EXPLANATORY MEMORANDUM TO

THE SENTENCING ACT 2020 (AMENDMENT OF SCHEDULE 21) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 The Lord Chancellor and Secretary of State for Justice, the Right Honourable Shabana Mahmood MP, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Andrew Waldren, Deputy Director for Sentencing and Parole Policy, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Lorna Dovey at the Ministry of Justice, Telephone: 07889 405900 or email: Lorna.Dovey2@justice.gov.uk can be contacted with any queries regarding the instrument. Alternatively, Sarah Clutterbuck at the Ministry of Justice, Telephone: 07840 001054 or email: Sarah.Clutterbuck@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument introduces two additional statutory aggravating factors in the determination of the minimum term in relation to the mandatory life sentence for murder: (a) the fact that the murder was connected with the end of the offender's intimate personal relationship with the victim, the victim intending to bring about the end of that intimate personal relationship, or a belief by the offender that the relationship had ended or that the victim intended to end the relationship, and (b) the fact that the murder involved strangulation, suffocation or asphyxiation.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 This instrument implements recommendations made in the independent Domestic Homicide Sentencing Review (the 'Review') undertaken by Clare Wade KC.

5.2 The Review was published in March 2023, and the previous Government published their response to the Review in July 2023.

5.3 The Review was based on a detailed case review of sentencing remarks from 120 domestic homicide cases between 2018 and 2022 (the 'case review'), supplemented by academic literature, consultation in focus groups with targeted stakeholders and evidence gathered through further interviews with stakeholders, lawyers, and criminologists.

5.4 Based on the analysis, the Review made 17 recommendations for reform. Underpinning many of these recommendations is Recommendation 4, an overarching recommendation that domestic murders should be given specialist consideration within the present sentencing framework under Schedule 21 to the Sentencing Code,[1] which sets out the principles which the court must have regard to in the determination of the minimum term in relation to the mandatory life sentence for murder.

5.5 This instrument implements recommendations 6 and 9. Recommendation 6 is: "if a murder takes place at the end of a relationship or when the victim has expressed the desire to leave the relationship then this should be regarded as an aggravating factor and that paragraph 9 of Schedule 21 should be amended accordingly". Recommendation 9 is: "in the event of murder by strangulation or in a murder where strangulation has occurred, then this method of killing should be a statutory aggravating factor and that paragraph 9 of Schedule 21 should be amended accordingly."

'End of a relationship'

5.6 In over a third of murder cases analysed in the case review, the murder occurred at the end, or perceived end, of the relationship, and in the majority of cases this appeared to be the catalyst for the killing.

5.7 A murder involving resentment or jealousy by the perpetrator at the end of a relationship is a significant feature of cases involving controlling or coercive behaviour towards the victim, and is often the final controlling act of an abusive partner.

Strangulation

5.8 In recent years strangulation has been recognised as a method of exerting power and control, particularly in the context of domestic abuse where female victims are assaulted by physically stronger males. Nearly a third of the murder cases analysed in the case review involved strangulation, all of which involved a male perpetrator and female victim.

What was the previous policy, how is this different?

5.9 The previous Government implemented recommendations 5 and 8 of the Review, by adding two statutory aggravating factors and one statutory mitigating factor to Schedule 21. This was achieved by passing the Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2024, which came into force on 29 February 2024.[2] The statutory aggravating factors are: (a) the fact that the offender had repeatedly or continuously engaged in behaviour towards the victim that was controlling or coercive and (b) the use of sustained and excessive violence towards the victim. The statutory

[1] Parts 2 to 13 of the Sentencing Act 2020 comprise the Sentencing Code: see section 1 of the Sentencing Act 2020.

[2] www.legislation.gov.uk/uksi/2024/137/introduction/made (came into force on 29 February 2024)

mitigating factor is the fact that the victim had repeatedly or continuously engaged in behaviour towards the offender that was controlling or coercive.

5.10 Prior to these regulations coming into force, Schedule 21 did not expressly reflect the specific and wider harms that are prevalent in domestic murders. In the Review, Clare Wade KC notes that 'there has never been any particular attention (within the overall framework) paid to murders which are committed in a domestic context'.

5.11 The statutory aggravating and mitigating factors in Schedule 21 are not exhaustive, and judges can take into account any relevant factors in terms of aggravation or mitigation. The circumstances falling within the new statutory aggravating factors could therefore be taken into account, and treated as aggravating factors, prior to the instrument coming into force, however the intention is to expressly recognise these factors in statute to ensure that domestic murders and the particular harms that arise in these cases are given specialist consideration in the framework.

6. Legislative and Legal Context

How has the law changed?

The Sentencing Framework for Murder

A Mandatory Life Sentence

6.1 Anyone who is found guilty of murder will receive a mandatory life sentence. Alongside this life sentence, the sentencing judge will set a minimum custodial term. A minimum term is the amount of time the offender will spend in prison before the Parole Board considers, for the first time, whether the offender can safely be released to serve the rest of their life sentence on licence in the community.

Schedule 21 to the Sentencing Code

6.2 Schedule 21 contains a range of starting points for determination of the minimum term. The particular circumstances of a murder will determine which of these starting points apply to a particular case.

6.3 A baseline starting point of 15 years applies to all murder cases committed by offenders aged 18 or over.

6.4 There is a 25-year starting point for murders involving the use of a knife or other weapon which has been taken to the scene with intent, which was put in place to recognise the seriousness of the illegal possession and use of knives in public.

6.5 The highest starting points are 30 years in a case of particularly high seriousness, such as the murder of two or more persons and murder involving the use of a firearm or explosive, and the whole life order starting point in a case of exceptionally high seriousness, such as the abduction and murder of a child.

6.6 Offenders who are under 18 when they commit murder face a sliding scale of starting points ranging from 8 to 27 years, depending on the age of the offender when the offence was committed and the seriousness of the offence.

6.7 After identifying the starting point, the court will consider relevant aggravating and mitigating factors (both statutory and non-statutory). The minimum term imposed can vary significantly upwards or downwards from the initial starting point, depending on the aggravating and mitigating factors in each case.

6.8 Paragraph 9 of Schedule 21 contains a non-exhaustive list of statutory aggravating factors that may be relevant to the offence of murder and paragraph 10 of Schedule 21

contains a non-exhaustive list of statutory mitigating factors that may be relevant to the offence of murder.

6.9 There is no upper or lower limit on the final minimum term to be imposed. Having taken into account all the circumstances of the case and the relevant aggravating and mitigating factors, the judge is able to impose a minimum term of any length, whatever the starting point.

6.10 This instrument amends paragraph 9 of Schedule 21 by adding additional statutory aggravating factors.

Why was this approach taken to change the law?

6.11 This instrument is being made under paragraph 19 of Schedule 23 to the Sentencing Act 2020, which provides for Schedule 21 to the Code to be amended by statutory instrument subject to the affirmative resolution procedure.

6.12 In a statement to announce these measures to Parliament, the Lord Chancellor and Secretary of State for Justice, the Right Honourable Shabana Mahmood MP, noted that the measures would be introduced by statutory instrument[3].

7. Consultation

Summary of consultation outcome and methodology

7.1 Paragraph 19(2) of Schedule 23 to the Sentencing Act 2020 stipulates that, before amending Schedule 21 by regulations subject to the affirmative resolution procedure, the Lord Chancellor must consult the Sentencing Council for England and Wales.

7.2 This consultation has been undertaken in the form of written correspondence and an in-person meeting between the Minister for Sentencing, Sir Nic Dakin MP, and the Chairman of the Sentencing Council, Lord Justice William Davis.

7.3 An overview of the consultation is set out below, including the main points raised by the Sentencing Council ('the Council') and the Government's response to these points following careful consideration.

<u>General</u>

- **Necessity of the changes:** The Council does not support the addition of either statutory aggravating factor, which they believe are unnecessary and counter-productive as judges can already take them into account as non-statutory aggravating factors. They also noted that any changes to Schedule 21 should be considered in the context of the Law Commission review of homicide law and sentencing[4], which was commissioned by the Government in December 2024.

  Government response: The Government recognises that judges can, and often do, take strangulation and the end of a relationship into account in sentencing. However, these factors were identified by an independent review as factors that are indicative of the abusive and controlling relationships that victims of domestic murder endure, and which the Review considered are not always recognised in sentencing. The Review therefore recommended that these factors should be recognised in statute, to ensure that the sentencing framework appropriately recognises the seriousness of domestic murders. Regarding the Council's view that changes to Schedule 21 should be considered as part of the Law Commission review of homicide law and sentencing, this is likely to take several years to

[3] questions-statements.parliament.uk/written-statements/detail/2024-12-06/hcws286
[4] lawcom.gov.uk/project/revisiting-the-law-of-homicide/

complete, and the Government will then need to consider the recommendations and bring forward any necessary legislation. The Government therefore considers that it is necessary to take more immediate action with the introduction of this instrument.

Strangulation

- **Ranking methods of killing**: The Council referred to the previous Government's rationale for rejecting this recommendation in its response to the Review[5]. In particular, the Council shared the concern (of the Review and the previous government) that this measure could emphasise one method of killing over more important considerations such as the degree to which the victim suffered.

  Government response*:* The Government recognises this concern. However, strangulation has been recognised as a method of exerting power and control, which is particularly prevalent in the context of domestic abuse where female victims are assaulted by physically stronger males. The Review found that nearly a third of the murder cases involved strangulation, all of which involved a male perpetrator and female victim, however in some of these cases, there was no recognition of the method of the killing in the factors which were said to aggravate the offence. The Review also highlighted that strangulation is a gendered form of killing which encapsulates the vulnerability of the victim and inflicts a high degree of suffering. The Government therefore concluded that it is necessary to ensure the seriousness of this behaviour is considered in sentencing.

- **Distinction between manslaughter Sentencing Guidelines and Schedule 21:** The Council referred to the aggravating factor for strangulation in the manslaughter sentencing guidelines (which the Council introduced in April 2024 in response to a recommendation made in the Domestic Homicide Sentencing Review), noting that the rationale for this addition to the guidelines was to indicate to lay readers that strangulation is taken seriously and to ensure that the seriousness of strangulation is not overlooked in sentencing, as well as to ensure consistency with the overarching aggravating factor in all guidelines for 'the use of a weapon'. In this respect, the Council noted that there is a distinction between the sentencing guidelines and Schedule 21, which does not list the use of a weapon as a statutory aggravating factor, and therefore a different approach is justified.

  Government response: While the use of a weapon is not listed as a statutory aggravating factor in Schedule 21, it is almost always considered as an aggravating factor as a result of its inclusion as an aggravating factor in the Overarching Principles Guideline. The Review highlights that, whilst men often kill women by means of strangulation, women are rarely able to kill men without the use of a weapon due to the imbalance of physical strength. The Government therefore considers that introducing a statutory aggravating factor for murders involving strangulation will emphasise the seriousness of this method of killing, and improve the consistency in the way the use of a weapon and strangulation are considered in murder sentencing.

- **Alignment with the manslaughter sentencing guidelines:** The Sentencing Council suggested that the legislative drafting of this measure should be amended from 'the fact that the murder involved strangulation, suffocation or asphyxiation'

[5] assets.publishing.service.gov.uk/media/64b802acef537100147aeeee/domestic-homicide-sentencing-review-case-review-response.pdf

to 'the fact that the murder involved *the use of* strangulation, suffocation or asphyxiation' to more closely align with the manslaughter sentencing guidelines (in which 'Use of strangulation, suffocation or asphyxiation' is listed as an aggravating factor).

Government response: The Government considered the Council's concern. However, the Government's view is that the current drafting better articulates the intention of this measure capturing murders that involve strangulation, as well as those committed by strangulation. Furthermore, it was noted that 'strangulation, suffocation and asphyxiation' (not proceeded by 'the use of') is listed as a high culpability factor in the sentencing guideline for assault, therefore it was not considered that exact alignment with the manslaughter guideline was necessary.

End of a relationship

- **Potential for evidential difficulties**: The Council expressed concern as to how the aggravating factor would operate in practice, noting that there could be difficulties in proving whether the offender and the victim were, or had been, in an "intimate personal relationship". The Council suggested that this could create scope for fruitless arguments which could add to the distress of the victim's family.

  Government response: The Government recognises that application of the factor and whether there is sufficient evidence to establish it will depend on the circumstances and available evidence in a particular case. If evidence of the factor cannot be established to the criminal standard, the aggravating factor will not apply. The Government recognises that, in some cases, establishing whether the victim and offender had been in a relationship and whether this was connected to the murder may increase the length of some legal proceedings. However, this will have the benefit of ensuring that the seriousness of the particular harms that occur in domestic murders are fully recognised in sentencing outcomes, and is a necessary consequence of ensuring consistency of approach.

- **Clearer legislative drafting:** The Council suggested that the terms '*connected with*' and '*end of*', which are used in the legislative drafting for this measure, ought to be more clearly defined to assist judges with applying the factor.

  Government response: The Government considered this when drafting the Instrument. However, the legislative drafting is intentionally broad in order to capture a wide range of cases where there is a connection between the end of a relationship and a murder, allowing room for judicial discretion and minimising the risk of evidential difficulties. The drafting also provides guidance on when this factor may be applicable; including whether the murder was connected with the victim's intention to end the relationship, or the offender's belief that the relationship had ended or may end. The Government therefore considers that judges will be able to apply this aggravating factor without difficulty, noting that judges already aggravate for murders that take place at the end of relationship where they consider it appropriate.

- **Other circumstances involving vulnerability of the victim:** The Council highlighted other circumstances where a victim is vulnerable, including pregnancy and stalking, and that it is not logical to identify just one of these in Schedule 21.

  Government response: The sentencing framework is clear that the statutory aggravating factors are not exhaustive; the sentencing judge is able to consider any relevant factors in terms of aggravation, including pregnancy and stalking.

The measures in this instrument were identified by an independent review as factors that are indicative of the abusive and controlling relationships that victims of domestic murder endure, and which are not always recognised in sentencing. The end of a relationship factor in particular is not necessarily intended to acknowledge the vulnerability of the victim; it is intended to address the link between resentment at the end of the relationship on the part of the perpetrator and coercive control.

Conclusion

7.4 The Government carefully considered all points raised by the Council. In written correspondence the Council indicated they were grateful for this consideration, and that the Government set out so fully the reasons for its decisions. The Council was also grateful for the Government's offer to consider further suggestions on alternative drafting by the Council, but declined to do so as they had no further points to make.

8. Applicable Guidance

8.1 The instrument is not complex and will not apply retrospectively and therefore no specific guidance is necessary for this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is detailed in the full Impact Assessment.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 All sentencing is kept under review, and we will draw on any data, including sentencing statistics and the Home Office Homicide Index to monitor the impact of this proposal in so far as that is possible.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Lord Chancellor and Secretary of State for Justice, the Right Honourable Shabana Mahmood MP has made the following statement regarding Human Rights:

"In my view the provisions of The Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").