

# **Equalities Statement for the Victims and Courts Bill:**

## **Automatic Restriction of Parental Responsibility**

### **Introduction**

1. Parental responsibility is defined in the Children Act 1989 as all the rights, duties, powers, responsibilities and authority which by law a parent or guardian of a child has in relation to the child and their property. It is to be exercised for the benefit of the child not the adult. Biological mothers have automatic parental responsibility, as do fathers and second female parents who were married to, or in a civil partnership with, the mother at the time of birth, or who 'legitimise' the birth by marrying or entering into a civil partnership with the mother afterwards. Fathers and second female parents who were not married to or in a civil partnership may acquire it through various avenues such as being registered on the birth certificate or court order.
2. Outside of adoption or surrogacy related proceedings, the family court can only remove parental responsibility if it was acquired in certain ways. The court does not have the power to remove the parental responsibility of a mother, or a father/second female parent who was married to or in a civil partnership with the mother at the time of the birth (or if they marry subsequently). However, the family court can restrict the parental responsibility of any parent. This happens in circumstances where it would be in the best interests of the child, through making a range of different orders.
3. There have been recent reforms to the law around parental responsibility. Section 18 of the Victims and Prisoners Act 2024 ('VAP 2024') amends the Children Act 1989 ('CA 1989') and provides for the automatic restriction of the exercise of parental responsibility for a parent who has been convicted of and sentenced for the murder or voluntary manslaughter of the other parent. For the restriction to occur, the Crown Court will be required to make a prohibited steps order ('PSO') at the point of sentencing to give effect to this restriction. The prohibited steps order will apply in respect of any children the offender shared with the victim.
4. For circumstances within section 18 VAP 2024, following the prohibited steps order being made, the relevant local authority will be under a duty to make an application within 14 calendar days from the day after the order is made by the Crown Court for the family court to consider the prohibited steps order. The family court will consider whether the restriction is in the best interest of the child(ren) involved and consider any representations made by the convicted parent/holder of parental responsibility to vary or discharge the order. The court may also make any other relevant orders it deems necessary under its existing powers.

## Policy summary

5. This measure will provide for the automatic restriction of the exercise of parental responsibility for an offender who has been sentenced to an immediate custodial sentence of four years or more for committing a 'serious' child sexual abuse offence against a child. This automatic restriction would require the Crown Court to make a prohibited steps order restricting parental responsibility at the point of sentencing, unless it appears to the court that it is not in the 'interests of justice' to do so. The prohibited steps order would make clear that the offender cannot take any step to exercise their parental responsibility. The order will remain in place unless the order is varied or discharged by the Family Division of the High Court or the family court, or until the child reaches 18 when parental responsibility no longer applies.
6. Following this the offender and others, including the non-offending parental responsibility holder, could apply to the family court to vary or discharge the order. If an individual successfully appeals their conviction or sentence and no longer meets the threshold outlined in this measure, the Local Authority will be required to make an application so that the prohibited steps order will be reviewed by the family court. The family court will then determine whether the prohibited steps order should be varied or discharged when considering the welfare of the child.

## Evidence and analysis – context

7. Data on the protected characteristics of individuals affected by this measure has been obtained from analysis of the Criminal Justice System Statistics: Outcomes by Offence data tool 2024.<sup>1</sup> Analysis has been undertaken on the characteristics of offenders sentenced for four years or more for offences included within the scope of the measure.<sup>2</sup> To account for yearly fluctuations in convictions a 10-year average has been used. However, we have excluded 2020 and 2021 from this analysis to account for the reduced number of convictions during the Covid-19 pandemic.<sup>3</sup>

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<sup>1</sup> [Criminal Justice System statistics quarterly: June 2024 - GOV.UK](#)

<sup>2</sup> The Outcomes by Offence data tool presents offences at an aggregated level and so some of the data will include offenders convicted of an offence that is not technically in scope of the measure. In addition, we have excluded from this analysis a small number of offences that are included in the measure. This is because the nature of the offences would suggest they are unlikely to be committed by a parent against their own child. Annex A provides a list of the offence categories included.

<sup>3</sup> For age, the data only includes the years of 2018, 2019, 2022, 2023 and 2024. This is because the age categories were amended in 2017. As with the other categories, 2020 and 2021 were excluded due to Covid-19.

8. This analysis is conducted on offenders sentenced for all of the relevant offences, irrespective of the age of the victim or whether the offender held parental responsibility for them.<sup>4</sup>
9. We know this measure will impact on the children and families of the offenders. We do not have data on who those people are and so cannot identify their characteristics.
10. The analysis of sentencing data provides information about several of the protected characteristics of offenders including age, ethnicity and sex.
11. While efforts have been made to source information related to the areas covered by the Bill measurement, there are still gaps in our evidence base. We do not have for example centrally recorded information on protected characteristics such as gender reassignment, marital status, pregnancy, disability or religion.
12. In light of our continuing duty to consider the equalities impacts of these proposals, we would welcome any further views, experiences and other new evidence from and about victims with any particular protected characteristics as the Bill progresses through Parliament and as we work towards implementation.
13. Considering the wider context in which this policy operates, there is a risk that due to other biases inbuilt within the criminal justice system that this policy may affect individuals with certain protected characteristics more than others (see paragraph 19).

## **Equality Duties**

14. This analysis considers the impact of new legislation against the statutory obligations under the Public Sector Equality Duty (PSED). The aim of the PSED is to embed equality considerations into the day-to-day work of public authorities, so that they tackle discrimination and inequality and contribute to making society fairer.
15. The PSED addresses discrimination, inequality and fairness between people who have protected characteristics and those who do not.
16. Section 149 of the Equality Act 2010 (the Act) that require Ministers and the department, when exercising their functions, to pay 'due regard' to the need to:
  - a. Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Act;

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<sup>4</sup> The offences do include some offences that can also be committed against an adult victim as well as against a victim under the age of 18.

- b. Advance equality of opportunity between those who share protected characteristics and those who do not; and
  - c. Foster good relations between those who share protected characteristics and those who do not.
17. The protected characteristics are race, sex, disability, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment. The protected characteristic of marriage and civil partnership are also relevant when considering the first limb of the duty.

## **Equality Considerations**

18. We have considered the above Bill provision in light of our PSED obligations. Key considerations are listed below.

### **Direct discrimination**

19. We consider that the provisions are not likely to be directly discriminatory within the meaning of the Equality Act 2010; they do not treat individuals less favourably because of their particular protected characteristics and they apply in the same way to all those in scope, regardless of their protected characteristics. The process will be applied to all those in scope of the provision in the same way, regardless of their circumstances or protected characteristics.

### **Indirect discrimination**

20. This measure will be applied to all those in scope of the amendment in the same way, regardless of their circumstances or protected characteristics. Despite this, officials expect some groups to be impacted more than others. We do not consider that the proposals will be indirectly discriminatory within the meaning of the Equality Act 2010. Indirect discrimination occurs when a policy applies equally to all individuals in the impacted pool but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not and it cannot be shown to be a proportionate means of achieving a legitimate aim. Although the offenders in scope of this measure are more likely to share a protected characteristic, including male offenders, the measure will be applied in the same way to all individuals in scope. We do not consider that it will result in a particular disadvantage for offenders who have protected characteristics. We also consider automatic restriction to be a proportionate means of achieving the legitimate aim, of protecting children from such offenders exercising their parental responsibility. Therefore, we do not consider the measure will be indirectly discriminatory within the meaning of the Equality Act 2010.

21. Considering the wider context in which this policy operates, there is a risk that due to other biases inbuilt within the criminal justice system that this policy may affect individuals with certain protected characteristics more than others. For example,

we know that racial disparities exist throughout the criminal justice system, including on charging and sentencing. In 2017 David Lammy MP published an 'independent review of the treatment of, and outcomes for Black, Asian and Ethnic Individuals within the criminal justice system in England and Wales'<sup>5</sup>. This review found that ethnic minority individuals experience higher arrest rates and are disproportionately represented within the prison population. If this disparity holds for child sexual offences, and ethnic minority child sexual offenders are more likely to be charged with an offence in scope or more likely to be receive a harsher sentence (immediate custodial sentence of four years or more), this may result in the restriction of the exercise of parental responsibility being applied disproportionately to ethnic minority parents.

### **Age**

22. The majority of offenders sentenced for relevant child sexual offences in cases where there was a child abuse flag were aged 25 years and over (89%) when they were sentenced. A further 11% were aged 18 to 24 years and 1% were under the age of 18 years. The criminal court sentencing data does not record the age of the offender at the time they committed the crime.

### **Sex**

23. Perpetrators of child sexual abuse are much more likely to be male than female. According to sentencing data, males accounted for the vast majority of offenders sentenced for the relevant offences (99%). As such, a higher proportion of those who fall within scope of the measure are likely to be male than female.

### **Race**

24. In terms of ethnicity, most offenders sentenced for these offences were recorded as 'White' (64%). In comparison, 6% were recorded as 'Black', 6% as 'Asian' and 1% as 'mixed'. However, a high proportion of offenders' ethnicities are recorded as 'unknown' which may have an impact on accuracy of these proportions.

### **Advancing equality of opportunity**

25. We have considered whether this policy measure would have an impact in relation to advancing equality; no obvious impacts have been yet identified.

### **Discrimination arising from disability and duty to make reasonable adjustments**

26. There is no recorded information on disability however, we do not consider that the proposals are likely to result in any unlawful discrimination within the meaning of the Equality Act 2010 in relation to disability. Where the risk of discrimination is identified, every effort will be made to make a reasonable adjustment where required.

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<sup>5</sup> [The Lammy Review](#)

### **Harassment and victimisation**

27. We do not consider that this Bill measure will give rise to harassment or victimisation within the meaning of the Equality Act.

### **Fostering good relations**

28. We have considered whether this Bill measure would have an impact in relation to fostering good relations; no obvious impacts have been yet identified.

### **Welsh language Impact**

29. The Bill measures will apply to both England and Wales. It is important to ensure that these measures are communicated in Welsh through the usual government channels. Any websites, forms and services will meet all statutory requirements to provide a service through the Welsh medium.

## **Annex A: Offences included within equalities analysis**

- 17A.1 Sexual assault on a male - penetration
- 17A.2 Sexual assault on a male
- 17B.1 Sexual assault of a male child under 13 - penetration
- 17B.2 Sexual assault of a male child under 13
- 19C Rape of a female aged 16 or over
- 19D Rape of a female aged under 16
- 19E Rape of a female child under 13 by a male
- 19F Rape of a male aged 16 or over
- 19G Rape of a male aged under 16
- 19H Rape of a male child under 13 by a male
- 20A.1 Sexual assault on a female - penetration
- 20A.2 Sexual assault on a female
- 20B.1 Sexual assault of a female child under 13 - penetration
- 20B.2 Sexual assault of a female child under 13
- 21.1 Sexual activity with a child under 13 - indictable only
- 21.3 Sexual activity with a child under 13 - offender aged 18 or over or age of offender unspecified - triable either way
- 22.1 Sexual activity involving a child under 16 - indictable only
- 22.3 Sexual activity involving a child under 16 - offender aged 18 or over - triable either way
- 22A.1 Causing sexual activity without consent - penetration
- 22A.2 Causing sexual activity without consent - no penetration
- 23.1 Familial sexual offences (incest) with a child family member aged under 13 - indictable only

- 23.3 Familial sexual offences (incest) with a child family member aged under 13 - offender aged 18 or over - triable either way
- 23.4 Familial sexual offences (incest) with a child family member aged 13 to 17 - indictable only
- 23.6 Familial sexual offences (incest) with a child family member aged 13 to 17 - offender aged 18 or over - triable either way
- 71.1 Abuse of children through prostitution and pornography - indictable only
- 71.2 Abuse of children through prostitution and pornography - triable either way