

Equalities Statement for the Victims and Courts Bill: **Automatic restriction of parental responsibility in cases** **where a child is born of rape**

Introduction

Current Legislation

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 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 and surrogacy 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 married to the mother. 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 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 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 for the family court to review the order within 14 calendar days starting from the day after the order is made by the Crown Court. The family court will consider whether the restriction is in the best interest of the child(ren) involved and any application by the convicted parent/holder of parental responsibility to vary or discharge the order.
5. Clauses 3 and 4 of the Victims and Courts Bill include a measure that would create an automatic restriction on the exercise of parental responsibility for offenders who are sentenced to four or more years in prison or detention for

certain 'serious' child sexual abuse offence against any child. When the bill was initially introduced this measure only applied when an offender is sentenced for an offence against a child for whom they have parental responsibility, but a Government amendment was tabled at report stage expanding the measure so it applies when the offence is committed against any child.

Policy summary

6. This measure will provide for the automatic restriction of the exercise of parental responsibility in cases where a child has been conceived of rape. In cases where in criminal proceedings the court is satisfied that a child did result from the rape being tried for, the Crown Court would be required, at the point of sentence, to make a prohibited steps order restricting the exercise of the offender's parental responsibility in respect of the relevant child. The court would not be able to make an order where it would not be in the interests of justice to do so.
7. In cases where the Crown Court has not established that a child has been born of the offence the case would be referred to the family court to consider the facts of the case and make any relevant orders to ensure the best interest of the child. To achieve this the Crown Court will make a referral to the relevant local authority (within 30 days starting from the day after sentencing), where it is satisfied of the following:
 - a. An offender has been sentenced for the crime of rape.
 - b. The court consider that a child may have resulted from rape
 - c. The offender holds parental responsibility for the child in question
 - d. The above provision relation to the court establishing that the child did result from rape does not apply.
8. Once the local authority receives the notification it will be under a duty to make enquiries with the victim to confirm that they consent to the local authority making an application to the family court to determine whether to make a s.8 Children Act 1989 order. The local authority will have 6 months from the day after they are notified to seek this consent. If consent is given, the local authority will have 30 days from the day after consent is given to make the application to the family court. The family court will then look at the full facts of the particular case and consider what is in the best interests of the child. This may include the making of any relevant orders, including potentially a prohibited steps order restricting the exercise of parental responsibility by the father if it is in the best interest of the child to do so. The court could also make a range of other orders to protect the child, in their best interests for instance specific issue orders, child arrangements orders and a Section 91(14) order to prohibit the offender from making further applications without the court's permission. It could also consider whether orders in respect of any other children who the perpetrator holds parental responsibility for would be appropriate.

Equality considerations

9. 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.
10. The PSED addresses discrimination, inequality and fairness between people who have protected characteristics and those who do not.
11. Section 149 of the Equality Act 2010 (the Act) requires Ministers and the department, when exercising their functions, to pay 'due regard' to the need to:
 1. Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Act;
 2. Advance equality of opportunity between those who share protected characteristics and those who do not; and
 3. Foster good relations between those who share protected characteristics and those who do not.
12. 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.
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Evidence and analysis – context

14. 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 2024.¹ Analysis has been undertaken on the characteristics of offenders sentenced for rape of a female over 16.² 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

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

² The Outcomes by Offence data tool presents offences at an aggregated level and so these statistics also include offenders sentenced for attempted rape (and a small number of other historical offences) which does not fall under this measure.

account for the reduced number of convictions during the Covid-19 pandemic.³

15. Criminal justice sentencing data does not include details on whether a child was conceived as a result of the offence. Therefore, the analysis is conducted on all offenders sentenced for rape of a female over 16.⁴
16. We know this measure will impact on the children and families of the offenders and their victims. We do not have data on who those people are and so cannot identify their characteristics.
17. The analysis of sentencing data provides information about the age and ethnicity of offenders.
18. 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.
19. 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.
20. 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.

Equality Considerations

21. We have considered the above Bill provision in light of our Public Sector Equality Duty obligations. Key considerations are listed below.

Direct discrimination

22. The offence of rape under Section 1 of the Sexual Offences Act 2003 ('the 2003 Act') can only be committed by a male. Section 1 makes clear that the vital ingredients of the offence consist of penetration by the penis of the vagina, anus or mouth of the complainant, together with the absence of consent of the complainant.

³ 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.

⁴ A small number of offenders are recorded as 'female' or 'unknown' sex in the data. Given the low numbers, these have still been included in the analysis to avoid under-counting.

23. The 2003 Act makes provision for the offence of causing a person to engage in sexual activity without consent (Section 4(4)), which can be committed by and against persons of either sex and includes cases of 'female rape', i.e. where A causes B to penetrate her vagina with his penis.
24. Despite the 2003 Act providing equivalent offences that cover both male and female offenders, we consider that there is a difference between an offence that results in the conception and birth of a child where the perpetrator is a male as opposed to where they are a female, particularly in respect of the forced nature of the conception that will have occurred. These differences cover the impact on the female who undergoes an unwanted pregnancy, the child that is born as a result of the rape, the difference in outcomes of male and female offenders when they receive a custodial sentence and in how the existing law treats the acquisition and restriction of parental responsibility.
25. Looking specifically at the impacts on children of being born of rape, there is clear evidence about the negative long-term impacts on children born of a female victim of rape. There is no equivalent evidence of children conceived by a male victim who has been caused to engage in sexual activity without consent (under Section 4(4) of the 2003 Act), but some of the evidence on the impact on children born of female victims would not likely be applicable to – or would be less applicable to – those conceived by a male victim who has been caused to engage in sexual activity without consent.
26. Research⁵ has found that unintended pregnancies can result in poorer health outcomes, for example because it may be longer before mothers receive prenatal care resulting in worse physical development for the child. It is less likely that this would occur in instances involving a female perpetrator. Negative impacts on children's emotional health and development are also brought about through the ongoing trauma and PTSD of the mother. The mother's trauma can lead to poor attachment between the mother and child and can lead to conflicting and oscillating feelings about the child, which can result in emotional neglect and lead to the child's long-term suffering. Children can feel negativity about their own identity with concerns that they have 'inherited' 'monster' traits from their father or that they were also a part of the victimisation of their mother. There is no evidence of whether children conceived by male victims who have been caused to engage in sexual activity without consent experience the same negative impacts.
27. Alongside this there are already differences between the outcomes for mothers and fathers when sentenced to custodial sentences, which directly impact on the wellbeing of their children. Research indicates that a mother going to prison has a greater negative effect on a child (or children) than a father doing so. This includes points such as only 5% of children with an

⁵ [Associations of Unintended Pregnancy With Maternal and Infant Health Outcomes: A Systematic Review and Meta-analysis - PMC](#)

imprisoned mother remaining in their established home and only 9% being cared for by their father⁶. In cases where the father is imprisoned most children are cared for by their mother.

28. In addition, the law around how parental responsibility is acquired, removed or restricted already recognises a difference between birth mothers and fathers. This includes points such as birth mothers, including where the child has been born as a result of a surrogacy arrangement, holding parental responsibility automatically regardless of their marital status, unlike fathers who must be married to the mother to obtain it automatically. Alongside this, the law gives every birth mother parental responsibility, applying the measure to female offenders may risk making it more likely some children may be left with no one who holds parental responsibility for them.

Indirect discrimination

29. 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 will share a protected characteristic, they will be 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 the child involved 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.

Age

30. The majority of offenders sentenced for rape of a female over 16 were aged 25 years and over (79%) when they were sentenced. A further 19% were aged 18 to 24 years and 2% 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

31. The crime of rape can only be committed by a male meaning that only male offenders are in scope of the measure.

Race

⁶ [Reducing the unnecessary imprisonment of mothers, improving the chances for their children | Prison Reform Trust](#)

32. In terms of ethnicity, most offenders sentenced for these offences were recorded as 'White' (54%). In comparison, 12% were recorded as 'Black', 9% as 'Asian' and 2% as 'mixed'. However, a high proportion of offenders' ethnicities are recorded as 'unknown' or 'other' (22%) which may have an impact on accuracy of these proportions.⁷

Advancing equality of opportunity

33. Officials have considered whether this measure would have an impact on advancing equality and have not identified any.

Discrimination arising from disability and duty to make reasonable adjustments

34. 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.

Harassment and victimisation

35. 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

36. Officials have considered whether this Bill measure would have an impact in relation to fostering good relations and have not identified any obvious impacts.

Welsh language Impact

37. 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.

⁷ Figures may not sum to 100% due to rounding.