Homicide offences in England and Wales



Consultation Question 1. (paragraph 4.25 of the consultation paper)

We invite consultees' views on a new structure of homicide law. We ask specific questions in the consultation paper about which offences would sit in each tier, the fault elements of homicide offences, and the operation of the partial defences. Here we welcome views that focus on the proposed three-tier structure itself.

We provisionally propose that the structure of the general homicide offences should have three tiers, to reflect different levels of culpability.

Do consultees agree?

First-degree murder and second-degree murder

Currently, the offence of murder is committed when a person has unlawfully killed another person either with the intention to kill or to cause GBH. Defendants convicted of murder will receive the mandatory life sentence.

Many criticise the offence of murder for being too broad, arguing that offenders who killed with the intention to cause GBH should not receive the mandatory life sentence and should not be grouped in the same category as offenders who intended to kill, who are generally more culpable. There is also evidence that the offence of murder is misunderstood by the public, because the word "murderer" is usually associated with a person who intended to kill.

Our provisional proposals

We provisionally propose to replace the single offence of murder with two separate offences of "first-degree murder" and "second-degree murder". First-degree murder would sit in the highest tier of our proposed structure of homicide offences, representing the most culpable type of homicide. Second-degree murder would sit in the second tier of the structure.

We provisionally conclude that there should be two offences of murder:

First-degree murder: the defendant killed with the intention to kill. This offence would carry the mandatory life sentence.

Second-degree murder: the defendant killed with the intention to cause serious injury. This offence would carry a discretionary life sentence.

We think that the term "serious injury" is more accurate and modern than "grievous bodily harm". Serious injury includes both physical injury and recognised psychiatric injury, in line with the case law.

We argue that drawing a line between these two types of intention makes homicide law fairer and clearer. We think that a defendant who intended to kill is usually more culpable than a defendant who intended to cause serious injury.

An example of each type of murder

First-degree murder: D intends to kill V and stabs V multiple times, causing V's death.

Second-degree murder: D intends to cause serious injury to V and stabs V in the hand, however V dies as a result: second-degree murder.

We argue that it is important for fair labelling that an offence of killing with the intention to cause serious injury is still labelled "murder" in some form, since the harm intended (serious injury) is significantly similar to the harm that resulted (death). However, we think that it would be unfair to convict these defendants of first-degree murder, the most serious form of murder.

Our provisional proposals would also enable proportionate sentencing. The mandatory life sentence would not apply to offenders convicted of second-degree murder; this ensures that the mandatory life sentence applies only to the most culpable killings, that is first-degree murder. This will help communicate the purpose of the mandatory life sentence, enabling a better understanding of it by the public.

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Under our provisional proposals, the sentencing judge would still be able to sentence offenders convicted of second-degree murder to a life sentence in cases where the offender intended to cause serious injury but was highly culpable. This might be appropriate, for example, if the defendant tortured the victim, intending only to cause serious injury, but the victim died. Here, the defendant's culpability can be seen as broadly similar to the culpability of an offender who intended to kill.

There are also practical benefits of our proposal to split murder into two degrees. Under the current law, when a jury finds the defendant guilty of murder, they do not explain whether they believe that the defendant intended to kill or intended to cause GBH. Our proposed two degrees of murder will ensure that it would be clearer from the jury's verdict which intention the jury believed the defendant had when they caused death. A clearer understanding of the jury's verdict has important communicative benefits for the defendant, the family of the victim and wider society.

Consultation Question 2. (paragraph 5.62 of the consultation paper)

We provisionally propose that there should be an offence of first-degree murder where the defendant unlawfully killed another person with the intention to kill.

Do consultees agree?

Consultation Question 3. (paragraph 6.50 of the consultation paper)

We provisionally propose that there should be an offence of second-degree murder where the defendant unlawfully killed another person with the intention to cause serious injury. This offence would have a maximum sentence of life imprisonment (discretionary life sentence).

Do consultees agree?

The role of partial defences

Under the current law, when the defendant is charged with murder but a partial defence applies, they will be convicted of a type of manslaughter which is known as "voluntary manslaughter". In such cases, the defendant had the intention to kill or to cause GBH. However, a successful partial defence means that their culpability is reduced.

The primary rationale for the partial defences is to ensure that defendants with reduced culpability do not receive the mandatory life sentence. This is because it would be disproportionate for those defendants to receive such a strict sentence. Partial defences are unique to murder, because murder is the only offence carrying the mandatory life sentence. For all other criminal offences, the defendant's reduced culpability is taken into account at sentencing (because the sentencing regime is more flexible).

The existing partial defences are:

Loss of control: D lost control because either (1) D feared serious violence from V against D or another person or (2) V did or said something which was of an extremely grave character and caused D to have a justifiable sense of being seriously wronged.

Diminished responsibility: D had a recognised medical condition preventing them from (for example) understanding their conduct or forming a rational judgement, which provides an explanation for the killing.

Killing in pursuance of a suicide pact: D and V agreed to die by suicide together, D killed V but D survived.

In this consultation paper we only examine how the partial defences should operate in the structure of homicide offences. We will consider the elements of the existing partial defences, and any potential new ones, in more detail in a future consultation paper.

Some argue that a manslaughter conviction for defendants with a partial defence does not sufficiently reflect the seriousness of the offending, since they still had the intention to kill or to cause GBH, even though their culpability is reduced. Critics argue that it is inconsistent, and unfair labelling, to include defendants with a partial defence in the same category as defendants who committed other manslaughter offences (known as "involuntary manslaughter"), because the latter group of defendants did not intend to kill or to cause GBH.

Voluntary manslaughter: D intended to kill or to cause GBH and is charged with murder, but a partial defence applies and reduces the conviction to manslaughter.

Involuntary manslaughter: unlawful dangerous act manslaughter, gross negligence manslaughter and reckless manslaughter.

Our provisional proposals

We provisionally propose that, under our three-tier structure, partial defences should apply to first-degree murder (defendants who had the intention to kill). A successful partial defence would reduce a charge of first-degree murder to "murder with a partial defence", which would carry a discretionary life sentence. This would be a separate verdict which sits within the second tier of our proposed structure, alongside, but distinct from, second-degree murder.

We think that the label of the verdict should reflect the successful partial defence, such

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as “murder with diminished responsibility” or “murder with loss of control”. However, we currently propose the generic label of “murder with a partial defence” until we review the partial defences in more detail in a future consultation paper.

Given that the primary rationale of the partial defences is to remove defendants with reduced culpability from the scope of the mandatory life sentence, it is necessary that the partial defences apply to first-degree murder. This is the only offence under our proposed structure to which the mandatory life sentence applies. Since defendants with a partial defence to first-degree murder had the intention to kill, we believe it is more appropriate that they be convicted of a form of murder rather than manslaughter. Removing defendants with a partial defence from the scope of manslaughter would also help clarify the purpose of (involuntary) manslaughter, which requires different fault elements.

We do not propose that the partial defences apply to second-degree murder. Given that the mandatory life sentence would not apply to second-degree murder, the primary rationale of the partial defences is not engaged. We are satisfied that a future sentencing regime for second-degree murder would allow the court to recognise circumstances similar to loss of control or diminished responsibility as possible justifications for a less strict sentence for the defendant (as happens with all other criminal offences).

Consultation Question 4. (paragraph 7.58 of the consultation paper)

We provisionally propose that when the defendant is charged with first-degree murder and a partial defence is successful, the defendant should be convicted of “murder with a partial defence” in the second tier of the homicide structure, for which the maximum sentence would be life imprisonment (discretionary life sentence).

Do consultees agree?

Consultation Question 5. (paragraph 7.59 of the consultation paper)

We provisionally propose that when the defendant is charged with second-degree murder, partial defences should not be available. When the defendant had the intention required for second-degree murder (intention to cause serious injury), circumstances akin to loss of control or diminished responsibility would be considered in mitigation at sentencing.

Do consultees agree?

Manslaughter

Under the current law, manslaughter is a single offence which can be committed in several ways. The first three types of manslaughter are unlawful dangerous act manslaughter, gross negligence manslaughter and reckless manslaughter. There is some debate about whether reckless manslaughter exists separately from gross negligence manslaughter. The last type of manslaughter is voluntary manslaughter, where a partial defence reduces a charge of murder to manslaughter (discussed above).

Manslaughter is widely criticised for being vague and unclear, representing too broad a range of conduct and culpability under a single offence. Our provisional proposal to change the operation of partial defences will help to address this criticism by narrowing the scope of manslaughter, since defendants with a partial defence will instead be convicted of "murder with a partial defence".

We provisionally propose that manslaughter should consist of three categories: unlawful dangerous act manslaughter ("UDAM"), gross negligence manslaughter ("GNM") and reckless manslaughter. Defendants in each of these categories will be convicted of the general offence of "manslaughter", which would form the third tier of the homicide structure. Manslaughter would carry a discretionary life sentence.

We believe there is a principled argument for having these three categories of manslaughter. The three categories represent types of killing which are broadly equivalent in culpability, and so should all fall under the offence of manslaughter.

However, the basis for the culpability is different in each type of killing, which should be reflected in different categories of manslaughter. Reckless manslaughter would cover defendants who were actively aware of a risk of death or serious injury and unreasonably ran that risk. GNM would cover defendants who breached a duty of care they owed to the victim and demonstrated culpable inadvertence to the risk of death. UDAM would cover defendants who caused death whilst embarking on an objectively dangerous unlawful act, and who intended to cause some injury or were reckless as to whether some injury was caused.

Unlawful dangerous act manslaughter

Under the current law, UDAM applies in cases where the defendant has caused the death of another by committing a crime which involved an objective danger of some harm.[1] Although this category is commonly called "unlawful act manslaughter", we refer to it as "unlawful *dangerous* act manslaughter" to reflect more accurately the requirements of this category.

Some argue that the objective nature of the current test for UDAM sets the threshold for liability too low, and covers an unduly wide range of conduct. We provisionally propose that the test for UDAM should have an additional subjective requirement – requiring that the defendant had either the intention to cause some injury or was reckless as to whether some injury was caused.

[1] Here, objective danger means that a reasonable person would have realised that the unlawful act was bound to pose a risk of *some* physical harm to another. Physical harm in this context can include shock where this results in actual injury, such as lasting effects on the nervous system.

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Consultation Question 6. (paragraph 8.102 of the consultation paper)

We provisionally propose that it should be unlawful dangerous act manslaughter where:

1) The defendant did an act which constituted a criminal offence.

2) The defendant's conduct was dangerous, in that a reasonable person would have recognised that it must subject another person to the risk of some injury.

3) The defendant intended to cause some injury or was reckless as to whether some injury was caused.

4) The defendant's conduct caused the death of another.

Do consultees agree?

This approach would narrow the category of UDAM, removing some defendants with the lowest level of culpability from its scope. Such defendants would still be criminally liable for the basic unlawful act they have committed.

Strict liability offences

Strict liability offences are offences for which the prosecution does not have to prove a fault element (such as intention, recklessness or negligence). There is currently some uncertainty as to whether strict liability offences can form the basis for a conviction for UDAM. We believe that in order for UDAM to cover only those defendants culpable enough for the label of manslaughter, the base unlawful act should contain a fault element, meaning that the defendant must have a specified fault element to be criminally liable.

Consultation Question 7. (paragraph 8.106 of the consultation paper)

We provisionally propose that strict liability offences should not be capable of forming the basis for a conviction for unlawful dangerous act manslaughter.

Do consultees agree?

Gross negligence manslaughter

GNM applies in cases where the defendant negligently breached a duty of care which they owed to the victim. At the time of the breach, there must have been a serious and obvious risk of death. Further, it must have been reasonably foreseeable at the time of the breach that the breach gave rise to a serious and obvious risk of death. The breach must have made a significant contribution to the death of the victim.

Even then, the defendant will not be guilty of GNM unless the circumstances of the breach were truly exceptionally bad and so reprehensible as to justify the conclusion that it amounted to gross negligence and required criminal sanction.

The evidence we received suggests that many stakeholders are generally satisfied with the way GNM operates in practice, and so we do not propose substantial changes to this category of manslaughter. However, we heard criticism of the language used in the final element of the test – that the circumstances of the breach were so bad that they require criminal sanction.
Some argue that the wording of this element is circular and unhelpful. This is because it leaves the jury to decide the standard of behaviour that is deserving of criminal sanction, when this should be a standard determined instead by the criminal law which

the jury is then required to apply to individual cases.

We believe that this problem can be addressed by changing the wording of the test for GNM to replace the reference to conduct requiring "criminal sanction".

Consultation Question 8. (paragraph 8.127 of the consultation paper)

We provisionally propose that gross negligence manslaughter should apply where:

1) The defendant owed an existing duty of care to the victim.
2) The defendant negligently breached that duty.
3) At the time of the breach there was a serious and obvious risk of death.
4) It was reasonably foreseeable at the time of the breach of the duty that the breach gave rise to a serious and obvious risk of death.
5) The breach of the duty caused or made a significant contribution to the death of the victim.
6) The defendant's conduct was truly exceptionally bad, falling far below what could reasonably be expected of them in the circumstances.

Do consultees agree?

Corporate Manslaughter

The offence of corporate manslaughter[2] is a separate statutory offence, rather than a category of manslaughter. Individual persons cannot be guilty of corporate manslaughter; the offence applies only to organisations. Nevertheless, there is some overlap between corporate manslaughter and GNM.

We have not received any evidence to suggest that the offence of corporate manslaughter requires reform, and we do not intend to consider the substantive elements of the offence in this project. We do not believe that our provisional proposals will have any detrimental impact on the offence of corporate manslaughter.

Consultation Question 9. (paragraph 8.142 of the consultation paper)

We invite consultees' views on whether our provisional proposal for reform of gross negligence manslaughter would have any consequential impact on the statutory offence of corporate manslaughter under section 1 of the Corporate Manslaughter and Corporate Homicide Act 2007.

Reckless manslaughter

There is debate as to whether a separate category of reckless manslaughter exists under the current law. However, the focus of this consultation paper is whether such a category *should* exist under a reformed homicide structure. We argue that it should.

The fault element for reckless manslaughter is, as the name suggests, recklessness. This means that the defendant was aware of a risk that their conduct would cause death or serious injury, and it was unreasonable for

[2] Corporate Manslaughter and Corporate Homicide Act 2007, s 1.

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the defendant to take that risk under the circumstances as they knew or believed them to be.

A substantial body of opinion suggests that reckless killing is one of the most culpable and serious forms of killing. It is important to ensure that such culpable conduct is distinguished from other cases that fall under the general offence of manslaughter. Removing cases of reckless killing from the scope of UDAM and GNM would also help to keep these categories conceptually clear.

Consultation Question 10. (paragraph 8.164 of the consultation paper)

We provisionally propose that there should be a separate category of reckless manslaughter which applies where:

1) The defendant's conduct caused the death of another.

2) The defendant was aware of a risk that their conduct would cause death or serious injury.

3) It was unreasonable for the defendant to take that risk, having regard to the circumstances as they knew or believed them to be.

Do consultees agree?

The term "manslaughter"

We heard concern from several stakeholders about the label "manslaughter". Some stakeholders suggested that the term "slaughter" carries more serious connotations than "murder" or "killing". One stakeholder noted the unnecessary use of the gendered prefix "man". There was no clear consensus on an alternative offence label, and we have not received sufficient evidence to reach a provisional position on reform of the offence label at this stage.

Consultation Question 11. (paragraph 8.172 of the consultation paper)

We invite consultees' views on the use of the term "manslaughter" to describe this tier of the general homicide offence structure.

Infanticide

The Infanticide Act 1922 was introduced to create a separate offence and defence to murder in circumstances where a mother killed her newly born child while her mind was disturbed as a result of childbirth.

Prior to the introduction of infanticide legislation in 1922, a mother who killed her infant child was charged with murder and, if convicted, faced a mandatory sentence of death. At this time, juries were increasingly reluctant to convict of murder in these cases. This reflected a desire for leniency for vulnerable mothers who (as was often the case) had killed their newborn child in the context of significant social and economic pressures, particularly for young and unmarried women.

A person can be convicted of infanticide if:

1) they are the mother of a child under 12 months old and cause the child's death, either by an act or by failing to act;

2) at the time, their mental state was disturbed; and

3) that disturbance was due to not having fully recovered from childbirth or from the effects of lactation.[3]

The effect of lactation or childbirth does not need to be a major cause of the disturbance of the mother's mind, and there is no need to show that this disturbance caused the killing.[4]

Explanations underlying infanticide

The existence of the law of infanticide can be justified on the basis that mothers who kill their infant children often act in circumstances of significant vulnerability, which reduces their culpability. This vulnerability is commonly described by reference to the mother's health and socio-economic factors.

In relation to the health of the mother, some mothers who kill their infants suffer from mental health conditions connected to pregnancy, childbirth, or the postpartum period (the post-birth period).

Alongside the circumstances relating to the mother's mental health, social and economic factors are highly relevant, particularly in cases where mothers kill their newborn babies (also known as neonaticide). Many of these cases arise from "crisis pregnancies", involving fear, denial, isolation, poverty, domestic abuse, immigration insecurity, or lack of access to healthcare and social support. Although social and cultural circumstances for many mothers have evolved since the early twentieth century when the law of infanticide was introduced, some mothers continue to experience extreme and complex forms of vulnerability.

Both health and socio-economic factors play an important role in justifying the ongoing need for the law of infanticide as a separate offence and defence to murder and manslaughter.

[3] Infanticide Act 1938, s 1.
[4] *R v Tunstill* [2018] EWCA Crim 1696 at [32].

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Infanticide as both a distinct offence and defence

The law of infanticide is unusual because it operates as both a separate criminal offence (it can be charged instead of murder or manslaughter) and a defence (when successful it can reduce a charge of murder or manslaughter to a conviction of infanticide instead).

As a standalone offence, infanticide allows appropriate cases to be dealt with outside the framework of murder or manslaughter from the very beginning of criminal proceedings, since these women are being charged with a less serious offence. This can spare vulnerable mothers from facing a murder charge and enables the practical consequences that follow, such as removing the stricter bail rules required for defendants charged with murder. The infanticide defence allows juries to return a verdict that better reflects the circumstances of the case, leading to more appropriate labelling and sentencing outcomes for mothers whose culpability is reduced.

Our provisional proposals

It has been argued that the law of infanticide as a defence may no longer be necessary given the availability of the partial defence of diminished responsibility. However, diminished responsibility only applies if the defendant has a diagnosed medical condition. It does not reflect situations where a mother's vulnerability arises from severe social, economic, or personal pressures, or where her mental disturbance does not amount to a recognised disorder, as can be the case in infanticide cases.

For these reasons, we are of the view that both the offence and the defence are necessary parts of the law of infanticide.

Consultation Question 12. (paragraph 9.49 of the consultation paper)

We provisionally propose that both the offence and defence of infanticide should be retained.

Do consultees agree?

We consider the current offence/defence structure to be sound in principle, but a fuller analysis of its elements, scope, wording, and interaction with diminished responsibility will be addressed in a later consultation paper on defences. That paper will examine these issues in detail and consider whether reform is needed to ensure infanticide operates effectively.

Other homicide offences

The criminal law of England and Wales contains a wide variety of offences relating to the death of a person, ranging from road traffic offences to cases involving dangerous dogs. We refer to these collectively as the "specific homicide offences".[5] These offences were introduced at different times for different purposes and cover a wide range of behaviours and levels of culpability, making them difficult to categorise neatly.

The following are examples of specific homicide offences:

- Road traffic offences such as causing death by dangerous driving.
- Causing or allowing the death of a child or vulnerable adult.
- Encouraging or assisting suicide.
- Being the owner or person in charge of a dog dangerously out of control where injury is caused leading to death.

In this paper we look at several specific homicide offences in more detail. We consider how these offences fit within the overall structure of homicide law and whether any of them raise issues that may require reform.

Relationships between homicide offences

In our view, there are good reasons for keeping these specific homicide offences separate from the general homicide structure.

First, the specific homicide offences were created for different purposes, often linked to social or practical problems. Some of the offences were introduced to address evidential difficulties, such as issues arising in fatal motoring cases where juries were historically reluctant to convict drivers of manslaughter. Other offences, such as the dangerous dog offence, reflect broader policy concerns about public safety.

Second, although the general principles of causation still apply, causation is sometimes less central to these offences than it is to murder and manslaughter. Some specific homicide offences allow liability even where the defendant did not directly cause the death, but allowed it to occur. In some offences, aggravating features (such as intoxication) do not need to be causally linked to the death itself.

Third, the seriousness of the specific homicide offences varies, which is reflected in their different fault requirements and maximum sentences. While some offences may resemble manslaughter in gravity, creating a single, general offence to cover all of this conduct would be impractical and risk unfair or inaccurate labelling.

[5] We use this term to mean an offence in which death is a distinct element that must be proved by the prosecution, but which falls outside the structure of general homicide offences.

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We conclude that the specific homicide offences should not be absorbed into the general homicide structure. Instead, they should be seen as distinct complementary offences that address cases where murder or manslaughter may not be appropriate.

Creation of new homicide offences

We heard that specific homicide offences can be valuable where they have a clear practical purpose.

Such offences may better reflect public views, be more acceptable to juries, and address evidential challenges faced by the general homicide offences. However, we were also warned against creating an excessive number of narrow offences, which could undermine the fair and effective operation of the law.

We conclude that new specific homicide offences should be introduced with care. However, we accept that there may be some limited circumstances where specific homicide offences are justified, particularly where clear gaps exist that cannot be addressed through the general homicide framework.

Drug supply leading to death

Some consultees called for reform of liability for deaths linked to the supply of unlawful drugs. Some recent cases, such as *R v Broughton*,[6] show the difficulty of proving causation in cases where the defendant supplied unlawful drugs to a person who subsequently died because of those drugs.

Some consultees argued that this reflects an unduly narrow approach to causation that makes prosecution difficult even where the defendant's responsibility appears to be high.

Several academics suggested that a specific drug-related homicide offence could overcome these difficulties by lowering the causation threshold and providing a clearer offence label, while still reflecting lower culpability than manslaughter. We acknowledge these arguments but conclude that we do not have enough evidence about prevalence and causation to justify such an offence. Accordingly, we seek further information about whether and how this issue should be addressed.

Consultation Question 13. (paragraph 10.86 of the consultation paper)

We invite consultees' views on the need and justifications for a bespoke offence to criminalise the supply of unlawful drugs resulting in the death of a person.

A "duty to rescue offence"

There is currently no general legal duty to rescue someone in danger. Criminal liability for omissions rather than acts arises only in limited circumstances, such as where there is a specific duty of care.

[6] *R v Broughton* [2020] EWCA Crim 1093.

We received evidence about cases where people failed to seek medical help or respond to signs of serious risk, including suicidal behaviour, leading to the death of another. We heard suggestions about the need for a "duty to rescue" offence which could apply in some of these situations. A medical emergency or dangerous situation may result in death, but will not always do so, and so a general duty to rescue offence could apply outside of homicide law. However, to the extent that these cases involve the death of a person, this issue is within the scope of our review.

Consultation Question 14. (paragraph 10.91 in the consultation paper)

We invite consultees' views on the need and justifications for a bespoke offence in cases in which there has been a culpable failure to seek medical assistance or intervention and death results.

Consultation Question 15. (paragraph 10.95 of the consultation paper)

We provisionally conclude that the specific homicide offences (criminal offences in which death is a distinct element that must be proved by the prosecution, but which fall outside the general homicide offences) should not be incorporated into the three-tier homicide structure.

Do consultees agree?

Consultation Question 16. (paragraph 10.96 of the consultation paper)

We invite consultees' views on whether the substantive elements of any of the specific homicide offences require reform.

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“Mercy” and consensual killings

A so-called **“mercy killing”** is a killing with the intention to kill which is said to be for compassionate reasons, including (but not limited to) where the deceased person was suffering extreme physical or psychological harm and expressed a wish to die.

A **“consensual killing”** is a killing with the intention to kill where the deceased person requested or consented to be killed.

Killing for genuinely compassionate reasons, or with the valid consent of the deceased person, can reduce someone’s culpability. In these cases, the criminal justice system currently relies on prosecutorial discretion, defences to murder, and/or sentencing to reflect that lower culpability.

Mercy killings and consensual killings are not distinct legal categories in homicide law. Because they involve the intention to kill, they generally fall within murder, although a conviction for manslaughter may arise where a partial defence applies. Most commonly this defence will be diminished responsibility or killing pursuant to a suicide pact (where both parties agree to die).

Mercy and consensual killings raise difficult questions about how homicide law should reflect reduced culpability in genuinely compassionate cases. Responses to the Call for Evidence and public attitude research show support for leniency in such cases.

Consideration of a new separate offence

We did not receive evidence that suggests a new offence (rather than reliance on defences, prosecutorial discretion and sentencing) is justified in these cases. Mercy and consensual killings involve the intention to kill, which is a core feature of the offence of murder. In our view, creating a separate offence would undermine the coherence of the homicide framework.

The role of defences

Concerns have been raised about the current use of partial defences in mercy killings, including concerns that diminished responsibility is often relied upon, despite not being designed for this purpose. This may suggest that the boundaries of diminished responsibility are being stretched and that a specific defence for mercy killings should be considered. We have also heard concerns about the availability of the suicide pact defence where there is a power imbalance or a history of abuse, such as in relationships between carers and care recipients. We think that these issues are best addressed in the next stage of the project, which will focus on defences and sentencing. Calls for a new partial defence require closer examination of how current defences operate and whether they adequately reflect culpability.

Consultation Question 17. (paragraph 11.26 of the consultation paper)

We provisionally conclude that a separate homicide offence for mercy and consensual killings is not justified.

Do consultees agree?

Complicity in homicide

Criminal offences are often committed by more than one person. When this happens, the law of complicity applies.

The law of complicity is often called "joint enterprise liability". We do not use this expression because the law changed in 2016 and joint enterprise liability is now a legally inaccurate term. Instead, we use "complicity" or sometimes "secondary liability".

In this section:

P (the principal) is used to refer to the person who carries out the crime (for example, the person who commits the killing).

D (the accomplice) is used to refer to the person who encourages or assists P to commit the crime (they are known in legal terms as the "secondary party" or "accessory").

Rules on complicity

Section 8 of the Accessories and Abettors Act 1861 states that a person (D) who aids, abets, counsels or procures the commission of a crime by another person (P) can be convicted of the same offence as P.

For the law of complicity to apply, the accomplice (D) must intentionally encourage or assist the principal (P) to commit an offence, intending that P would commit the offence with the fault element required for that offence.

Example:

In a murder case, where P killed V, D will be guilty of murder if D intentionally encouraged or assisted P, intending that P would commit murder with the fault element of murder (either intention to kill or intention to cause GBH).

There are two possible scenarios to which the law of complicity applies:

a) D intentionally assisted or encouraged P to commit crime A (for example, murder), and P commits crime A (murder).

b) D intentionally assisted or encouraged P to commit crime A (for example, robbery of a bank) but P commits (also, or instead) a different crime B (for example, murder of the bank security guard).

The second scenario is obviously more complicated, because it must be decided when the accomplice (D) can be convicted of the offence B committed by the principal offender (P). The answer to this question has caused some challenges in the case law.

Before 2016, courts had developed special rules of complicity applicable to joint enterprise cases (when D and P are parties to a common enterprise to commit crime A): D could be convicted of crime B committed by P (for example, murder) when D foresaw the possibility that P might commit crime B (murder), even if D did not intend P to do so.

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In 2016, the UK Supreme Court in the case of *Jogee* decided that the law had taken a "wrong turn".[7] In all cases, foresight is not sufficient. D may be convicted of the same offence as P when D intentionally encouraged or assisted P to commit offence A, and D intended (not foresaw) that P would commit (also, or instead) offence B. Foresight can be evidence from which a jury could infer that D had the required intention, but it is not the same as intention.

However, when P committed murder (because P intended at least to cause serious injury) but D intended that P would cause non-serious injury, D may be convicted of unlawful act manslaughter. For instance, when group violence escalates and D assisted or encouraged an unlawful act which sober and reasonable people would realise carried the risk of some harm (not necessarily serious) to another, and death in fact occurs, D would be guilty of unlawful act manslaughter.

Critique of the law of complicity following *Jogee*

Despite the Supreme Court's decision in *Jogee*, the law of complicity continues to be criticised as legally complex and often unfair. Among the problems identified by critics are the following:

1) There is a growing body of evidence suggesting that some categories of defendants are disproportionately affected by the operation of the law of complicity, including young Black men and boys; women; and people with Autism Spectrum Disorders.

2) There is some criticism that the prosecution sometimes relies on so-called "gang narratives" to prosecute group violence, including by interpreting aspects of Black youth culture (such as clothing and rap music) as evidence of gang membership (which is used to argue that D encouraged or assisted P).

3) The meaning of "encouraging or assisting" remains unclear despite the clarification in *Jogee* that mere presence at the crime scene is insufficient to establish D's liability. This uncertainty has prompted calls for greater clarity, for example some have suggested a requirement that D must make a "significant contribution" to the crime committed by P.

4) There are concerns with fair labelling and the proportionality of sentences in these cases because the law allows an accomplice to be convicted and sentenced as if they were the principal. However, in some cases the accomplice's culpability may be lower than the principal's.

These concerns demonstrate, in our view, that there is a strong case for considering comprehensive reform of the general rules governing the law of complicity. We have concluded that a project on the reform of homicide is not the right vehicle to review rules governing complicity that apply generally to all offences, not just to homicide offences.

[7] *R v Jogee; Ruddock v The Queen* [2016] UKSC 8.

Effect of our proposals on the law of complicity

Although we do not propose reforms to the general rules of complicity, our proposed restructuring of homicide offences (introducing a three-tier homicide structure including first-degree and second-degree murder) would improve the way the law of complicity operates in homicide cases.

Two degrees of murder would allow clearer distinctions between D's and P's respective intentions. Under our proposals, in some cases where death occurs, D may be convicted of second-degree murder (if they intended that P would intend to cause serious injury), while P may be convicted of first-degree murder (if they instead intended to kill). Under the current law, this distinction is not possible, because D will be convicted of murder even if they only intended that P would intend to cause serious injury. By introducing two murder offences, the law would better reflect each person's role and intention. It would also require the prosecution to choose charges that reflect differences in culpability.

Our proposed structure would lead to more proportionate sentencing. Currently, accessories convicted of murder will receive the mandatory life sentence. Under the proposed structure, some of these cases would fall under second-degree murder, which carries a maximum (discretionary) sentence of life imprisonment. Therefore, in these cases the judge will have greater flexibility in sentencing.

Finally, our provisional proposals would ensure that D may be convicted of unlawful dangerous act manslaughter in complicity cases when D either intended to cause some injury or was reckless as to whether some injury would be caused. This is in line with the proposed change to unlawful dangerous act manslaughter, which would ensure that liability depends on D's subjective state of mind, making the law fairer.

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Attempted murder

A person is guilty of attempting to commit an offence if they intend to commit it and do an act that is more than merely preparatory towards committing it. Courts do not require the defendant to have taken the "last act", but the conduct must go beyond planning or preparation and move into execution.

For the offence of attempted murder, the defendant must have the intention to kill. Unlike the offence of murder, the intention to cause GBH is not sufficient. Attempted murder carries a discretionary life sentence, but there is no mandatory life sentence.

Attempted murder under our proposed homicide structure

Under our proposed reforms, attempted murder would apply only to first-degree murder, which requires the intention to kill. This would improve coherence by requiring the same fault for the attempt and the underlying offence.

We do not think there should be an offence of attempted second-degree murder, which would be based on intention to cause serious injury. Such an offence would unnecessarily complicate the law and duplicate existing offences such as attempted GBH or causing GBH with intent. If someone acts with the intention to cause serious harm only, and does not kill, it is not appropriate that they be liable for attempted murder.

In our view, partial defences should not apply to attempted murder, as there is no mandatory life sentence and sentencing guidelines already allow courts to reflect reduced culpability.

Consultation Question 18. (paragraph 13.26 in the consultation paper)

We provisionally propose that attempt liability under our proposed homicide offences should apply to first-degree murder. The defendant would be liable for this offence where:

1) they do an act that is more than merely preparatory to the commission of the offence of first-degree murder; and

2) they have the intention to kill.

Do consultees agree?

Consultation Question 19. (paragraph 13.28 in the consultation paper)

Under our proposals, a defendant who unlawfully kills another person with the intention to cause serious injury would be guilty of second-degree murder. Currently, where the defendant acts with the intention to cause grievous bodily harm and takes steps that are more than merely preparatory towards doing so, the defendant may be guilty of causing grievous bodily harm with intent or attempting to cause grievous bodily harm.

We provisionally propose that this approach be retained, with the consequence that there would not be an offence of attempted second-degree murder.

Do consultees agree?

Victims of domestic abuse and homicide

In the consultation paper we consider homicide offences relevant to victims of domestic abuse. In particular, we note the gendered nature of this type of offending and the disproportionate impact on women and girls as the most common victims of domestic abuse.

There are also longstanding concerns that the available defences to murder and manslaughter do not operate effectively for victims of abuse who kill their abuser. We are not aware of significant concern with the way that the offences of murder and manslaughter themselves operate in these cases. Accordingly, we will consider the relevant issues for victims of abuse who kill their abuser in the defences and sentencing strands of this project.

In this paper, we focus on victims of abuse who die by suicide whose deaths have prompted calls for reform of the application of the law of homicide to the perpetrators of such abuse.

Victims of abuse who die by suicide

The prevalence of suicide in cases of domestic abuse has gained prominence in recent years.[8] There are concerns that the operation of the general homicide offences does not fully address the culpability of perpetrators of abuse when their victim dies by suicide as a result of that abuse.

Current law

The reasons why someone may decide to take their own life are complex and varying. However, where a victim's decision is influenced by abuse, this raises questions about the criminal culpability of the abuser.

Murder or manslaughter charges may be brought where an abuser is involved in the victim of abuse's death by suicide or self-harm, with manslaughter the most commonly considered offence. In addition, encouraging or assisting suicide criminalises acts capable of encouraging or assisting suicide where the act was intended to encourage or assist suicide or an attempt at suicide.[9] Other non-fatal offences, such as controlling or coercive behaviour, stalking, or assault, may also be relevant.

Issues and analysis

Two reasons have been suggested to explain the lack of successful prosecutions for homicide offences in respect of suicides following domestic abuse. These relate to the approach in practice to these prosecutions and the law itself.

Practice: Some suggest there is currently a lack of awareness and a perceived unwillingness to investigate and charge homicide offences in these cases. This includes barriers to recognising abuse when investigating a suicide, resulting in missed opportunities to gather evidence that might support a prosecution.

[8] Deaths by suicide following domestic abuse are more common than intimate partner homicide. See Vulnerability Knowledge and Practice Programme (VKPP), "Executive Summary: Domestic Homicides and Suspected Victim Suicides 2020-2024, Year 4 Report" (March 2025) p 4.
[9] Suicide Act 1961, s 2.

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Some stakeholders said the existing criminal offences are adequate but are not always properly used because of gaps in understanding and practice. They argued that better training and updated policy for police and prosecutors, and better guidance for juries, on the link between domestic abuse and suicide would improve investigations and prosecution decisions. There is some evidence suggesting improvements in this area, with new policing initiatives helping to support prosecutions where appropriate. In our view, continued improvement in practice across these systems is essential. While law reform can support better outcomes in these cases, it should be accompanied by improved awareness of the impact of domestic abuse, and ongoing wider work to improve outcomes for all victims of abuse.

The law: The test of causation applied in murder and manslaughter prosecutions is challenging in the context of suicide following domestic abuse. The act of suicide may be treated as an independent act, which means legally the conduct leading up to it is not the "cause" of the death. However, the law accepts that suicide does not always break the chain of causation. In practice, prosecutions may fail because victims' pre-existing mental health vulnerabilities can be used to downplay the role of abuse, raising concerns that genuinely culpable conduct too often evades criminal responsibility. Although proving causation is rightly demanding, case law shows it is possible, and recent improvements in investigation and evidence-gathering should help support prosecutions. However, we recognise the challenges in prosecuting murder and manslaughter in these cases.

A new offence

Some stakeholders suggested that there should be a new, specific criminal offence for cases where domestic abuse leads to suicide, with a sentence similar to manslaughter. A specific offence could help juries better understand the link between abuse and suicide, encourage more prosecutions in suitable cases, and reflect the seriousness of the harm. A separate offence could also have the benefit of providing an alternative to jurors who may not feel that a conviction for murder or manslaughter is appropriate on the facts. However, some warned that similar offences in other countries have not always been enforced effectively.

As an alternative or additional approach, others suggested treating suicide following abuse as an aggravating factor at sentencing for non-homicide offences. This would allow courts to reflect the seriousness of the outcome even where homicide charges are not possible.

There are already specific offences introduced to address culpable conduct that results in death (see discussion above under "specific homicide offences"). These offences exist to fill gaps in other offences, deal with evidential difficulties, and ensure fair labelling where juries may be reluctant to convict of murder or manslaughter. Given the prevalence of suicide following domestic abuse and the low number of prosecutions, we consider in the consultation paper the need for a bespoke offence.

To ensure that it is restricted to culpable conduct, a new offence could be limited to abusive conduct that is already criminalised. A causal element between that abuse and the death would be required to ensure that the offence applies only where there is a sufficient link between the conduct and the death to justify criminalisation. One option is to create an additional version of an existing offence that reflects the fact a death occurred, similar to fatal driving offences. An aggravated version of an existing offence could provide a fair and structured approach. In our view the offence of controlling or coercive behaviour under section 76 of the Serious Crime Act 2015 would be the most suitable base offence. This offence has been successfully charged in cases of domestic abuse after the death of the victim, and best reflects the type of abusive conduct that can contribute to suicide amongst victims. While more evidence is needed before recommending reform, the consultation paper invites views on a bespoke offence.

In addition, or as an alternative to a bespoke offence, introducing an aggravating factor at sentencing for domestic abuse offences commonly charged following a death by suicide could help ensure that the fact death resulted from the conduct is appropriately reflected in the criminal justice response. However, we note that for the judge to take account of this at sentencing, it is likely that evidence would be required to demonstrate a link between the conduct and the death. In practice, the aggravating factor may therefore need a similar formulation to a bespoke offence. We invite views on this approach as well.

Consultation Question 20. (paragraph 14.67 of the consultation paper)

We seek consultees' views on the need and justifications for a bespoke offence to criminalise controlling or coercive behaviour in an intimate or family relationship where that abusive conduct contributes to the death by suicide of the victim.

Consultation Question 21. (paragraph 14.68 of the consultation paper)

We seek consultees' views on the need and justifications for an aggravating factor at sentencing for criminal offences commonly charged in domestic abuse cases, where that abuse contributes to the death by suicide of the victim.

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Equality Impact

We aim to ensure homicide law is fair. Research highlighted in the consultation paper suggests that homicide law already has disproportionate impacts on specific groups. For example, the evidence suggests a gendered nature of domestic homicide and a disproportionate impact of joint enterprise laws on Black men and boys. We also recognise that children are affected differently by homicide law, both as victims and defendants, and that factors such as brain development and gang involvement may be relevant to their experiences in relation to the law of homicide.

Consultees are therefore invited to share evidence or views on how existing law or our proposed reforms may advantage or disadvantage specific groups (with particular attention to the characteristics protected by the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation) to help ensure that any reform produces a fair and equitable legal framework for all.

Consultation Question 22. (paragraph 15.6 of the consultation paper)

We invite consultees to tell us if they believe or have evidence or data to suggest that the homicide offences, or our proposed reforms, could result in advantages or disadvantages to certain groups or based on certain characteristics, with particular attention to the protected characteristics in section 4 of the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation), and also other characteristics such as socio-economic position and immigration status.

Consultation Question 23. (paragraph 15.7 of the consultation paper)

We invite consultees to tell us anything relating to the homicide offences, or our proposed reforms, that they have not yet had a chance to say in response to any of the earlier consultation questions.

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