

Northern Ireland Office
Criminal Law Branch
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To Whom It May Concern:

**CONSULTATION ON PROPOSALS FOR REFORM OF THE LAW ON
MURDER, MANSLAUGHTER AND INFANTICIDE**

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ works on a broad range of human rights issues and its membership is drawn from across the community. CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

CAJ welcomes this opportunity to comment on these important proposals regarding changes to the law in relation to murder, manslaughter, and infanticide. Unfortunately we were unable to provide you with a more detailed response within the timeframe provided for in the consultation. We do hope however that even at this late stage our concerns will be taken on board.

Clearly there are a number of problems with the law as it currently stands regarding the taking of life, with women in particular being disadvantaged under the present system. As the consultation paper rightly points out, women who kill in response to sustained abuse, sometimes over a long period, may have difficulty establishing that their actions were as a result of a "sudden loss of self-

control” - which is the current test for provocation. The removal of the requirement that the loss of control be “sudden” should go some way towards addressing situations in which a victim of domestic violence may kill an abusive partner, and where the killing is in response to fear, rather than anger. We also welcome the fact that killing in response to sexual infidelity cannot on its own constitute grounds for a partial defence in these cases.

In this context, we agree that the proposed reform of the law as outlined should represent an improvement on the current situation, in particular for vulnerable women. CAJ remains concerned however that some other difficulties are likely to continue to arise. The range of emotions that arise in the course of taking life, particularly in situations in which the act was done under stress, are perhaps not as straightforward as the consultation paper makes out. There are also likely to be difficulties with respect to the requirement that a defence based on grounds of “diminished responsibility” be linked to a “recognised” condition.

Many of these matters were examined in a much more comprehensive way by the Law Commission in their studies into these issues, and it remains a matter of regret for CAJ that government chose to effectively water down the Law Commission findings and come up with a much more piecemeal set of proposals.

CAJ would therefore **recommend** full re-examination of the findings of the Law Commission into this issue, to be followed by a much more holistic approach to dealing with the difficulties surrounding the current law relating to murder and manslaughter, rather than the somewhat piecemeal approach outlined in the consultation paper. While these proposals may represent a positive step forward, they remain very much a missed opportunity in terms of the comprehensive changes in the law that are required to address all current difficulties. Given that a murder conviction carries a mandatory life sentence, CAJ is of the view that the law in this respect should be as well thought out and clear as possible.

CAJ also wishes to make specific comment on the way in which the NIO have approached their Section 75 requirements in relation to these proposals. We note that according to the screening form, the decision is not to carry out an Equality Impact Assessment. The screening document correctly identifies the likely positive impact on women of the proposed changes, but does not identify impacts on any of the other groups. This position however is somewhat at odds with the findings of the impact assessment produced by the Home Office, which considers the equality considerations from the point of view of mental health issues and the proposed changes to the law on diminished responsibility.

While we do not necessarily agree with all the conclusions of the Home Office impact assessment, their recognition of the link between “diminished responsibility”, and equality implications in relation to disability is in our view a correct approach to take with regard to carrying out such exercises. The Home

Office impact assessment also acknowledges the potential equality implications of not accepting that the definition of diminished responsibility be extended to include “developmental immaturity” in the case of an offender aged under 18 at the time of the killing. Indeed, the overall approach to the impact assessment from the Home Office, while far from perfect, is much more thorough than the Section 75 analysis undertaken by the Northern Ireland Office.

The failure of the NIO in its screening procedure to acknowledge the equality implications of proposals, which are already identified by the Home Office, is in fact quite stark. There is clearly therefore a need for the NIO to re-examine its approach to the Section 75 requirements of this consultation, in order to more fully reflect existing requirements under the Northern Ireland Act 1998.

In summary, the proposals as outlined will very clearly have equality implications in relation to disability, age and gender and in that context should be fully considered within the context of an EQIA in order to ensure that as far as possible the needs of particular groups are addressed by the proposed changes to the law.

In particular, CAJ **recommends** that the new proposals in relation to partial defence of diminished responsibility be examined in order to determine the extent to which addressing the needs of people with disabilities will be met. Equally, a similar exercise should be undertaken with respect to the proposed rejection of the Law Commission suggestions on “developmental immaturity” for those who have committed killings while under the age of 18. Such an exercise would in our view ultimately lead to a more comprehensive and systematic legal framework than that which will result from these proposals.

Yours faithfully,

Tim Cunningham
Equality Project Worker