

## Terms of reference

The Law Commission has been directed to review the current defence of insanity (section 23 of the Crimes Act 1961) and in particular to consider:

- Whether the defence is appropriate in its nature and scope.
- If not, whether it should be abolished or modified.
- The way in which the defence should be put to and considered by the court.
- Issues relating to the burden and standard of proof.

In relation to partial defences, the Commission has been asked to further consider issues arising from its recommendations in *Some Criminal Defences with Particular Reference to Battered Defendants*, including:

- Will the repeal of partial defences unduly disadvantage persons with mental illness or disability, battered defendants, and any other minority groups who may be particularly reliant on such defences?
- Undertake gender analysis of the current operation of partial defences, and in light of this, consider the gender implications of the recommendation for partial defence repeal.
- Is there a risk of unduly harsh sentences under section 102 of the Sentencing Act as currently drafted (and should the section therefore be amended) if partial defences are repealed?
- Is the stigma of a murder conviction appropriate for persons who have acted by reason of adverse circumstances for which society may feel some sympathy?
- Should there be a separate defence for battered defendants, in addition to or instead of current defences?

In relation to infanticide, not previously considered by the Commission:

- Are the current criteria for the defence as provided for in section 178 of the Crimes Act appropriate?
- The significance (if any) of its character as a hybrid offence/partial defence – eg, should infanticide be included consistent with the Law Commission recommendation to repeal provocation and not to introduce diminished responsibility, or did Parliament intend in framing it as a hybrid offence/partial defence to signal a unique status.
- Reform options including whether section 178 should be repealed.