



## **Coroners and Justice Bill – Part 2**

### **Suggested amendments for Committee Stage House of Commons**

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## Introduction and summary

1. JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy and human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is also the British section of the International Commission of Jurists.
2. JUSTICE has previously commented on many of the proposals in the Bill during their development in consultation papers and previous Bills and in our briefing on Second Reading. In relation to the homicide proposals we have been heavily involved in consultation both with the Law Commission and the Ministry of Justice. These amendments are intended to highlight our main concerns about Part 2 for Committee stage; where we have not commented upon a certain provision in the Bill here, that should not be taken as an endorsement of its contents.
3. In short, our concerns centre upon:
  - **the implementation of new partial defences to murder in the absence of wholesale reform of the law of homicide;**
  - **the government's failure to include developmental immaturity in children as a criterion that can give rise to the partial defence of diminished responsibility;**
  - **the narrowing of the diminished responsibility and 'loss of control' partial defences may mean that murder convictions result in cases where a manslaughter conviction would be appropriate;**
  - **the failure of the Bill to deal with consensual mercy killing and assisted suicide of the seriously ill who wish to end their lives but are unable to do so without assistance. Carers who assist people in these circumstances to end their lives will remain vulnerable to prosecution and imprisonment.**
4. For reasons of brevity we have not suggested amendments to Northern Ireland provisions here but where they mirror the England and Wales provisions in which we have suggested amendments we would suggest that similar amendments be made to them.

## **Part 2: Criminal Offences**

*Clauses 39 and 40 – Persons suffering from diminished responsibility*

### **Amendments**

Clause **39**, page **24**, line **9**, at end insert

( ) A person ("D") who kills or is party to the killing of another is not to be convicted of murder if D was under the age of eighteen and his developmental immaturity -

(a) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A), and

(b) provides an explanation for D's acts and omissions in doing or being a party to the killing.

Clause **39**, page **24**, line **14**, after (1)(c) insert "and subsection ( ) (b)"

Clause **39**, page **24**, line **15**, after "functioning" insert "or D's developmental immaturity"

### **Briefing**

We are generally concerned at the government's decision to enact these reforms to the partial defences to homicide in the absence of a fundamental review of the law of homicide and, further, without properly considering that the Law Commission's proposals on which they are based were intended for a three-tier, not a two-tier, structure of homicide offences. We are also concerned that they have appeared in such a large Bill containing so many important provisions. It is unlikely that there will be sufficient time for the debate these clauses deserve.

However, we are at this stage putting forward specific amendments to address some of the particular, rather than general, problems with the government's clauses on homicide in the Bill. In relation to diminished responsibility, the amendments above would reinstate the Law Commission's recommendation that the diminished responsibility partial defence be available to a child or young person under 18 if their developmental immaturity substantially impaired their ability to understand the nature of their conduct, form a rational judgment or exercise self-control at the time of the killing. They would be guilty of manslaughter rather than murder and therefore the judge would have a full range of sentencing options.

*Clause 41 – Partial defence to murder: loss of control*

*Clause 42 – Meaning of “qualifying trigger”*

### **Amendment**

Clause **41**, page **25**, leave out paragraph (6)

### **Briefing**

This probing amendment would remove the Bill’s provision that the jury may only consider ‘loss of control’ as a partial defence to murder if evidence is adduced on which in the judge’s opinion a jury, properly directed, could conclude that the defence might apply. We are concerned that this may cause problems where a defence of self-defence is put forward to a murder charge. In some circumstances where this is rejected, the jury should also go on to consider whether the defendant acted in fear of serious violence in order to satisfy clause 41 so that the correct verdict is one of manslaughter. We are concerned that they may not be able to do this if sub-clause (6) remains in place and would welcome the government’s view on this.

### **Alternative amendments**

Clause **41**, page **25**, leave out Clause 41

### *New clause*

### **Partial defence to murder: fear of serious violence**

- (1) Where a person (“D”) kills or is a party to the killing of another (“V”), D is not to be convicted of murder if –
  - (a) D’s acts and omissions in doing or being a party to the killing resulted from D’s fear of serious violence from V against D or another identified person, and
  - (b) a person of D’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.
- (2) In subsection (1)(b) the reference to “the circumstances of D” is a reference to all of D’s circumstances other than those whose only relevance to D’s conduct is that they bear on D’s general capacity for tolerance or self-restraint.

- (3) Subsection (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge.
- (4) For the purposes of this section, D's fear of serious violence is to be disregarded to the extent that it was caused by a thing which D incited to be done or said for the purpose of providing an excuse to use violence.
- (5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the jury must assume that the defence is satisfied unless the prosecution prove beyond reasonable doubt that it is not.
- (6) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.
- (7) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

### Briefing

This new clause is the first of two new clauses designed to offer alternative partial defences to those proposed by the government under the heading 'Partial defence to murder: loss of control'. This first new clause provides a partial defence of fear of serious violence designed for situations where the defendant acts in self-defence but the degree of force used is judged to be excessive by the jury. We are concerned that some cases where a murder conviction is not justified may remain, legally, murder under the government's proposals. This is due to the retention of the 'loss of self-control' requirement in relation to the partial defence of fear of serious violence. For example, where an armed police officer responds with fatal force in good faith to protect the public to a person who appears to be armed and dangerous, but the jury conclude that that degree of force was unreasonable in the circumstances, we are concerned that a manslaughter conviction should be available. This is particularly pertinent since the government have failed to adopt the Law Commission's recommendations to divide the offence of murder into two categories; murder now will still include cases where there was no intention to kill nor even foresight on the defendant's part that death could result from his actions.

The removal of the loss of self-control requirement would make a manslaughter conviction possible in appropriate cases of excessive self-defence or defence of another. We are also concerned that the requirement of 'loss of self-control' may continue to prejudice women who kill abusive husbands or partners due to ongoing abuse and fear.

*New clause*

**Partial defence to murder: loss of control**

- (1) Where a person (“D”) kills or is a party to the killing of another (“V”), D is not to be convicted of murder if –
  - (a) D’s acts and omissions in doing or being a party to the killing resulted from D’s loss of self-control,
  - (b) the loss of self-control had a qualifying trigger; and
  - (c) a person of D’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.
- (2) For the purposes of subsection (1)(a), it does not matter whether or not the loss of control was sudden.
- (3) In subsection (1)(c) the reference to “the circumstances of D” is a reference to all of D’s circumstances other than those whose only relevance to D’s conduct is that they bear on D’s general capacity for tolerance or self-restraint.
- (4) Subsection (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge.
- (5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the jury must assume that the defence is satisfied unless the prosecution prove beyond reasonable doubt that it is not.
- (6) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.
- (7) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

Clause **42**, page **25**, lines **34-35**, leave out from “D’s loss” to end and insert –

- (a) D did not intend to kill V; and
- (b) D’s loss of self-control was attributable to a state of extreme emotional disturbance.

Clause **42**, page **26**, line **1**, leave out paragraph (a)

## Briefing

This new clause (designed to be inserted into the Bill along with the first new clause above, in place of the existing clause 41), together with the amendments proposed to clause 42, deals with circumstances where we believe a loss of control should reduce a murder conviction to manslaughter. We have retained the government's 'words and conduct' element but have added an additional circumstance: where the defendant was extremely emotionally disturbed and – crucially – acted only to cause serious harm but not to kill the victim. For example, where an exhausted parent 'snaps' and assaults a crying child intending to cause serious harm but with no intention to kill, a manslaughter verdict would not be available under the Bill's provisions.<sup>1</sup> We emphasise that we do not seek to condone such conduct, merely that there may be circumstances outside the 'words and conduct' element of the government's clause 41 where a manslaughter conviction, and discretion in sentencing, should be available. The criterion that a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or a similar way would still be present as a safeguard against unmeritorious cases.

We believe that this extension of the 'loss of self-control' defence might also offer a route to a manslaughter conviction and discretionary sentencing for some defendants who kill a seriously ill loved one who wishes to die but is unable to end their own life. The greater specificity of the new diminished responsibility defence and the narrowing of provocation into 'loss of control' may make it much harder to escape a murder conviction in these cases. However, many such defendants are unlikely to have lost their self-control, and therefore we believe that ideally an alternative solution should be found for these cases.

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<sup>1</sup> Cf *R v Doughty* (Stephen Clifford) (1986) 83 Cr App R 319; (1986) Crim LR 625

*Clauses 46-48: Encouraging or assisting suicide*

**Amendment**

Clause **46**, page **27**, line **14**, at end insert –

(1BA) A person is not guilty of an offence under this section if he proves that his actions were reasonable in the circumstances.

**Briefing**

The new clauses relating to encouraging or assisting suicide fail to deal with the situation highlighted by recent cases reported in the media: that of a seriously ill person who wishes to end his or her life but is physically unable to do so without assistance and therefore will require the aid of a partner, relative or friend to do so. While we are aware that the Committee's time will be limited, we suggest this probing amendment in order to emphasise that there may be circumstances in which coming to the aid of a loved one who wishes to end his or her life but cannot do so alone should not expose both the seriously ill person and the person who they wish to help them to the fear that prosecution for a serious indictable offence will result.

**JUSTICE  
February 2009**