



Briefing for the Public Petitions Committee

Petition Number: [PE1565](#)

Main Petitioner: James Dougall

Subject: Whole of Life Sentence for Violent Reoffenders

Calls on the Parliament to urge the Scottish Government to increase the maximum possible sentence for violent reoffenders who commit murder to be a whole of life custodial sentence

Proposed Reform

The petitioner would like to see the law changed so that a judge, on sentencing a person convicted of murder, would have the power to direct that the rest of the offender's life is to be spent in custody without the possibility of release on parole. He argues that a judge should have this option:

“where a previously violent offender flagrantly disregards the rehabilitation offered and the opportunity given to him through early release [from a custodial sentence] and then goes on to commit a violent murder then I believe that the Scottish judiciary need to be given the option and the guidance to impose a whole of life punishment sentence”.

Scots law already allows for the possibility that the minimum period of custody set by the judge, before a prisoner serving a life sentence can be considered for release on parole, may exceed the prisoner's life expectancy. However, the judiciary in Scotland do not currently have the power to simply impose a whole life order without specifying a determinate period of years and months.

The current position in both Scotland and England (where a whole life order can be made) is outlined below.

Current Law in Scotland

A conviction for murder carries with it a mandatory sentence of life imprisonment. This does not mean that all (or indeed most) convicted murderers currently spend the rest of their lives in custody.

Section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 includes provision for the possible release on parole for prisoners serving life sentences for murder. Such prisoners are entitled to have their continued detention reviewed by the Parole Board for Scotland once they have served the punishment part of the sentence (as described below).

After considering a case, the Parole Board will either direct the Scottish Ministers to release the prisoner or order the prisoner's continued detention. Any release is on life licence, with released prisoners being subject to appropriate licence conditions and supervised by criminal justice social work for the rest of their lives. A breach of licence conditions may result in recall to custody. Where the Parole Board does not direct a prisoner's release, the case must generally be reviewed again no later than two years after the date of the last review.

Information on the length of time served by life prisoners prior to their first being released on life licence is set out in appendix A of the Parole Board's [Annual Report 2013-2014](#). The figures relate to all life sentences, not just mandatory life sentences imposed for murder.

The punishment part of a life sentence, for someone convicted of murder, is described in section 2 of the 1993 Act as the part of the total sentence which the court considers appropriate to satisfy the requirements for retribution and deterrence:

- taking into account the seriousness of the offence(s) for which the person is convicted, any previous convictions and any sentence discount justified on the basis of a guilty plea
- ignoring any period of confinement which may be necessary for the protection of the public

The punishment part is set by the court at the time of passing the sentence and is served wholly in custody. Even following the expiry of the punishment part, a life sentence prisoner will not be released unless the Parole Board is satisfied that continued confinement is no longer necessary for the protection of the public.

Section 2 of the 1993 Act goes on to provide that the court in setting the punishment part:

- shall specify the period that the court considers appropriate in years and months
- may specify any such period of years and months notwithstanding the likelihood that such a period will exceed the remainder of the prisoner's natural life

Thus, a court can set a punishment part which in practice may require a person to spend the rest of his/her life in custody, but cannot do this by simply stating that the offender must not be released. The court must set a definite period in years and months.

The issue was considered in the context of the Bill which became the Convention Rights (Compliance) (Scotland) Act 2001. The [policy memorandum](#) published along with the Bill noted that:

“The Executive believes that the system for sentencing life prisoners should be clear and transparent with no room for misunderstanding. On that basis, the Executive proposes to remove the judges’ current discretion not to set a punishment part. Instead, the judge will be required to specify a punishment part, in terms of a specific number of years and months, in every case. If, exceptionally, a judge considered that a particular case required a long punishment period, it would be open to him to specify a period of years which, if appropriate, clearly exceeded the individual’s life expectancy. This will cover the small number of situations where the seriousness of the crime or the age or health of the individual might make it necessary for the punishment part to be longer than that individual’s life expectancy. The requirement to specify the length of the period to be served as punishment will remove any potential misunderstandings about the court’s intentions.” (para 35)

Statements made by the judiciary on sentencing people convicted of murder (and other offences) are available on the Judiciary of Scotland website under the heading of [Sentencing Statements](#). Recent statements following convictions for murder include:

- [HMA v Angus Sinclair](#) (November 2014) – punishment part of 37 years
- [HMA v John Paul Bird](#) (January 2015) – punishment part of 18 years
- [HMA v Robert Buczek](#) (March 2015) – punishment part of 20 years
- [HMA v James Keith Caven](#) (April 2015) – punishment part of 20 years
- [HMA v Jack Mallon](#) (April 2015) – punishment part of 19 years

Approach in England

The approach in England is similar in that a conviction for murder carries a mandatory life sentence, with the court normally setting a minimum term which must be served in custody before the offender can be considered for release on licence. However, unlike the position in Scotland, the courts do have the power to impose whole life orders (without specifying a determinate period of years and months) in cases where it is considered that the possibility of release on parole should not apply. The Crown Prosecution Service’s website notes that:

“In accordance with section 269 of the Criminal Justice Act 2003 all courts passing a mandatory life sentence are required to order the minimum term the prisoner must serve before the Parole Board can consider release on licence, unless the seriousness of the offence is so exceptionally high that the early release provisions should not apply, in other words a ‘whole life order’.

In July 2013 the Grand Chamber of the European Court of Human Rights ruled in the case of *Vinter and others v UK* that whole life orders of imprisonment violated Article 3 of the European Convention on Human Rights which prohibits inhuman and degrading treatment and torture. This ruling has now been successfully challenged. On 18

February 2014 in the case of AG Reference (No 69 of 2013), Re; Also known as: R v McLaughlin and R v Newell [2014] EWCA Crim 188 the Court of Appeal, led by LCJ Thomas, held that whole life sentences imposed pursuant to section 269 of the Criminal Justice Act 2003 were not incompatible with Article 3 of the European Convention on Human Rights 1950 and judges were to continue to impose them in exceptional circumstances. There is an adequate review mechanism where such sentences are imposed. Thomas said the law in England and Wales provides an offender 'hope' or the 'possibility' of release in 'exceptional circumstances'. Although the Court found it difficult to specify in advance such circumstances. 'But circumstances can and do change in exceptional cases'. Therefore section 30 Crime (Sentences) Act 1997 provides the regime through which such sentences can be reduced and is compatible with Article 3."¹

Section 30 of the Crime (Sentences) Act 1997 deals with the power to release life prisoners on compassionate grounds.

In relation to the circumstances in which a court may impose a whole life order, section 269 of the Criminal Justice Act 2003 provides that the offender must have been 21 or over at the time of the offence.

The Crown Prosecution Service's website goes on to set out the following guidance in relation to the circumstances where a whole life order might be considered appropriate:

"Where the offender is 21 or over at the time of the offence and the court takes the view that the murder is so grave that the offender should spend the rest of their life in prison, a 'whole life order' is the appropriate starting point. The early release provisions in section 28 of the Crime (Sentences) Act 1997 will then not apply. Such an order should only be specified where the court considers that the seriousness of the offence is exceptionally high. Such cases include:

- a) the murder of two or more persons where each murder involves a substantial degree of premeditation, the abduction of the victim, or sexual or sadistic conduct;
- b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation;
- c) a murder done for the purpose of advancing a political, religious or ideological cause; or
- d) a murder by an offender previously convicted of murder."

The above guidance refers to a whole life order being the appropriate starting point. Mitigating factors may still lead to the court not imposing such an order.

¹ Crown Prosecution Service's website under the heading of [Sentencing – Mandatory Life Sentences in Murder Cases](#). Also see the BBC news report [British Courts Can Impose Whole-Life Prison Sentences](#) (3 February 2015).

Further information on life sentences in England is set out in the House of Commons Library briefing [Mandatory Life Sentences for Murder](#) (2012).

Frazer McCallum

Senior Researcher

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