

Sentencing Council meeting:
Paper number:

16 June 2023
SC(23)JUN05 – Amendment to Schedule 21

Lead Council member:
Lead official:

Bill Davies
Ruth Pope
Ruth.pope@sentencingcouncil.gov.uk

1 ISSUE

1.1 Sentencing for murder is governed by [Schedule 21 to the Sentencing Code](#).

1.2 The Chairman has received a letter from the Lord Chancellor stating:

As you are aware, the Government published Clare Wade KC's Domestic Homicide Sentencing Review on 17 March, alongside the announcement of an initial package of reforms to change the law so that sentencing for domestic murders always reflects the seriousness of these crimes. This includes the introduction of 'overkill' and a history of coercive or controlling behaviour against the victim as statutory aggravating factors in Schedule 21 of the Sentencing Act 2020. The Government committed to introducing legislation to implement these reforms as soon as possible.

Paragraph 19 of Schedule 23 of the Sentencing Act 2020 allows for the Lord Chancellor to amend Schedule 21 by regulations subject to the affirmative resolution procedure, but stipulates that before making regulations the Lord Chancellor must consult the Sentencing Council for England and Wales. As such, I have appended a draft Statutory Instrument for the proposed amendments to Schedule 21, for your consideration.

Recommendation 5 in the Review is that Schedule 21 should be amended to make coercive or controlling behaviour both an aggravating factor and a mitigating factor, depending on the circumstances. Whilst the Government thus far has only committed to making this behaviour a statutory aggravating factor to murder, our intention is to legislate for both parts of the recommendation at the same time. This will be announced in the Government's full response to the Review. Therefore, for the purposes of this consultation, the draft Statutory Instrument also includes reference to coercive or controlling behaviour against the offender as a statutory mitigating factor.

The Government's full response to the Domestic Homicide Sentencing Review will be published before summer recess. I would be grateful for the Council's views on this by Friday 30 June.

1.3 The draft SI is attached. It creates two additional statutory aggravating factors, and one additional statutory mitigating factor. The new aggravating factors apply where:

(1) the offender had repeatedly or continuously engaged in behaviour towards the victim that was controlling or coercive and, at the time of the behaviour, the offender and victim were personally connected within the meaning of section 76 of the Serious Crime Act 2015; and

(2) the offender used violence significantly greater than that which was necessary to cause death (sometimes referred to as “overkill”).

1.4 The new mitigating factor applies where the victim had repeatedly or continuously engaged in behaviour towards the offender that was controlling or coercive and, at the time of the behaviour, the offender and victim were personally connected within the meaning of section 76 of the Serious Crime Act 2015.

1.5 The new factors only apply to offences committed on or after the day on which these Regulations come into force.

2 RECOMMENDATION

2.1 That the Council agrees to respond to the Lord Chancellor stating that the changes are in line with current sentencing practice and are unlikely to have a significant impact on sentencing levels overall.

3 CONSIDERATION

3.1 As a statutory consultee the Council should consider the SI and provide a response to the Lord Chancellor.

3.2 The aggravating and mitigating factors in Schedule 21 are non-exhaustive. While sentencing for murder is governed by Schedule 21 rather than by a sentencing guideline, courts must still follow any sentencing guidelines relevant to the case and any relevant case law.

3.3 The proposed aggravating factor relating to coercive and controlling behaviour is covered by the Domestic abuse guideline and the factor relating to ‘overkill’ is not dissimilar to the existing aggravating factor in Schedule 21: ‘(c) mental or physical suffering inflicted on the victim before death’.

3.4 The proposed mitigating factor is one that courts do take into account across a range of offences.

3.5 While we have not carried out any analysis of murder cases, it seems likely that courts are already taking into account the proposed new factors in relevant cases and we therefore would not expect these proposals to have a significant impact on sentencing.

3.6 The suggestion is that the Council responds to the Lord Chancellor in its capacity as a statutory consultee, noting the proposals and indicating that, for the reasons outlined above we do not expect them to have a significant impact on sentencing for murder, nor would they necessitate any changes to current sentencing guidelines.

Question: Does the Council agree with the suggested approach?

DRAFT STATUTORY INSTRUMENT

2023 No.

CRIMINAL LAW, ENGLAND AND WALES

SENTENCING

**The Sentencing Act 2020 (Amendment of Schedule 21)
Regulations 2023**

Made - - - - - ***

Coming into force ***

The Lord Chancellor makes these Regulations in exercise of the powers conferred by paragraph 19(1) of Schedule 23 to the Sentencing Act 2020(a) (“the Act”).

The Lord Chancellor has consulted with the Sentencing Council in accordance with paragraph 19(2) of Schedule 23 to the Act.

In accordance with section 407(7) of the Act and paragraph 19(4) of Schedule 23 to the Act, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1. These Regulations may be cited as the Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 and come into force on [***].
2. These Regulations extend to England and Wales.
3. In these Regulations, “the Act” means the Sentencing Act 2020(b).

Aggravating factors

4. In paragraph 9 of Schedule 21 to the Act (determination of minimum term in relation to mandatory life sentence for murder etc)—

(a) after paragraph (b), insert—

“(ba) where the offence was committed on or after the day on which the Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 came into force, the fact that the offender had repeatedly or continuously engaged in behaviour towards the

(a) 2020 c. 17
(b) 2020 c. 17

victim that was controlling or coercive and, at the time of the behaviour, the offender and the victim were personally connected within the meaning of section 76 of the Serious Crime Act 2015(a);”;

(b) in paragraph (f), omit “and”; and

(c) after paragraph (f), insert—

“(fa) where the offence was committed on or after the day on which the Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 came into force, the use of violence significantly greater than that which was necessary to cause death, and”.

Mitigating factors

5. In paragraph 10 of Schedule 21 to the Act (determination of minimum term in relation to mandatory life sentence for murder etc), after paragraph (c) insert—

“(ca) where the offence was committed on or after the day on which the Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 came into force, the fact that the victim had repeatedly or continuously engaged in behaviour towards the offender that was controlling or coercive and, at the time of the behaviour, the victim and the offender were personally connected within the meaning of section 76 of the Serious Crime Act 2015(b);”.

Date

Lord Chancellor
Ministry of Justice

(a) 2015 c. 9 (as amended by section 68 of the Domestic Abuse Act 2021 (c. 17))
(b) 2015 c. 9 (as amended by section 68 of the Domestic Abuse Act 2021 (c. 17))

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend paragraphs 9 and 10 of Schedule 21 to the Sentencing Act 2020. They create two additional statutory aggravating factors, and one additional statutory mitigating factor, in the determination of the minimum term in relation to mandatory life sentences for murder. The new aggravating factors apply where: (1) the offender had repeatedly or continuously engaged in behaviour towards the victim that was controlling or coercive and, at the time of the behaviour, the offender and victim were personally connected within the meaning of section 76 of the Serious Crime Act 2015; and (2) the offender used violence significantly greater than that which was necessary to cause death (sometimes referred to as “overkill”). The new mitigating factor applies where the victim had repeatedly or continuously engaged in behaviour towards the offender that was controlling or coercive and, at the time of the behaviour, the offender and victim were personally connected within the meaning of section 76 of the Serious Crime Act 2015. These new statutory aggravating factors and this new statutory mitigating factor only apply to offences committed on or after the day on which these Regulations come into force.

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