

PROPOSED WHOLE LIFE CUSTODY (SCOTLAND) BILL

LIAM KERR MSP

SUMMARY OF CONSULTATION RESPONSES

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament's Non-Government Bills Unit (NGBU). Section 4 has been prepared by Liam Kerr MSP and includes his commentary on the results of the consultation.

Where respondents have requested that certain information be treated as "not for publication", or that the response remain anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting, and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses are available on the following website <https://www.liamkerr.org.uk/life-should-mean-life>.

Responses have been numbered for ease of reference, and the relevant number is included in brackets after the name of the respondent.

A list of respondents submitted by organisations is set out in the Annex.

SECTION 1: INTRODUCTION AND BACKGROUND

Liam Kerr's draft proposal, lodged on 28 May 2019, is for a Bill to:

give Scottish courts the power to sentence the worst criminals to custody for the rest of their lives.

The proposal was accompanied by a consultation document, prepared with the assistance of NGBU. This document was published on the Parliament's website, from where it remains accessible:

<https://www.parliament.scot/parliamentarybusiness/Bills/12419.aspx>

The consultation period ran from 29 May 2019 to 30 August 2019.

The following organisations were sent copies of the consultation document or links to it:

- Bar Associations
- Crown Office and Procurator Fiscal Service
- Faculty of Advocates
- Families Outside
- HM Chief Inspector of Prisons for Scotland
- Howard League Scotland
- International Futures Forum
- IPPR Scotland
- Judicial Institute for Scotland
- Justice Scotland
- Law Society of Scotland
- Miscarriages of Justice Organisation
- Office of the Lord President
- Parole Board for Scotland
- Police Scotland
- Positive Prison? Positive Futures
- Prison Reform Trust
- Rape Crisis Scotland
- Reform Scotland
- Risk Management Authority
- Royal Society of Edinburgh
- Scotland's Futures Forum
- Scottish Centre for Crime and Justice Research
- Scottish Children's Reporter Administration
- Scottish Courts and Tribunals Service
- Scottish Legal Aid Board
- Scottish Prison Service
- Scottish Sentencing Council
- Scottish Women's Aid
- Senators of the College of Justice
- Sheriff's Association
- Victim Support Scotland

A number of relevant academics/experts were also contacted in relation to the consultation.

The consultation was widely publicised on social media, and a debate on the proposal was held in the Scottish Parliament on 4 June 2019.

The consultation exercise was run by Liam Kerr's parliamentary office.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament's website:

- Standing orders (Chapter 9):
<https://www.parliament.scot/parliamentarybusiness/26514.aspx>
- Guidance (Part 3):
<http://www.parliament.scot/parliamentarybusiness/25690.aspx>

SECTION 2: OVERVIEW OF RESPONSES

In total, 232 responses were received, and the vast majority (224) were submitted by “Smart Survey” (an online survey tool which allows responses to be completed and submitted online). Only 8 responses were received by the member’s office in other formats (direct to the member via email or in hard copy).

There were 101 (43%) anonymous submissions and 22 submissions (9%) were marked ‘not for publication.’

There were 8 responses (3%) from organisations and 224 (97%) from individuals.

The responses can be categorized as follows:

Individuals

- 2 (1%) from individual politicians (MSPs, MPs, MEPs, peers, councillors),
- 9 (4%) from academics
- 21 (9%) from professionals in a relevant field
- 192 (83%) from private individuals (members of the public)

Organisations

- 2 (1%) from representative organisations (the Edinburgh Bar Association and Law Society of Scotland)
- 1 (<1%) from a public sector organisation (the Scottish Sentencing Council)
- 3 (1%) from third sector organisations (Howard League Scotland, Miscarriages of Justice Organisation, and the Scottish Legal Action Group)
- 2 (1%) from other types of organisations (the Scottish Prisoner Advocacy and Research Collective (SPARC), and the Justice Solutions group from the British Transport Police (which submitted the collective view of a number of British Transport Police officers, rather than the views of the force as a whole).

Where reference to a specific response is made in this summary, this includes the index number as it appears on the member’s website and an identity number generated by “Smart Survey”.

The majority of the non-Smart Survey responses did not specifically answer the questions presented in the survey but instead supplied comments and analysis regarding the member’s proposal.

A significant majority of respondents (78%) indicated that they were supportive of the member's proposal to give Scottish courts the power to sentence the worst criminals to custody for the rest of their lives. Some of these respondents relayed their personal experience of the crimes addressed in the proposal, either as a victim or as a family member or friend to the victim.

A number of common themes arose from the reasons given for supporting the proposal. Many respondents were of the view that Whole Life Custody sentences would increase a sense of justice for victims and their families and felt that the criminal justice system currently places too much emphasis on the rights of offenders, to the detriment of victims and their families. Respondents also believed that, with particular reference to the crimes set out in the proposal, offenders who had committed these crimes did not deserve a second chance, or to be free from prison, particularly as the impact on the victim and/or their family might be life-long.

Many respondents expressed the view that offenders who commit such serious crimes are unlikely or unable to be rehabilitated and should therefore remain in prison. On a similar theme, many respondents commented that Whole Life Custody sentences should be available for the safety of the public.

Other notable themes from supportive respondents included that the current 'life sentence' regime is too 'soft' and does not adequately reflect the seriousness and harm caused by the crimes in question. 'Life should mean life' was a common suggestion from respondents, who also expressed concern and criticism that a life sentence may mean that an offender is released from custody after a certain number of years. Many respondents also noted that Whole Life Custody sentences would be a stronger deterrent against such crimes being committed.

Respondents who opposed the proposed Bill's aims also shared a number of common themes, including that they believed that the current system of life sentences and Orders for Lifelong Restriction (OLRs) works well. Many opposing respondents argued that decisions about the risk an offender poses to the public should be left to the Parole Board for Scotland. Respondents also commented that they believed that no individual should be locked up with no prospect of release, or opportunity to reform. These comments often also included reference to concerns about the undermining of human rights and compliance with the European Convention on Human Rights (ECHR).

Some respondents in opposition to the proposal highlighted that Whole Life Custody sentences could increase the risk of danger to others in the prison system, including prison staff. They noted that a significant factor in prison discipline is the hope experienced by the offender for the opportunity for release, whereas Whole Life Custody prisoners would have no incentive to comply with a prison regime. Respondents also noted that the proposal does not guarantee public safety, as a system of compassionate release would remain in existence, in order for the proposal to be ECHR compliant.

Respondents who opposed the general aims of the proposal were consistent in their opposition to the later questions that set out the proposed Bill's detail. The same consistency was seen in respondents that supported the general aims of the proposed Bill, who then either supported or chose options that the member had set out.

Of the eight organisations that responded, six indicated that they were opposed to the proposal, with one organisation being partially supportive and one being neutral.

SECTION 3: RESPONSES TO CONSULTATION QUESTIONS

This section sets out an overview of responses to each question in the consultation document.

General aim of proposed Bill

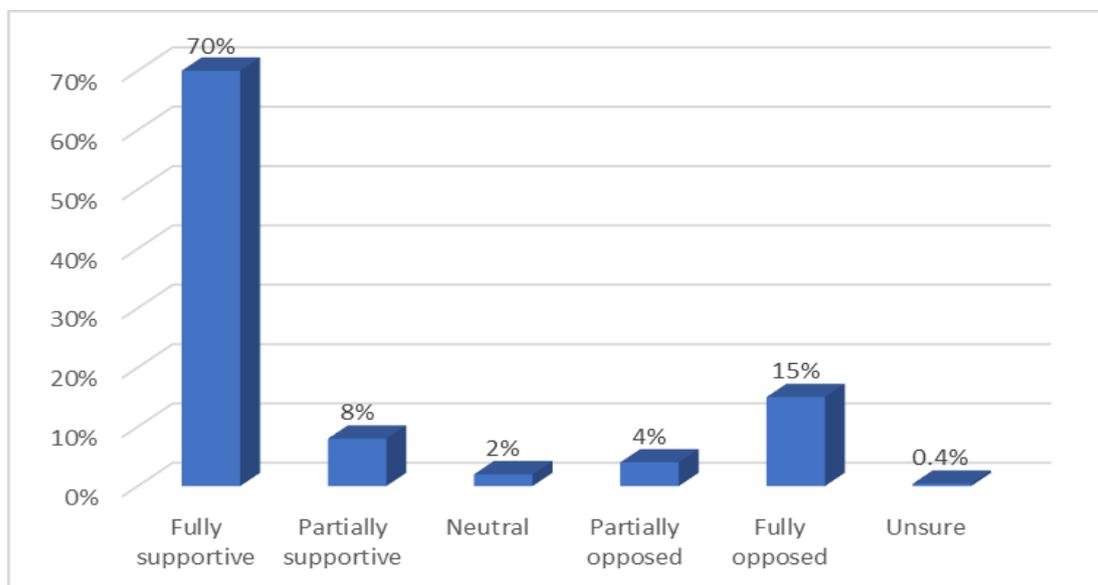
The consultation document outlined the aims of the proposed Bill and what it would involve. Respondents were asked:

Question 1: Which of the following best expresses your view of giving Scottish courts the power to sentence the worst criminals to custody for the rest of their lives? Please explain the reasons for your response.

227 of 232 respondents answered this question (98% of total respondents).

160 (70%) were fully supportive of the proposal, 19 (8%) were partially supportive, 5 (2%) were neutral in their view, 9 (4%) were partially opposed, 33 (15%) were fully opposed and 1 (<1%) was unsure.

Some respondents, particularly organisations, did not directly answer this question (or later questions) but have indicated in their written submissions whether or not they supported the general aims of the proposed Bill. Their views have therefore not been included in the statistical analysis to the questions, however, some of their comments and analysis are provided below and throughout the summary.



Support for the proposal

The following common themes were given as reasons for why 78% of respondents either fully or partially supporting the proposed Bill:

- The ‘worst criminals’ are unlikely or unable to be rehabilitated so should remain in prison
- Whole Life Custody sentences would increase justice for victims and their families
- Those guilty of the ‘worst offences’ don’t deserve a second chance, or to be freed from prison
- The current ‘life sentence’ doesn’t fit the crime and isn’t harsh enough to reflect the crime committed; ‘life should mean life’.
- Whole Life Custody should be available for the safety of the public
- Whole Life Custody sentences would be a stronger deterrent

Many respondents referred to more than one of these themes (or variations on these themes), in giving a reason for their response, for example Linda McDonald—

“Whole life sentence gives justice for victims and families who have suffered at the hands of these violent, sick, dangerous criminals. It gives reassurance that the public are safe. Gives us confidence that life means the whole of their life and there is the acceptance that these category dangerous criminals cannot be rehabilitated so stay behind bars” (Response 99, ID: 119957361).

Justice for victims

Respondents commented that a Whole Life Custody sentence would provide a greater sense of justice for the victim and their family. Similarly, respondents often noted victims “need to be considered more” (Anita Smith, Response 48, ID: 118216434) and that “real justice for the victims has to be the utmost consideration” (Anonymous, Response 7, ID: 117914252). Another anonymous respondent explained that—

“... victims of the serious crimes this is intended for would feel more like justice had been done [and] wouldn’t have the fear of the perpetrators being released back to their area” (Response 151, ID: 124181995).

John Angus expressed a commonly held view that-

“It’s time that victims of these crimes and their families were given proper justice and not the peelly wally version that’s given out today.” (Response no 161) ID: 124231942)

Undeserving of release or incapable of rehabilitation

Some respondents reflected the view that offenders who commit the sort of crimes that merit a life sentence do not deserve to be freed from prison (e.g. Anonymous, Response 174, ID: 124857910 and John Rae, Response 38, ID: 118207118). Steven Stewart made the point that “If someone commits a crime such as murder then why should they be able to eventually carry on

with life as normal when their victim or the victim's family can't." (Response 222, ID: 125694903).

A large number of respondents stated that they believe that the types of offenders who are given a life sentence are very unlikely to be rehabilitated back into society. For example, one anonymous respondent commented-

"It is unlikely that the very worst offenders in society can be rehabilitated particularly those who have no empathy. They should spend the rest of their lives in jail" (Response 3, ID: 117887233).

Issues of public safety

Many respondents, similarly commented that, for reasons of public safety and public protection, certain offenders should never be released from prison as they might, or would be likely to, commit another similar crime. Isobel Delussey said—

"I believe there are some crimes committed which an individual may enact again and which are so heinous that they will forever be a danger to the public. The only way we can ensure public safety in such extreme cases is by making sure there is no path to freedom" (Response 94, ID: 119579039).

One anonymous respondent gave the following personal example—

"I have witnessed a close friend recovering from the aftermath of a brutal attack by a man who had previously committed a very brutal murder, but was released after serving his sentence. He then committed another very brutal murder attempt within a few weeks of his release" (Response 115, ID: 120008476).

Concern regarding the 'life' sentence and current sentencing practices

A large number of respondents raised concerns with the current sentencing regime, including that: current life sentences, with the possibility of parole, are not harsh enough at present; that 'life' should mean 'life'; and that if an offender takes a life, they should be locked up for the rest of their life—

"Far too many current sentences for extremely serious crimes are pathetically weak" (David Middleton, Response 194, ID: 124894037).

"Sentences should be kept simple and understandable. Life should mean life. If you only want [them] to serve a shorter term, sentence them to a shorter term" (Stuart Macpherson, Response 192, ID: 124892499).

Whole Life Custody would be a stronger deterrent

Many respondents argued that a Whole Life Custody sentence would provide a stronger deterrent against committing crimes such as murder (for example Anonymous, Response 160, ID: 124216184).

Other views

A few respondents provided other reasons for being supportive of the aim of the proposal, including that the sentencing regime for whole life sentences in Scotland doesn't match the position in England and Wales and is therefore 'weaker' (Anonymous, Response 17, ID: 117954449 and Anonymous, Response 102, ID: 119998161).

A few respondents compared Whole Life Custody with the death penalty. For example—

“Society works best when criminals know there is a consequence and full life custody is the next best deterrent to hanging for those that break the law in the worst possible manner” (Catherine Smith, Response 45, ID: 118214988).

“Criminals are treated too lightly in this country. If we cannot have the death penalty for murderers and child sex offenders, then life should mean life” (Jonathan Brown, Response 44, ID: 118212369).

Opposition to the proposal

The 19% of respondents who indicated their full or partial opposition to the proposal shared a number of common themes for this opposition:

- The current system of life sentences and Orders for Lifelong Restriction (OLRs) works well
- It should be left up to the Parole Board for Scotland to decide on the risk an offender may pose to the public
- No individual should be locked up with no prospect of release or opportunity to reform
- It would increase the risk of danger to others in the prison system, including staff
- It doesn't guarantee public safety

Two respondents opposed the proposal because they didn't believe it goes far enough and suggested that the death penalty be re-introduced.

Current sentencing regime is adequate

Reasons respondents gave for believing that the current sentencing regime is adequate or works well, include that—

“The current system works well; it punishes individuals and thereafter allows decisions to be taken on a risk-based approach ... A life sentence is ultimately a life sentence; release on parole does not bring the sentence to an end. The individual continues to be monitored and is subject to a whole range of conditions. They can be recalled to prison at any time where their risk increases or where they breach the conditions placed upon them; that option remains open for the remainder of the offender's natural life.” (Alistair Sloan, Response 83, ID: 118552548)

“Scottish courts also have the option of imposing an Order for Lifelong Restriction (OLR), where the convicted person's sentence for serious violent or sexual offences is based on the likelihood of future high-risk offending, rather than the offence itself” (Dr Kasey McCall-Smith, University of Edinburgh Law School, Response 226, ID: 125841301).

“In the case of OLR leaving prison is exceptional ... The numbers paroled are very small – 2 in the past five years” (Professor Richard Simpson, Response 9, ID: 117928044).

Parole Board should decide on risk

Many respondents also specifically made the point that it should be and should remain, for the Parole Board to decide on whether the offender poses a risk to the public, not the sentencing judge. Dr Hannah Graham and Professor Fergus McNeill were concerned that “the proposal unnecessarily constrains the independence of judges and devalues the professionalism of the Parole Board for Scotland in making such complex and sensitive decisions in the public interest ... judgments about *risk* must be made by the Parole Board because risk is dynamic; it changes over time ...” (non-Smart Survey response 1).

The Scottish Sentencing Council was of the opinion that—

“Introducing whole life terms in the manner suggested by this consultation document would reduce the discretion presently afforded to both the judiciary and the Parole Board in these most difficult of cases, and the Council is not persuaded that the case has been made that this legislative change is necessary” (non-Smart Survey response 7).

Nobody deserves to be locked up with no prospect of release/people should have opportunity for reform

A large number of respondents who opposed the proposal provided comments that prison should always offer the opportunity for rehabilitation, and that no person deserves to be imprisoned with no prospect of release. For example—

“People can be reformed. To abandon someone to hopelessness is a dereliction of society’s duty of care, it is barbaric and inhumane.” (David McIntyre, Response 23, ID: 117991717)

“Justice must also always have the goal of rehabilitation, even for the “worst”.” (Anonymous, Response 177, ID: 124863351)

Danger to others in the prison system

A few respondents were concerned about the risk to others in prison if the possibility of release is taken away—

“The prospect of release at some point in the future is an important component of what helps those in custody to comply with the prison regime, thus making it more possible for an orderly custodial environment to be maintained ... the removal of any prospect of release would remove many of the incentives to comply with prison rules which currently exist ... individuals could continue to commit crime in prison without fear of punishment.” (Howard League Scotland, non-Smart Survey response 2).

“An individual without hope would be a nightmare inside the prison and they would be an increased risk of hurting both themselves and others within the prison environment.” (Anonymous, Response 113, ID: 120003996)

The proposal doesn’t guarantee public safety

In a similar vein, some respondents felt that the proposal would not increase public safety. For example, the Scottish Prisoner Advocacy and Research Collective (SPARC) commented that “There is no evidence presented that this sentence would improve the safety of individuals or communities”. (Response 224, ID: 125751198)

James D. Watson made the point that the proposal would not “keep the worst offenders off our streets forever” as “... whole life sentences would still be required to allow compassionate release, and this is more than just being terminally ill.” (non-smart survey response 5)

The Miscarriages of Justice Organisation also noted that “It is incorrect to present the extremeness of the individual’s behaviour as an indication of their likelihood to reoffend ... petty crimes have the highest recidivism rates.” (non-Smart Survey Response 3)

Other criticisms of the proposal

The Miscarriages of Justice Organisation (Scotland) criticized the proposal for ignoring or departing from the current intentions and principles of the criminal justice system in Scotland, such as a “reasoned approach to the sentencing of

offenders”, arguing it is therefore “retrograde in its intended effect.” (non-Smart Survey response 3).

According to the Howard League Scotland, “there is no evidence that Whole Life Custody Sentences are sought by the Scottish judiciary ... England and Wales may well have a working and legal system of Whole Life Orders, but no-one in the Scottish judiciary is asking “why can’t we?” (non-Smart Survey response 2).

A few respondents noted that the proposal would lead to an increased cost to the taxpayer; these comments are dealt with in the ‘financial impact’ section of this summary.

Scott Macdonald raised a concern that “the definition of “most serious” crimes could significantly expand from the definition in this proposed Bill, as happened in England and Wales with the “imprisonment for public protection” (IPP) sentence. It could lead, in these circumstances, to a higher number of inappropriately harsh sentences and a rising prison population in already over-crowded prisons” (Response 34, ID: 118201808).

Two respondents commented that their opposition to the proposal stemmed from it not being harsh enough, and that the death penalty should be reinstated. Kevin Dickson, for example, said—

“I don’t believe that people who commit serious crimes such as murder, rape and molestation of children or women should receive such lenient sentences of the likes we see today, In my honest opinion, if it were possible I would like to see the death penalty brought back for such cases that can be proved without shadow of doubt, as I don’t believe tax payer should bear the burden of keeping such offenders locked up therefor I have to say I am partially opposed” (Response 85, ID: 118957902).

Neutral views

The views of the five respondents (2%) who selected ‘neutral’ included that “each and every case is different and must be considered as so” (Anonymous, Response 92, ID: 119564484); that the role of prison included rehabilitation; that current sentencing practices, including OLRs, are adequate; and that the Parole Board should determine risk upon release.

The Law Society of Scotland (LSS) commented that the proposal to introduce Whole Life Custody sentences “follows the logical argument that life imprisonment was the sentence that replaced the death penalty.” In addition, the LSS pointed to a number of ongoing initiatives that need to be considered in relation to this proposal, such as the Scottish Law Commission’s current project on Homicide, the Scottish Government’s potential reforms to the Parole Board following a consultation in March 2019, titled ‘Transforming Parole in Scotland’, and the Scottish Sentencing Council’s current work on

publishing guidelines on sentencing (Law Society of Scotland, non-Smart Survey response 6).

Unsure

Caroline Brophy-Parkin gave as her reason for choosing “unsure”:

“I am concerned that this could be abused and those who could be rehabilitated not given the opportunity after an appropriate time in prison.” (Response 26, ID: 118007057)

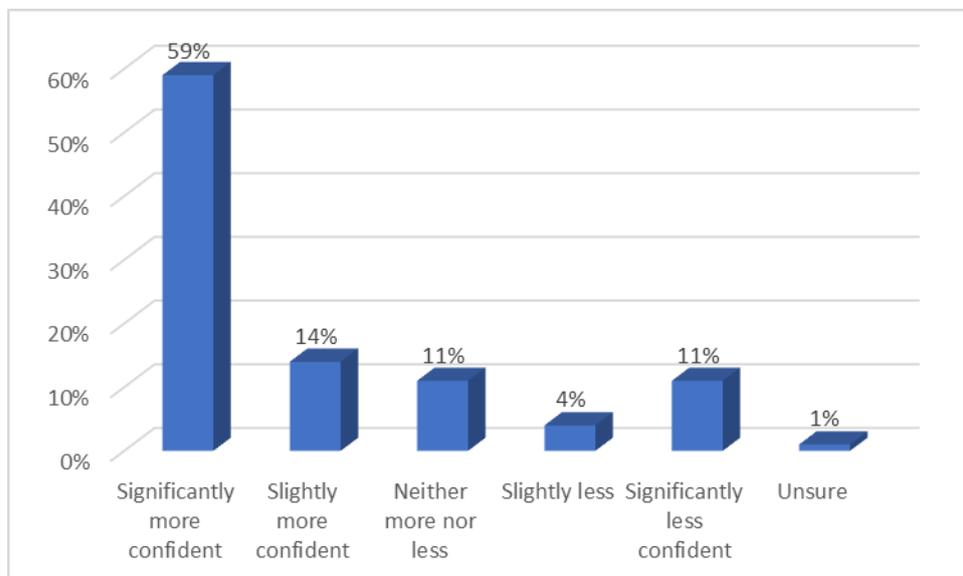
Level of confidence in justice system

Respondents were asked:

Question 2: How would introducing Whole Life Custody Sentences affect your level of confidence in the Scottish justice system? Please explain the reasons for your response.

225 of 232 respondents (97%) answered this question.

132 (59%) choose ‘significantly more confident in the justice system’, 32 (14%) chose ‘slightly more confident in the justice system’, 24 (11%) selected neither more nor less confident, 10 (4%) selected slightly less confident 24 (11%) selected significantly less confident and 3 (1%) were unsure.



Increased level of confidence in the justice system

Significantly more confident

132 respondents (59%) believed that the proposals would give them a significantly increased level of confidence in the justice system.

Reasons included reference to the themes mentioned for supporting the proposal in Question 1, such as: the sentence given should be the full sentence served (Anonymous, Response 114, ID: 120006839); it would increase public safety (Anonymous, Response 3, ID: 117887233); and it would provide for a “better deterrent for potential offenders.” (Anonymous, Response 170, ID: 124854997). For example, Pauline Salvarli commented—

“The current 'soft justice' is simply not working. It has led to greatly reduced confidence in the general public in the ability of our criminal justice system to prevent crime, and to punish it when prevention has failed. It has left Police Scotland deeply demoralised and much less effective. This exacerbates the loss of faith in the system on the part of the public” (Response 10, ID: 117928262).

One anonymous respondent stated—

“The Scottish judiciary needs to be empowered to execute the hugest safety measures to protect the general public. They do not currently have the powers to do so. Therefore, they cannot fully protect the general public. To take (or attempt) to take a life is the most serious violation of society. We look to the judiciary and legal system to protect us and society in general” (Response 101, ID: 119976364).

In addition, respondents noted that justice would “be seen to be done” (Anonymous, Response 7, ID: 117914252) and that the justice system would be seen as “having a tougher and fairer attitude towards crime and its victims” (John Rae, Response 38, ID: 118207118).

Slightly more confident

32 respondents (14%) said that the proposals would give them a slightly increased level of confidence in the justice system.

Such respondents pointed to other issues that need to be addressed in order to tackle deficiencies in the Scottish justice system—

“The justice system has a significant number of problems that go beyond the need for Whole Life Custody sentences ... I think that whole life sentences is the move in the right direction for the justice system, therefore increasing my confidence in it slightly” (Zara Daggart, Response 137, ID: 120868628).

“Whilst this change would go a long way, there are still many more

ways that the Scottish justice system falls short” (Dawn Macbeth, Response 49, ID: 118218552).

One respondent selected ‘slightly more confident’ on the grounds that different judges might sentence differently (Anonymous, Response 103, ID: 119999536).

Less confidence in the justice system

15 respondents (7%) said that the proposal would give them less confidence in the justice system.

Their reasons included that: prison should offer the hope of rehabilitation “and the possibility of reintegration into society” (William Denny, Response 203, ID: 124905186); “[the proposal] would place retribution above all other considerations in sentencing” (Alistair Sloan, Response 83, ID: 118552548); it would increase violence in prisons and risk to prison staff; it would increase cost to the taxpayer (John Macleod, Response 14, ID: 117943171); and it runs counter to the intentions of the criminal justice system. One anonymous respondent said—

“The hands of the criminal justice system would be tied, where professionals within it, who believe that an individual should be released, are unable to progress towards release ... The integrity of the CJS is further undermined by the politicising of offences to score points with the public. Judges can in practice sentence offenders with tariffs exceeding life expectancy. Leave the judges alone – they are not requesting this” (Anonymous, Response 214, ID: 118366599).

Scott Macdonald also raised the concern that “This measure ... could - insofar as it has any impact on judicial decision-making - only increase pressure on Scottish judges to deliver more counter-productively punitive sentences.” (Response 34, ID: 118201808)

The Scottish Prisoner Advocacy and Research Collective argued that “the proposal is contrary to core values of Scottish people and policy which recognise the potential for change and human growth. Consequently, were they to be enacted, our confidence that the justice system in Scotland is based on the best evidence available, and that it does its utmost to respect human rights, would be significantly damaged.” (Response 224, ID: 125751198)

Dr Jamie Buchan raised a concern about miscarriages of justice, stating that “Although there are robust safeguards against miscarriages of justice, it cannot be denied that the Bill does create more opportunities for these to arise.” (Response 164, ID: 124587090)

Neutral

24 respondents (11%) felt that the proposals would not affect their level of confidence in the justice system.

Many said that their sense of justice stemmed from elsewhere. Some respondents felt that nothing would change—

“[the proposal] feels like a populist move to simply appease an abstract sense of justice. Given that these sentences are likely to be given out on a very sparse basis, there would be no reason that the justice system would feel any fairer” (Anonymous, Response no 21, ID: 117967941).

“I am content that the justice system would remain robust and that judges would rarely if ever use such an option” (Brian Smith, Response 27, ID: 118058123).

Unsure

The one respondent who provided a comment for selecting ‘unsure’ said—

“Having such a sentence does not always mean it would be utilised, so I cannot be sure that my confidence or not would be justified.” (Anonymous, Response 201, ID: 124902776)

Other points made

A few respondents made other comments and suggestions in relation to this question. These included—

“The people represented by Parliament should provide sentencing guidelines to judges” (David McIntyre, Response 23, ID: 117991717).

“We would need to be persuaded that providing the courts with the power to impose such sentences would affect the level of public confidence, if the courts were then not, in the eyes of the public, to go on to make sufficiently frequent use of it” (Law Society of Scotland, non-Smart Survey response 6).

Howard League Scotland made the point that the Scottish Crime and Justice Survey (2017/18) shows that 76% of the public “did not know very much, or anything at all, about the criminal justice system. Research shows that the more information that is provided to the public about the circumstances of crimes, the less punitive they become” (non-Smart Survey response 2).

Types of murder

Respondents were asked:

Question 3: Which types of murder should have a Whole Life Custody Sentence as the starting point for sentencing? (Choose all that apply) Please explain the reasons for your response.

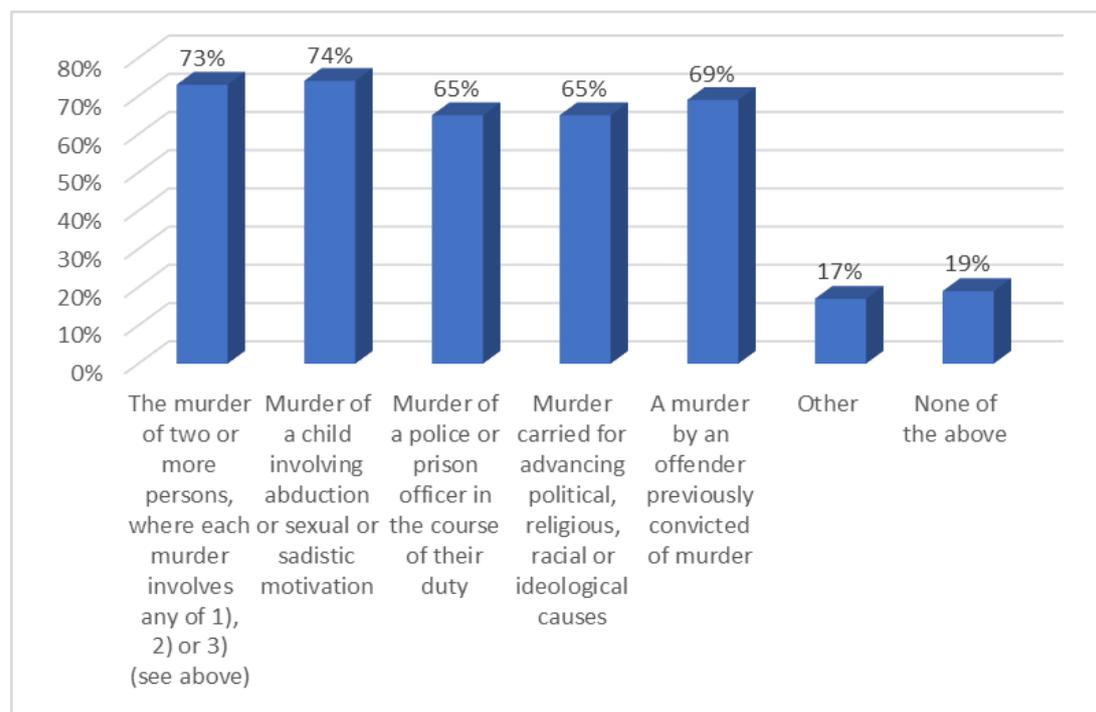
Of the 232 respondents, 226 (97% of the total) responded to this question.

The five main options listed all gained majority support:

- The murder of two or more persons, where each murder involves any of (1) a substantial degree of premeditation or planning, (2) the abduction of the victim, or (3) sexual or sadistic conduct (166 respondents (73%))
- The murder of a child if involving the abduction of the child or sexual or sadistic motivation (167 respondents (74%) selected)
- The murder of a police or prison officer in the course of their duty (146 respondents (65%))
- A murder carried out for the purpose of advancing a political, religious, racial or ideological cause (148 respondents (65%))
- A murder by an offender previously convicted of murder (155 respondents (69%))

Of those who selected any of these five options, over 80% selected all of them.

In addition, 39 respondents (17%) selected “other” and 42 respondents (19%) selected “none of the above”.



Respondents who selected all five options for types of murder

Respondents who selected all of the first five options gave reasons such “All of these are valid and absolutely appropriate criteria, and all are currently used in England” (Anonymous, Response 17, ID: 117954449).

Linda McDonald commented—

“It's my opinion that these types of murderers should be held accountable and face the consequences” (Response 99, ID: 119957361).

In addition, many of the respondents that selected all five options wanted all murders to carry a Whole Life Custody sentence (i.e. in addition to the options listed in the consultation) – for example, Chloe Hunter (Response no 61, ID: 118235251). Another respondent reasoned—

“Even the murder of a single person might constitute a whole life sentence. Why release someone likely to commit murder again? These are all very serious offences creating victims of the victim's families and friends. This needs to be recognised in the actions of the offender” (Anonymous, Response 59, ID: 118231291).

Respondents who selected some of the options for types of murder but not others

Respondents who selected some of the five options but not others gave reasons for their choices. For example—

One anonymous respondent chose the first, second and fifth on the grounds that they were “the most heinous” (Response 47, ID: 118215887).

Isobel Delussey selected the first, second, third and fifth because they “presume a desire and premeditation without remorse. There would be the temptation and compulsion to keep going” (Response 94, ID: 19579039).

One respondent gave as a reason for not selecting the fifth option that “a murderer who has previously murdered ... should [have] been sentenced to life in the first place” (Anonymous, Response 215, ID: 125462021).

Reasons given for selecting ‘other’ and other suggestions made

The 39 respondents (17%) that selected ‘other’ gave a variety of suggestions for other types of crime to be considered for a Whole Life Custody sentence. These have been summarised in the analysis of Question 5, which sought

views on other types of offences (other than murder or certain sexual offences) which should attract a Whole Life Custody Sentence as a 'starting point' for sentencing.

The Law Society of Scotland commented that there should not be a list of 'starting points' for a Whole Life Custody sentence, explaining that-

"It is quite difficult to see what else the court would be able to do if a "whole life sentence" is the starting or headline sentence, unless it is envisaged that the court will have discretion to depart from the default position for stated reasons such as discount for an early plea as they currently have. There would then be less scope for unusual cases to be dealt with on their merits even where a non-exhaustive list is provided. If a persuasive case were ultimately to be made out for introducing "whole life sentences", then a possible suggested approach might be to permit or provide the court with that sentencing option in murder cases if a set of risk criteria were met, similar to the procedures set out currently where the court is considering making an OLR." (non-Smart Survey response 6)

Reasons given for selecting 'none of the above' or not supporting any of the options

Some of the 42 respondents (19%) who selected "none of the above" believed that Whole Life Custody sentences should not be allowed in any case (e.g. John Alistair, Response 75, ID: 118325823)

Howard League Scotland also reiterated their opposition to Whole Life Custody sentences in their response to this question, explaining that—

"The current legal requirement that a life sentence must be imposed following a conviction of murder is relatively unusual ... The wide definition of murder in Scotland, and the automatic life sentence mandated for this crime, is part of the reason why Scotland has the highest rate of life sentenced prisoners in Europe" (non-Smart Survey response 2).

A number of respondents again argued that the current system works well and that Whole Life Custody sentences would be unnecessary (e.g. Rebecca Carr, Response 142, ID: 122531861).

One respondent noted that the "severity of sentence has no demonstrable effect on deterrence" (Gordon Bradley, Response 11, ID: 117930389) and a few respondents were opposed to the idea of creating categories—

"It will create further injustice. Why is the murder of a public servant like a nurse or doctor in the course of their duty less heinous than that of a police or prison officer?" (Anonymous, Response 113, ID: 120003996).

"There should be no change. One death is not a more "valuable " death than another" (Hugh Cumming, Response 212, ID: 125368988).

Types of sexual offences

Respondents were asked:

Question 4: Which sexual offences should have a Whole Life Custody Sentence as the starting point for sentencing? (Choose all that apply) Please explain the reasons for this response.

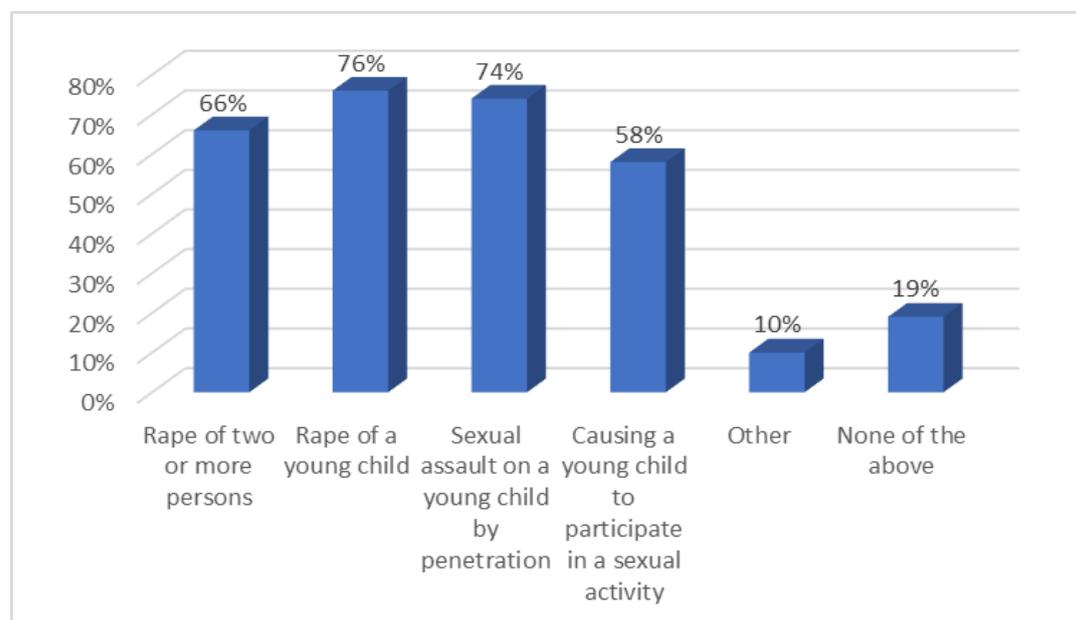
Of the 232 responses, 221 (95% of the total) responded to this question.

Each of the four specific options provided gained the support of a majority of respondents:

- Rape of two or more persons (selected by 145 of respondents (66%))
- Rape of a young child (selected by 169 (76%))
- Sexual assault on a young child by penetration (selected by 164 (74%))
- Causing a young child to participate in a sexual activity (selected by 129 (58%))

And over 70% of respondents selected all four.

In addition, 21 respondents (10%) selected “other” and 43 (19%) selected “none of the above”.



Respondents who selected all four options for types of sexual offences

Respondents provided a number of reasons for selecting all four options provided. For example, a number of respondents believed that there is no possibility for reform for offenders that commit these types of crimes:

“Anyone capable of this level of offending is very likely completely beyond reform and the public must be protected from them” (Anonymous, Response 17, ID: 117954449).

Respondents also explained that Whole Life Custody sentences were needed in order to provide justice to the rape victim—

“Rape takes away the victim’s life, the life they should have had. It is only proportionate that the offender’s life should be affected for the rest of their life” (Anonymous, Response 16, ID: 117949364).

“Again I feel for the victims, their lives have been ruined, so a life sentence is justified” (Andrew Burns, Response 199, ID: 124896490).

Ashleigh Watson commented that Whole Life Custody sentences for these crimes would “send a clear message it will not be tolerated at any level no matter who they are or who their victims are” (Response 50, ID: 118219462).

Some respondents wanted any sexual offences against children to be punishable by a whole life sentence:

“Anything sexual against a child. Again the law is clear on this matter if you can commit these offences in the first place it is vital to protect potential future victims” (Anonymous, Response 64, ID: 118242033).

“Any child abuse one off or systematic should face harshest of sentences” (Adele Smith, Response 121, ID: 120043652).

Respondents who selected some types of sexual offences but not others

A number of respondents selected only the first three options, which related to rape or penetration. One anonymous respondent felt that those three “would represent a balanced starting point” (Response 100, ID: 119970291).

A few respondents selected only those options that related to sexual offences against children, explaining that—

“The protection of young children should be the most important aim of any criminal justice system, and sexual predators who prey on children should be removed from society” (Pauline Salvarli, Response 10, ID: 117928262).

“Offences against children should carry the more severe sentence” (Stuart Macpherson, Response 192, ID: 124892499).

Reasons given for selecting ‘other’ and other suggestions made

Suggestions for other types of sexual crimes to be considered for a Whole Life Custody sentence have been summarized in the analysis of Question 5.

Reasons given for selecting ‘none of the above’

Most of the 43 respondents who selected “none of the above” believed that Whole Life Custody sentences should not be allowed in any case, for example:

“Sexual offences are awful but whole life custody sentences should be a last resort. There are many programmes available to address this behaviour and only after these have been exhausted, or shown to have no effect on the perpetrator, should custody be imposed and it has to be a sentence with a limit” (Anonymous, Response 150, ID: 124180660).

Robert Heading suggested that Whole Life Custody sentences should only apply to multiple sexual offences—

“All of the above could possibly be offences committed on a single occasion. I would have thought repeated offences committed on separate occasions would be a better pre-requisite for a whole life sentence” (Response 129, ID: 120188579).

Another respondent made the point that “... oftentimes a sexual offender is themselves a victim of abuse. Whilst this should not single them out for preferential treatment, they are themselves a victim of circumstances and should be helped instead of being written off as a lost cause worthy only of life in a cell” (Anonymous, Response 172, ID: 124853636).

Howard League Scotland commented that:

“The proposal to make a Whole Life Custody Sentence the starting point for the offences listed would therefore constitute significant ‘up-tariffing’. It should also be noted that the proposed list of offences which would attract a Whole Life Custody Sentence “would be explicitly non-exhaustive” thus also allowing for net-widening ...” (non-Smart Survey response 2).

The Scottish Prisoner Advocacy and Research Collective was concerned about human rights, stating that:

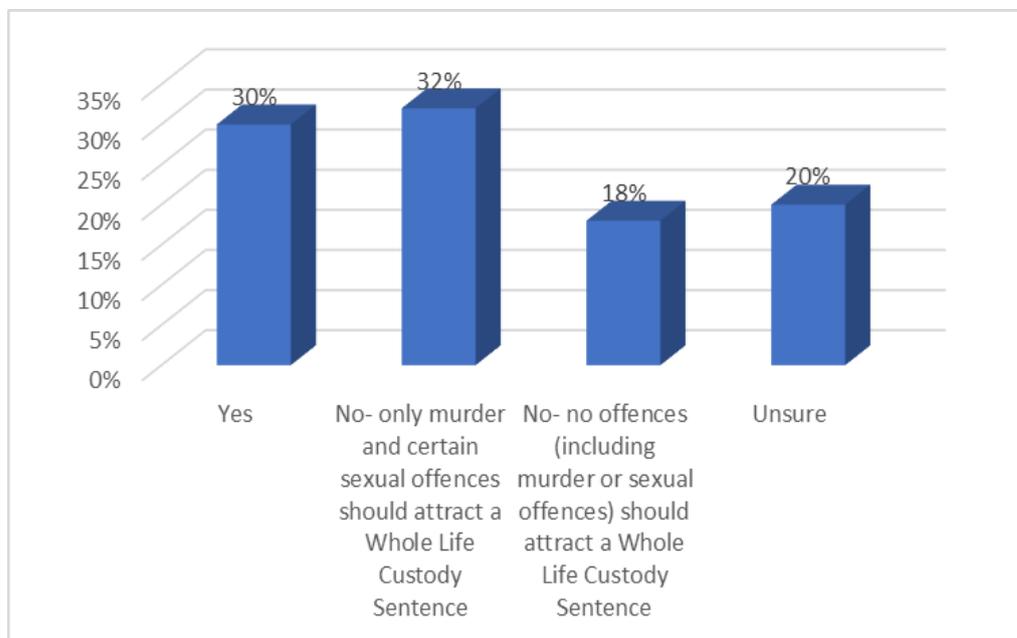
“The consideration of whole life sentences for such crimes further goes against the foundation of human rights principles and jurisprudence of Europe and the UK. The countries making most use of whole life sentences for crimes other than murder are China, the Philippines and the US in its southern states. These are not comparators which Scotland should be embracing” (Response 224, ID: 125751198).

Other types of offences

Q5. Are there any other types of offences (other than murder or certain sexual offences) which should attract a Whole Life Custody Sentence as a 'starting point' for sentencing?

220 of 232 respondents (95%) answered this question.

67 respondents (30%) thought that there were other types of offences which should warrant a Whole Life Custody sentence, 71 (32%) believed that only murder and certain sexual offences should attract a Whole Life Custody sentence and 39 respondents (18%) believed that no offences should warrant a whole life custody sentence. Forty-three respondents (20%) were unsure.



Yes

Of those who believed that other offences should be eligible for a Whole Life Custody sentence, almost a third wanted acts of terrorism to be included. For example, Pauline Salvarli referred to—

“carrying out acts of terrorism where loss of life or serious maiming was the intention, whether or not anyone actually died as a result of such acts, for example a bombing, deliberate, pre-planned driving of a vehicle into a crowd or similar” (Response 10, ID: 117928262).

Other suggestions included:

- The murder of an elected official—

“I think that murder of an elected official e.g. parliamentarian should command a whole life sentence. Planning to and carrying out the murder of a policeman is an act against the state (anarchy?), same should apply for Government” (Anonymous, Response 3, ID: 117887233).

- The murder of any vulnerable adult, child or pregnant woman.
- “Anyone involved with firearms; leaders of serious and organised crime gangs” (Anonymous, Response no 80, ID: 118369569)
- The murder of members of the emergency or ‘blue light’ services
- The murder of elderly people
- The murder of off-duty police officers, prison officers and members of the armed forces
- The murder of teachers and nurses-

“Teachers and nurses have been killed while going about their normal work. Are their lives any less valuable than those of police or prison officers?” (Helen Blackburn, Response 155, ID: 124205483).

- Causing death due to driving under the influence
- Treason
- Paedophilia
- Animal cruelty
- Acts of torture
- Serious assault
- Drug dealing and the supply of drugs
- Repeat offenders
- Repeated incidents of domestic abuse carried out by the same abuser
- Any form of rape or violent sexual assault
- Any crime in which the victim is “left with lifelong trauma/loss” (Anonymous, Response 207, ID: 124936318).

No – only murder and certain sexual offences should attract a Whole Life Custody Sentence

71 respondents (32%) to this question selected this option. However, the reasons given were more about why these offences should attract a whole life sentence rather than why others should not—

“Murder and sexually motivated crimes are the worst crimes you could imagine and must be met with the ultimate punishment” (Anonymous, Response 17, ID:117954449).

“I have chosen this option as I think murder and any sexual crimes on a child are the acts of a person who will never realise the true extent of what they have done. They are a severe danger” (Response 186, Sandra McGregor, ID:124878853).

No – no offences (including murder or sexual offences) should attract a Whole Life Custody Sentence

39 respondents (18%) to the question selected this option.

One respondent expressed concern that the definitions of ‘most serious’ crimes could increase if the courts were given the power to impose a whole life custody sentence (Scott Macdonald, Response 34, ID: 118201808) whilst Andrew Fraser asked why such a change in sentencing was thought necessary—

“No-one has explained why this should be a real improvement on the current situation. No-one has explained why it will be effective” (Response 147, ID: 119568713).

In its response the Scottish Prisoner Advocacy and Research Collective (SPARC) expressed its opposition to the proposal:

“there are grave concerns about the utility and humanity of this proposed sentence, and therefore we cannot support its use in any circumstances. We recognise that these are amongst the most serious offences, but our judiciary already have, and make extensive use of, extensive powers of sentencing to respond to these cases” (Response 224, ID: 125751198).

Unsure

43 respondents (20%) were unsure whether other types of offence (than those proposed by the consultation document) should attract a Whole Life Custody sentence.

One Anonymous respondent felt that more background information on the defendant’s criminal history would need to be taken into consideration before a court handed down a judgement (Response 57, Anonymous, ID: 118226688). Zara Daggart felt that it would depend on the facts and circumstances of the case being tried as to whether a whole life custody sentence should be imposed (Response 137, ID: 120868628).

Robert Heading noted that an accused person’s past criminal record could be a factor and that a judge should be able to use discretion in these cases:

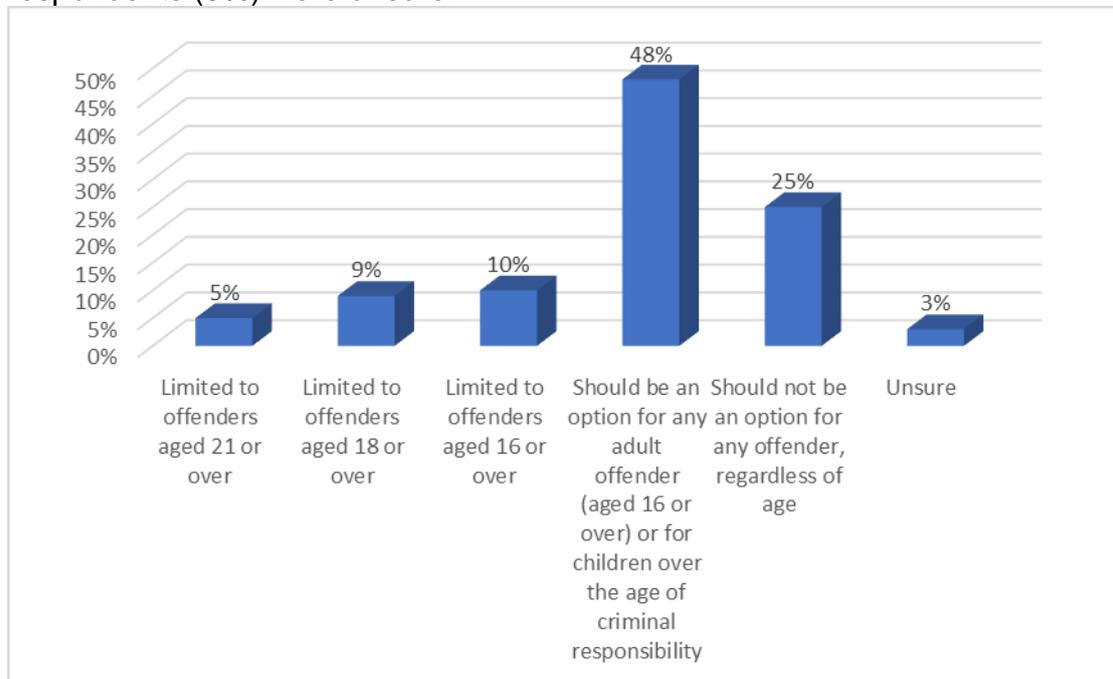
“I am concerned about repetition of serious offences being a factor for a judge to consider. For example, should an individual who drives dangerously and injures/kills someone while already disqualified and without insurance be considered for a whole life sentence if he does it again? Allow the judge discretion, I think (Response 129, Robert Heading, ID: 120188579).

Young offenders

Which of the following best expresses your view on whether whole life custody should be a sentencing option for younger offenders?

220 respondents (95%) answered this question.

By far the most popular option was that Whole Life Custody sentences should be an option for any adult offender (aged 16 or over) or for children over the age of criminal responsibility (at the time the offence was committed) – which was supported by 106 respondents (48%). 24% of respondents wanted Whole Life Custody sentences limited to adults, with the cut-off age set at either 16 (22 respondents, 10%), 18 (19 respondents, 9%) or 21 (12 respondents, 5%). 54 respondents (25%) believed that Whole Life Custody sentences should not be an option for any offender, regardless of age, and 7 respondents (3%) were unsure.



Anyone over the age of criminal responsibility

Views expressed in support of this position included:

“Currently the law is that at age 12 years, if you are deemed able to understand the implications of giving your view and are mature enough you can have your view taken into account. A young person may well understand what they are doing when they commit an offence. They will certainly be aware of whole life sentencing through talking to others, and school. They and adults need to be aware that the ultimate sanction on their behaviour is there. We currently have a society of no limits or few effective ones” (Response 59, Anonymous, ID: 118231291).

“It is unlikely that many children would be sentenced to a whole life ruling but it should be a last resort option...” (Response 7, Anonymous, ID: 117914252).

Adult offenders only

Those who gave reasons for limiting Whole Life Custody sentences to adults tied the cut-off age to a person’s level of maturity and to other existing age-limits:

“By the time someone is 21 they should have the mental ability to see what is right and wrong ...” (Anonymous, Response 84, ID: 118563965).

“I believe 21 is the lower limit in England and Wales, and this seems sensible. While 21 is still horribly young to condemn a person to lifetime behind bars, to pass a sentence on a minor is utterly abhorrent” (Response 102, Anonymous, ID: 119998161).

Offenders aged 18 or over should “know better” (Anonymous, Response 54, ID: 118221741) and are “classed as adults” (Anonymous, Response 162, ID: 124240848).

“The age of consent and or adulthood is a minefield that needs fixing, generally I believe 18 is appropriate” (Anonymous, Response 174, ID: 124857910).

“You have rights at 16 to vote and have a say in this country therefore you should be criminally responsible. Rights are given as well as responsibilities” (Response 64, Anonymous, ID: 118242033).

“I believe there is a drift towards denying that young adults are not mature enough to face the full force of the Law. This is nonsensical and extremely liberal approach and NOT sustainable. Old enough to leave school, to marry and soon possibly to vote. Then, old enough to suffer full life for their actions” (Response 194, David Middleton, ID: 124894037).

Whole life custody should not be an option for any offender, regardless of age

54 respondents (25%) to the question selected this option.

One anonymous respondent advocated “a Scandinavian-style system in which prisoners are reviewed and can simply have their sentences extended if they are likely to re-offend or show no mercy for their crimes” (Response 21, Anonymous, ID: 117967941).

Another respondent pointed out that Children’s Hearings already exist to deal with juvenile offending and that “they provide a humane and effective approach to juvenile offending. Whole life custody would be totally inconsistent with the ethos and practice of the hearings” (Response 165, Anonymous, ID: 124368176).

Dr Kasey McCall-Smith argued that Whole Life Custody for children would be incompatible with international obligations:

“In line with the UN Convention on the Rights of the Child (article 37(a)), to which the UK is a party, life sentences for children (18 years and under) are prohibited. Therefore, Scotland, as a devolved nation, has an obligation not to impose life sentences on children” (Response 226, ID: 125841301).

Unsure

7 respondents (3%) to the question were unsure about Whole Life Custody sentences for younger offenders. One respondent noted that how an offender viewed their actions at the age of 30 could differ from when they were 18 and committed the crime (Response no 57, Anonymous, ID: 118226688) and another respondent thought that decisions should be based on “individual case review” (Caroline Brophy-Parkin, Response 26, ID: 118007057).

Financial Impact

Q7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have? Please explain the reasons for your response.

174 respondents (75%) answered this question. Most respondents either believed that the proposed Bill would lead to additional costs, or that the cost implications would be minimal (due to long-term savings balancing out initial increased spending) and/or were not a factor that should be considered for the purposes of this proposal. Some respondents noted that the proposal may lead to savings, whilst others questioned whether the costs of the proposal had been fully examined. A significant number of respondents stated that they did not know what the financial impact of the proposal would be.

Additional expense

Dr Jamie Buchan thought significant costs could arise as a result of the proposed legislation, including costs ranging from housing high security prisoners, additional training for staff and any compensation cases where a prisoner challenged a while life sentence. He commented:

“It is very doubtful that this would be a good use of the SPS budget, when there are pressing issues of overcrowding and safety across the Scottish prison estate. It would be essential to ensure proper training,

and provision, for appeals and reviews as well, which would be a significant additional cost not considered anywhere in this proposal. Also, not considered are the significant financial losses that would ensure if a prisoner successfully challenged a whole-life sentence in court and was awarded damages” (Response 164, ID: 124587090).

A few respondents pointed out that not only would there be costs associated with housing prisoners but also healthcare costs for those prisoners in later life. One such respondent stated:

“In the longer term the proposed Bill would have a substantial financial effect ... Prisons are not designed to be old people’s homes. Whilst prisoners with dementia may not be a problem in terms of disorder, they will create costly problems in terms of care ...” (Response 165, Anonymous, ID: 124368176).

Cost not a factor

A significant number of respondents questioned whether costs should be a factor. For example, Pauline Salvarli said:

“I do not think that the financial impact should be a major consideration. Protecting the public, taking dangerous criminals off the streets and keeping our children and vulnerable people safe should be the priority, regardless of cost. How can you put a price on the security and safety of the public, especially of children?” (Response 10, ID: 117928262).

Another respondent noted:

“... the cost is immaterial to the safety of the public at large and perhaps the criminals may think twice about their behaviour if they know they could face a life in prison” (Response 7, Anonymous, ID: 117914252).

One anonymous respondent pointed out that the small number of people likely to be given whole-life sentences would limit the costs involved:

“While a whole life tariff is expensive, the numbers will it is hoped be very small. England and Wales have approximately 75 such inmates, so on a similar population proportion, that puts Scotland’s whole life numbers in mid-single digits. Costs should not be the issue. That way lies the dangerous road towards favouring capital punishment, which I would not support in any circumstances” (Response 102, Anonymous, ID: 119998161).

Potential savings

A number of respondents argued that although the proposed Bill would incur additional costs, these could be offset by savings generated in the long-term, if the offender was sentenced to a whole life sentence and therefore had no

possibility to reoffend and use up police and court time. Others felt that this may also serve as a deterrent to future offenders and may therefore reduce the number of criminal acts committed:

“This would increase costs because there would be more people in prison, however long term we might see saving as potential offenders may be wary of ending up in jail for life” (Response 191, Anonymous, ID: 124889271).

“... Repeat offenders waste vast amount of police resources in enquiry time, not to mention court time and the time of members of the public (who are often messed around by court and treated very poorly by the legal system) ... The financial cost will also be mitigated by reduced police enquiries.” (Response 63, John Emley, ID: 118241891)

Costings not justified

A few respondents raised concerns about the approach to costs that had been taken in the consultation document. According to Dr Hannah Graham and Professor Fergus McNeill:

“the human and fiscal costliness of this draft proposal has neither been clearly articulated nor well justified by its proponent ... resources could be better spent in other priority areas, including violence reduction, restorative justice and victim support services” (non-Smart Survey response 1).

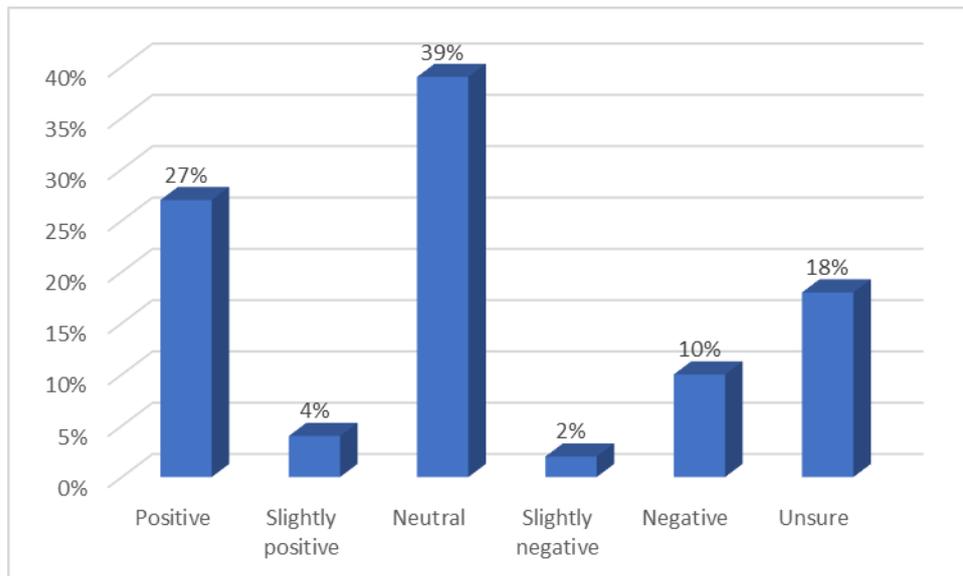
James Watson noted that “Adopting a pro rata approach to calculating costs is questionable ... the average annual cost does not include the support services for long term prisoners and the programmes that they undertake. The costs here are likely to be higher ...” (non-Smart Survey response 5).

Equalities Impact

Q8. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation?

220 respondents (95%) answered this question.

59 respondents (27%) felt that the proposed Bill would have a positive impact, 8 respondents (4%) believed that the proposal would have a slightly positive impact, whilst 86 (39%) felt that the proposed Bill would have a neutral impact, 5 respondents (2%) believed that the proposed Bill would have a slightly negative impact, 23 respondents (10%) believed that the proposed Bill would have a negative impact, 39 respondents (18%) were unsure.



Positive impacts

Most of those who believed that the proposed Bill would have a positive impact did not explain this in terms of the protected characteristics (under the Equality Act 2010) but instead claimed that the proposed Bill would offer a positive impact more widely. For example:

“The Bill regardless of any characteristics outlined above, the taking of a life or actions which will affect the victim’s life for the duration of their life would mean equality across the board regardless of those characteristics” (Response 16, Anonymous, ID: 117949364).

“Why should taking dangerous criminals off the streets impact negatively on any of that? If anything, making the streets safer has to have a positive effect for old people and for people of different beliefs”. (Response 10, Pauline Salvarli, ID: 117928262)

Neutral

Others took the view that protected characteristics were irrelevant in this context:

“I don’t believe this will have any impact. A criminal offender is a criminal offender and protected characteristics shouldn’t play any role in justice” (Response 17, Anonymous, ID: 117954449).

“There should be no question regarding equality issues and provisions. All defendants should be treated equally regardless of age, race, gender etc. The offence should be the focus and not the defendant’s make up ...” (Response 57, Anonymous, ID: 118226688).

Christopher G M made the point that currently males make up the majority of the prison population and that this was unlikely to change as a result of the proposed Bill (Response 60, Christopher G M, ID: 118234013).

One anonymous respondent felt that only in the case of an offender suffering from mental illness should a different approach be considered (Response 189, Anonymous, ID: 124887388).

Negative

One anonymous respondent felt the proposal would have an unfair impact on younger offenders:

“... the younger an offender is, potentially the longer they shall serve. Thus a 21-year-old and a 51-year-old, committing the same offence, will in practice serve greatly different sentences” (Response 214, ID: 118366599).

The same respondent also noted that the proposal would have a negative impact offenders’ families “... whole life sentences will effectively end the marriage of offenders thus punishing the partner and children of the offender further, with no hope of a restored family life in the future” (Anonymous, Response 214, ID: 118366599).

Dr Kasey McCall-Smith stated that those individuals classed as ‘vulnerable’ might be impacted more negatively than other individuals:

“Research and practice in other jurisdictions and in particular the US, has demonstrated that whole life sentences are applied to individuals suffering from some pre-defined vulnerability more often than individuals suffering from no vulnerability. This is undoubtedly true for individuals from minority groups or with disabilities. Thus, any move towards up-tariffing could have a negative response for vulnerable groups including those identified under the Equality Act 2010” (Response 226, ID: 125841301).

Unsure

A similar point was made by SPARC (Scottish Prisoner Advocacy and Research Collective):

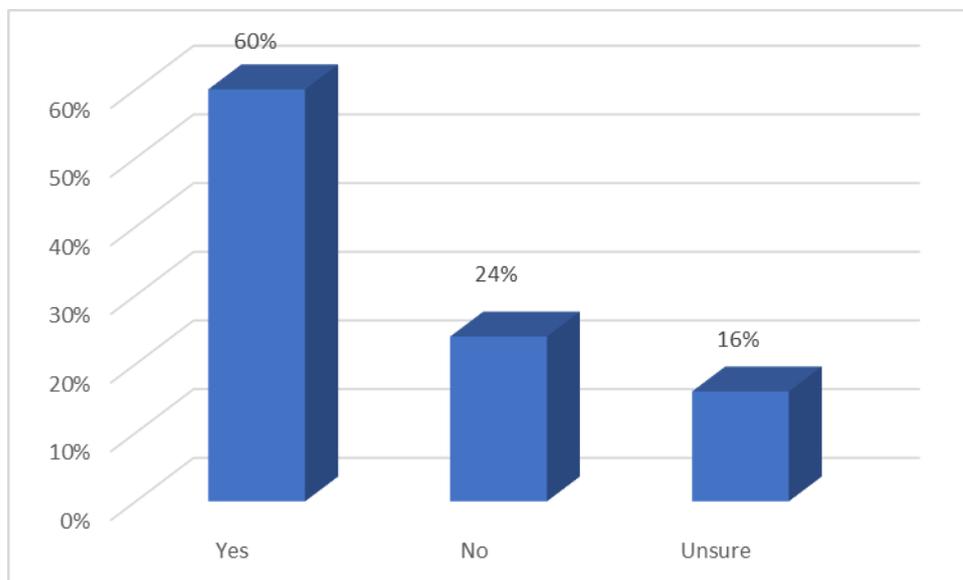
“Much of the scholarship on punishment in the UK and the US has highlighted the discriminatory impact of sentences. For the same crimes people who are poorer, less literate, of a minority ethnic or religious background, statistically are more likely to be given longer, more harsh and more prison-based sentences than their counterparts” (Response 224, ID: 125751198).

One anonymous respondent who was unsure what impact the proposal would have on equalities said this should not prevent a whole life custody sentence being handed out (Response 84, ID: 118563965).

Sustainability

Q9. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having any likely future disproportionate economic, social and/or environmental impacts?

Of the 222 respondents (96%) who answered this question, 134 (60%) felt that the proposed Bill could be delivered sustainably, 52 (24%) that it could not be delivered sustainably, and 36 (16%) were unsure.



Yes

Reasons given for thinking the Bill could be delivered sustainably included a reduction in police resources, social service resources and housing. One anonymous respondent argued that:

“... the social impact will be positive. If you feel that you live in a society where justice is not served you have less respect for the law and authority. Civic duty diminishes, and petty crime rises, which all costs money” (Response 3, Anonymous, ID: 117887233).

Ashleigh Watson felt that the proposed Bill would give the public reassurance that crime is taken seriously and that offenders will be punished:

“This Bill needs to happen so that socially, economically and environmentally the country is better off ...” (Response 50, ID: 118219462).

No

Others, however, believed that imposing life-long sentences on an offender, with no chance of rehabilitation would cause economic and social harm to society.

Scott Macdonald argued that the negative impact on the children and families of an imprisoned offender needs to be considered:

“Aside from increasing the budgetary pressures on the Scottish Government, the very high prison population has created incredible social damage. Family disruption has harmed the educational life chances of children who have an imprisoned parent, as well as significantly impacting their emotional wellbeing. It has compounded social deprivation by depriving households of potential productive wage-earners” (Response 34, ID:118201808).

SPARC commented:

“Similar to the question relating to equalities, this sentence is highly likely to contribute to the disproportionate impact of punishment on those with the least secure economic and social positions, undermining equal societies as a whole. The fact that this would apply to a relatively small number as compared to the thousands who receive other punishments, is no defence. If a sentence is likely to be discriminatory in its application, it is both unjust and antidemocratic” (Response 224, ID: 125751198).

Unsure

Two respondents thought that only ‘time would tell’ as to whether or not there is any impact on sustainability.

Others who were unsure seemed to assume that economic costs were the only factor affecting sustainability, required more information, or were unsure what the question meant.

General Comments

Respondents were asked:

Question 10: Do you have any other comments or suggestions on the proposal?
--

Of the 232 responses, 108 (47%) respondents answered this question.

A number of recurring themes were cited in response to this question that have already been covered elsewhere in this summary.

Some respondents used this question to reiterate their strong support or opposition to the proposal.

Some of the Non-Smart Survey respondents provided detailed analysis and scrutiny of the consultation document, both in response to Question 10 and throughout their submission. For example, James D. Watson provided comparative analysis of the crime rates and prison populations of Finland and Scotland (which have similar population sizes) and provided survey research on public perceptions of sentencing (Non-Smart Survey response 5).

The Scottish Legal Action Group drew particular attention to the terms of the judgment of the European Court of Human Rights in *Hutchinson v the United Kingdom*, discussed the Court's principles in relation to life sentencing, and the requirement for any proposal to be compliant with European Convention on Human Rights (Non-Smart Survey response 4).

Howard League Scotland provided a detailed discussion of the relevant case law that indicates that the offender must have the prospect of release and the possibility of a review of their sentence (Non-Smart Survey response 2).

These responses are available in full on the member's website:
<https://www.liamkerr.org.uk/life-should-mean-life>

SECTION 4: MEMBER'S COMMENTARY

Liam Kerr MSP has provided the following commentary on the results of the consultation, as summarised in sections 1-3 above.

Firstly, I would like to thank the substantial number of respondents who got involved in this consultation and thank you to the Scottish Parliament's Non-Government Bills Unit.

Over 200 responses were received and the contributions provided valuable insight into the debate surrounding whole life custody. I was glad to see the responses were overwhelmingly positive to my proposals and note that several of the concerns raised could be addressed through amendment and improvement in the proposals.

The consultation has demonstrated that as well as the public, many key stakeholders in this debate across Scotland are in principle supportive of this initiative.

I note that support for the core proposal, that the worst criminals should be sentenced to custody for the rest of their lives, was high with 78 per cent of respondents agreeing with the statement. Reasons given ranged from providing victims and the general public with a sense of justice, to deterring people from ever committing such heinous crimes.

It is notable that widespread support (73 per cent) was given for the proposition that such a proposal would boost confidence in the Scottish Justice system. This is unsurprising as many cited this as a reason for supporting the main idea of 'life means life' sentences.

Furthermore, majority support was received for each of the five crimes we suggested as being eligible for a whole life custody sentence. This demonstrates that not only is there support for our proposal but support also for its wide-ranging application.

This consultation makes clear that these proposals are right for Scotland and would be a further enhancement to the Scottish system of justice.

The next step for me on the basis of this summary of consultation responses would have been to lodge a final proposal and seek the MSP support required to gain the right to introduce a Bill. By the time I had reached that point, the situation was complicated by the coronavirus crisis and the circumstances meant there was insufficient time left this session to guarantee a Bill could be drafted and complete its passage through the Parliament.

Therefore, should the people vote to give me the honour to serve them at the 2021 election, I will look to progress my proposal for a Bill in the early part of session 6 of the Scottish Parliament, on the basis of the consultation I have already run.

That will deliver justice; that will deliver what the people have clearly signalled they want and that will ensure that for the worst criminals in Society, life really does mean life.

ANNEXE

Consultation responses

All publishable responses can be seen on the member's website at <https://www.liamkerr.org.uk/life-should-mean-life>

Below is a list of responses attributable to organisations, in alphabetical order. Due to the volume of responses, a list of individuals who responded has not been included here.

Organisation	Response number	Smart Survey ID (where applicable)
British Transport Police (Justice Solutions)	Non-Smart Survey Response 8	N/A
Edinburgh Bar Association	225	125874391
Howard League Scotland	Non-Smart Survey Response 2	N/A
Law Society of Scotland	Non-Smart Survey Response 6	N/A
Miscarriages of Justice Organisation	Non-Smart Survey Response 3	N/A
Scottish Legal Action Group (SCOLAG)	Non-Smart Survey Response 4	N/A
Scottish Prisoner Advocacy and Research Collective (SPARC)	224	125751198
Scottish Sentencing Council	Non-Smart Survey Response 7	N/A