

PRISONERS (DISCLOSURE OF INFORMATION ABOUT VICTIMS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Prisoners (Disclosure of Information about Victims) Bill as brought from the House of Commons on 3 March 2020 (HL Bill 102).

- These Explanatory Notes have been produced by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The purpose of the Prisoners (Disclosure of Information about Victims) Bill is to ensure that circumstances where offenders do not disclose certain details about their offences, specifically the location of victims' remains and the identity of child victims in indecent images thereby causing additional distress to victims and their families, are considered by the Parole Board as part of their assessment as to whether such an offender should be released from prison.

Policy background

- 2 The first measure of this Bill is a version of Helen's Law' which has been the subject of a long running campaign following the murder of Helen McCourt in 1988 whose body has never been found.
- 3 The Bill's provisions relating to offenders convicted of taking or making indecent images of children follows the case of Vanessa George who was released on parole after serving 10 years for multiple counts of sexual abuse and taking and distributing indecent images of children. She refused to name the victims, which has added to the distress of families whose children attended the nursery where the abuse took place.
- 4 The Parole Board already has internal guidance which advises panel members to consider any failure or refusal by an offender to disclose the whereabouts of a victim's remains when assessing suitability for release. It is also established Parole Board practice to consider the non-disclosure of relevant information by offenders in cases involving living victims. The Bill therefore puts both this guidance and established practice into statute.

Legal background

- 5 The Bill proposes to change the statutory schemes that apply to prisoners serving life sentences, extended determinate sentences and other relevant sentences for, variously, the common law offences of murder and manslaughter and the offence of taking or making an indecent photograph or pseudo-photograph of a child at section 1(1)(a) of the Protection of Children Act 1978. The Bill does not change the statutory release tests themselves. Rather the Bill provides that, when the Parole Board are applying those tests and assessing whether a relevant offender should be released after serving the appropriate custodial term, the Board must consider the matters covered by the Bill.
- 6 The Bill achieves this by adding new sections after the life sentence release provisions in section 28 of the Crime (Sentences) Act 1997, after the release provisions for extended determinate sentences in section 246A of the Criminal Justice Act 2003, and by making similar changes to Schedule 20B of the Criminal Justice Act 2003 that apply to predecessor sentences. The changes relating to victims' remains are made in respect of all such sentences as it is possible to have received either a life sentence or an extended determinate sentence for manslaughter. The changes relating to indecent images are made for extended determinate sentences and also life sentences as although an offender cannot currently receive a life sentence under the 1978 Act, it was previously possible for offenders to receive a sentence of imprisonment for public protection for this offence which falls into the definition of a life sentence. All these sentences involve Parole Board release. For life sentences this is in all cases. For extended determinate sentences the Parole Board can direct release once two thirds of the requisite custodial period has been served before automatic release at the end of that period. There is nothing in the present statutory scheme which specifies any considerations which the Parole Board should or should not take into account in their assessment (although the Parole

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Board Member's Handbook provides non-statutory guidance to members in how to approach cases). General public law principles mean that all relevant considerations should be taken into account. This Bill will change this by creating an express obligation for the Parole Board to take the non-disclosure of certain information into account when considering certain cases and as part of their wider assessment as to an offender's suitability for release.

- 7 More specifically, when a prisoner who has been convicted of murder or manslaughter and is serving either a life sentence or an extended determinate sentence (or one of its predecessors) is considered for release by the Parole Board, the Board must take into account any failure on the part of that prisoner to disclose the location of the victim's remains as part of their assessment of the offender's suitability for release. Additionally, when a prisoner who has been convicted of the offence of taking or making an indecent photograph or pseudo photograph of a child, and who is serving an extended determinate sentence (or one of its predecessors) or is serving a sentence of imprisonment for public protection, is considered for release by the Parole Board, the Board must take into account any failure on the part of that prisoner to disclose the identity of the child or children who are the subjects of the images.

Territorial extent and application

- 8 Clause 3 sets out the territorial extent of the Bill (the jurisdiction of which the law forms a part). The provisions of the Bill extend and apply (where the law produces a practical effect) to England and Wales only. Prisons and sentencing (including release provisions) are devolved to Scotland and Northern Ireland. The Bill will apply to those convicted of murder and the equivalent offences to manslaughter and taking or making indecent photographs of children in Scotland, Northern Ireland and other territories (including the Channel Islands and the Isle of Man) and who are subsequently transferred within the jurisdiction of England and Wales and considered for release by the Parole Board of England and Wales.
- 9 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Murder or manslaughter: prisoner's non-disclosure of information

- 10 Clause 1 applies to the release provisions relating to life sentences in murder, manslaughter and indecent image cases by placing a statutory obligation on the Parole Board to consider non-disclosure of information about a victim's remains or the identity of children in such indecent photographs when making a public protection decision (including a decision to release) about a prisoner. Clause 1(1) inserts a new section 28A after the life sentence release test (at section 28 of the Crime (Sentences) Act 1997). Clause 1(2) makes consequential amendment to section 28.
- 11 Subsection (1) of the new section 28A sets out the circumstances in which the new obligation on the Parole Board will apply. When the Parole Board makes a public protection decision in relation to a prisoner who is serving a life sentence for murder or manslaughter, and the Board does not know where or how the victim's remains have been disposed and the Board believes that the prisoner has information about this (whether that relates to his or her own actions or those of another person) that the prisoner has not disclosed to the Board, this fact (known as the prisoner's non-disclosure) must be taken into account. The relevant issue here is whether the Parole Board has subjective knowledge as to the fate of the victim's remains, and what they reasonably believe the prisoner to know about this.
- 12 Subsection (2) of the new section provides that when making such a public protection decision, the Board must particularly take account of the prisoner's non-disclosure and the reasons, in the Parole Board's view, for the non-disclosure. Again, the relevant issue is what the Parole Board subjectively believe to be the reason for the non-disclosure on the part of the prisoner. This subjective test will enable the Parole Board to consider these reasons – for example, whether the prisoner's non-disclosure is the result of a psychiatric disorder, or a deliberate decision not to disclose the whereabouts of a victim's remains.
- 13 Subsection (3) of the new clause makes it clear that the new obligation on the Parole Board that is created by the Bill does not interfere with the way in which the Board takes public protection decisions or limit the things which may be taken into account.
- 14 Subsection (4) of the new clause gives further information on what is meant by "life sentence", "murder" and "manslaughter" for the purposes of subsection (1)(a). The reference to a life sentence refers to a sentence that has been passed before the coming into force of Clause 1 of the Bill. The reference to murder includes the equivalent offence in Scotland, Northern Ireland, the Channel Islands, the Isle of Man and any other country or territory. Similarly, the reference to manslaughter includes the equivalent offences in all such countries and territories including the offence of culpable homicide in Scotland.
- 15 Subsection (5) of the new clause makes it clear that the reference to a public protection decision refers to the Parole Board's decision to potentially release a prisoner pursuant to section 23(5) of the Crime (Sentences) Act 1997. This limits the new provisions' application to first release of offenders only, excluding offenders subsequently re-released after recall on licence. The victim is defined as the victim of the offence for which the life sentence was given, and the reference to a victim's remains being disposed of includes a situation where remains are left at the location where the victim died so there is no requirement for the prisoner to have actually done an act to dispose of those remains.
- 16 Clause 1 also inserts a new section 28B into the Crime (Sentences) Act 1997. This functions in the same manner as the new section 28A, but will apply when the Parole Board makes a public protection decision in relation to a prisoner who is serving a sentence of imprisonment for public protection for the offence of taking or making an indecent photograph (or pseudo-

photograph) of a child. Where the Board does not know the identity of the child who appears in that indecent image and believes that the prisoner has information about the identity of that child which the prisoner has not disclosed, this non-disclosure must be taken into account.

- 17 Subsection (2) of the new provision sets out the subjective test the Board must apply in making a release decision. Subsection (3) ensures the new provision does not interfere with the overall discretion of the Board in application of the release test, and subsection (4) ensures the new provision will apply to those sentenced before the coming into force of Clause 1.
- 18 Subsections (5) and (6) of the new provision define “an offence of taking an indecent photograph of a child” and also “the relevant offence of making an indecent pseudo-photograph of a child”. A pseudo-photograph is defined in section 7(7) of the Protection of Children Act 1978 as an image that is made to look like a photograph. In such a case, the child who is the subject of the image is the child whose image the Board believes was used in the making of the pseudo-photograph.
- 19 Subsection (7) confirms that the reference to a public protection decision refers to the Parole Board’s decision to potentially release a prisoner pursuant to section 23(5) of the Crime (Sentences) Act 1997. This limits the new provisions’ application to first release of offenders only, excluding offenders subsequently re-released after recall on licence. It also defines a “relevant indecent image” as being an actual photograph of a child or a pseudo-photograph of a child so both are included whenever that phrase is used.
- 20 Subsection (2) of Clause 1 inserts a signposting provision into section 28 to make it clear when looking at that section that new sections 28A or 28B must be applied.

Clause 2: Manslaughter or indecent images: prisoner’s non-disclosure of information

- 21 Clause 2 changes the release provisions for extended determinate sentences (and predecessor sentences) to place a statutory obligation on the Parole Board to consider the non-disclosure of information in similar situations to those set out in Clause 1 in respect of victim’s remains and in respect of indecent images. The clause directs that new provisions be applied to the extended determinate sentence release scheme (at section 246A of the Criminal Justice Act 2003) and its predecessor sentences (see Schedule 20B of the Criminal Justice Act 2003).
- 22 Clause 2(2) creates a new section 246B of the Criminal Justice Act 2003 that makes identical provision in respect of a victim’s remains to that provided for in Clause 1 for life prisoners, for prisoners serving extended determinate sentences for manslaughter imposed under sections 226A and 226B. These prisoners are made subject to Parole Board consideration for release at the two thirds point of sentence under section 246A of the Criminal Justice Act 2003. This clause and the new section 246B require the Parole Board to consider a failure by the extended determinate sentence prisoner to disclose information about a victim’s remains when the Board considers release. Like the new section 28A, these changes also apply to prisoners sentenced before the Bill comes into force via the new subsection 246B(4).
- 23 Clause 2(2) also inserts a new section 246C into the Criminal Justice Act 2003. Section 246C applies when the Parole Board makes a public protection decision in relation to a prisoner who is serving an extended determinate sentence for the offence of taking or making an indecent photograph of a child, or a relevant offence of making an indecent pseudo-photograph of a child under section 1(1)(a) of the Protection of Children Act 1978. The provision is engaged where the Board does not know the identity of the child who appears in that indecent image and believes that the prisoner has information about the identity of that child which the prisoner has not disclosed. As with the changes in respect of a victim’s remains made by Clause 1, and new section 246B, the relevant consideration is the Board’s subjective knowledge as to the identity of the child who is the subject of the indecent image, and what they reasonably believe the prisoner to know about this.

- 24 Subsection (2) of the new section 246C provides that when making such a public protection decision in relation to such a prisoner, the Board must particularly take account of the prisoner's non-disclosure about the images and the reasons, in the Parole Board's view, for the non-disclosure. Again, the relevant issue is what the Parole Board subjectively believe to be reason for the non-disclosure on the part of the prisoner.
- 25 Subsection (3) makes it clear that the new obligation on the Parole Board that is created by the Bill does not interfere with the way in which the Board takes public protection decisions.
- 26 Subsection (4) of the new section 246C makes it clear that the reference to a sentence in subsection (1) of the new section 246A includes a sentence that has been passed before the coming into force of clause 2 of the Bill.
- 27 Subsection (5) defines "an offence of taking an indecent photograph of a child" and also "the relevant offence of making an indecent pseudo-photograph of a child".
- 28 Subsection (6) of the new clause makes it clear that the reference to a public protection decision refers to the Parole Board's decision to potentially release a prisoner pursuant to section 246A(5). This limits the new provisions' application to first release of offenders only, excluding offenders subsequently re-released after recall on licence, who are released under different provisions of the Criminal Justice Act 2003. It also defines a "relevant indecent image".
- 29 Clause 2(3) makes consequential amendment to section 246A inserting a signposting provision into section 246A to make it clear when looking at that section that new sections 246B and 246C must be applied.
- 30 Clause 2(4) makes comparable provision to that made in Clause 2(2) by adding a new paragraphs 38 and 39 of Schedule 20B to the Criminal Justice Act 2003. This ensures that parallel changes are made to release provisions in paragraphs 6, 15 and 25 of that Schedule, which apply to prisoners still serving old sentences which were subject to the release provisions of the Criminal Justice Act 1967 and Criminal Justice Act 1991 and sections 227 and 228 of the Criminal Justice Act 2003, which are still subject to Parole Board release. Clause 2(5) makes consequential amendment to paragraphs 6, 15 and 25 of Schedule 20B.

Clause 3: Short title, commencement and extent

- 31 Clause 3 confirms when the Act comes into force and the extent of the Bill. With the exception of Clause 3, the Bill will come into force on a day that will be specified by the Secretary of State for Justice by statutory instrument.

Financial implications of the Bill

- 32 The proposed change is to put Parole Board practice on a statutory footing. Currently, the Parole Board take non-disclosure of relevant information into account in assessing suitability for release. This Bill will create a statutory obligation so the Parole Board must do this. All Panels are required to comply with their guidance and follow established practice, therefore the Bill will not result in any change to current Parole Board practice and it is not anticipated that there will be any impact on the prison population or demand for prison places following commencement of the legislation. The only costs envisaged arising from this change are possibly from an addition to Parole Board guidance (to cover the issue regarding non-disclosure in cases involving indecent images of children) although that is a matter for the Parole Board.
- 33 Therefore, there is no need for an Impact Assessment to accompany this Bill.

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Parliamentary approval for financial costs or for charges imposed

34 The Bill does not require either a money resolution or a ways and means resolution.

Compatibility with the European Convention on Human Rights

35 The Government considers that the Prisoners (Disclosure of Information about Victims) Bill is compatible with the European Convention on Human Rights and Lord Keen of Elie, MoJ Spokesperson in the Lords has provided a statement under section 19(1)(a) of the Human Rights Act 1998 to that effect.

Annex A – Territorial extent and application in the United Kingdom

36 The provisions in this Bill form part of the law of England and Wales and extend and apply to the single jurisdiction of England and Wales.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	No	No	NA	NA	NA	No
Clause 2	Yes	Yes	No	No	NA	NA	NA	No
Clause 3	Yes	Yes	No	No	NA	NA	NA	No

Minor or consequential effects¹

37 The Bill has no minor or consequential effects outside England and Wales.

Subject matter and legislative competence of devolved legislatures

38 Prisons and sentencing (including release provisions) are devolved to Scotland and Northern Ireland.

¹ References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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