

SCHEDULES

SCHEDULE 21

Section 322

DETERMINATION OF MINIMUM TERM IN RELATION TO MANDATORY LIFE SENTENCE FOR MURDER ETC

Interpretation

- 1 In this Schedule—
- “child” means a person aged under 18;
 - “mandatory life sentence” means a mandatory life sentence passed in circumstances where the sentence is fixed by law.

Starting points

- 2 (1) If—
- (a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and
 - (b) the offender was aged 21 or over when the offence was committed,
- the appropriate starting point is a whole life order.
- (2) Cases that would normally fall within sub-paragraph (1)(a) include—
- (a) the murder of two or more persons, where each murder involves any of the following—
 - (i) a substantial degree of premeditation or planning,
 - (ii) the abduction of the victim, or
 - (iii) sexual or sadistic conduct,
 - (b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,
 - (c) the murder of a police officer or prison officer in the course of his or her duty, where the offence was committed on or after 13 April 2015,
 - (d) a murder done for the purpose of advancing a political, religious, racial or ideological cause, or
 - (e) a murder by an offender previously convicted of murder.
- 3 (1) If—
- (a) the case does not fall within paragraph 2(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and
 - (b) the offender was aged 18 or over when the offence was committed,
- the appropriate starting point, in determining the minimum term, is 30 years.
- (2) Cases that (if not falling within paragraph 2(1)) would normally fall within sub-paragraph (1)(a) include—

- (a) in the case of a offence committed before 13 April 2015, the murder of a police officer or prison officer in the course of his or her duty,
 - (b) a murder involving the use of a firearm or explosive,
 - (c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),
 - (d) a murder intended to obstruct or interfere with the course of justice,
 - (e) a murder involving sexual or sadistic conduct,
 - (f) the murder of two or more persons,
 - (g) a murder that is aggravated by racial or religious hostility or by hostility related to sexual orientation,
 - (h) a murder that is aggravated by hostility related to disability or transgender identity, where the offence was committed on or after 3 December 2012 (or over a period, or at some time during a period, ending on or after that date),
 - (i) a murder falling within paragraph 2(2) committed by an offender who was aged under 21 when the offence was committed.
- (3) An offence is aggravated in any of the ways mentioned in sub-paragraph (2)(g) or (h) if section 66 requires the court to treat the fact that it is so aggravated as an aggravating factor.
- 4 (1) If—
- (a) the case does not fall within paragraph 2(1) or 3(1),
 - (b) the offence falls within sub-paragraph (2), and
 - (c) the offender was aged 18 or over when the offence was committed,
 - (d) the offence was committed on or after 2 March 2010,
- the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.
- (2) The offence falls within this sub-paragraph if the offender took a knife or other weapon to the scene intending to—
- (a) commit any offence, or
 - (b) have it available to use as a weapon,
- and used that knife or other weapon in committing the murder.
- 5 If the offender was aged 18 or over when the offence was committed and the case does not fall within paragraph 2(1), 3(1) or 4(1), the appropriate starting point, in determining the minimum term, is 15 years.
- 6 If the offender was aged under 18 when the offence was committed, the appropriate starting point, in determining the minimum term, is 12 years.

Aggravating and mitigating factors

- 7 Having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.
- 8 Detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.
- 9 Aggravating factors (additional to those mentioned in paragraphs 2(2), 3(2) and 4(2)) that may be relevant to the offence of murder include—

- (a) a significant degree of planning or premeditation,
 - (b) the fact that the victim was particularly vulnerable because of age or disability,
 - (c) mental or physical suffering inflicted on the victim before death,
 - (d) the abuse of a position of trust,
 - (e) the use of duress or threats against another person to facilitate the commission of the offence,
 - (f) the fact that victim was providing a public service or performing a public duty, and
 - (g) concealment, destruction or dismemberment of the body.
- 10 Mitigating factors that may be relevant to the offence of murder include—
- (a) an intention to cause serious bodily harm rather than to kill,
 - (b) lack of premeditation,
 - (c) the fact that the offender suffered from any mental disorder or mental disability which (although not falling within section 2(1) of the Homicide Act 1957) lowered the offender's degree of culpability,
 - (d) the fact that the offender was provoked (for example, by prolonged stress) but, in the case of a murder committed before 4 October 2010, in a way not amounting to a defence of provocation,
 - (e) the fact that the offender acted to any extent in self-defence or, in the case of a murder committed on or after 4 October 2010, in fear of violence,
 - (f) a belief by the offender that the murder was an act of mercy, and
 - (g) the age of the offender.
- 11 Nothing in this Schedule restricts the application of—
- (a) section 65 (previous convictions),
 - (b) section 64 (bail), or
 - (c) section 73 (guilty plea),
- or of section 238(1)(b) or (c) or 239 of the Armed Forces Act 2006.

Offences committed before 18 December 2003

- 12 (1) This paragraph applies where the offence was committed before 18 December 2003.
- (2) If the court makes a minimum term order, the minimum term must, in the opinion of the court, be no be greater than the period which, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify to the offender as the minimum period which in the view of the Secretary of State should be served before the prisoner's release on licence.
- (3) The court may not make a whole life order unless it is of the opinion that, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify the prisoner that the Secretary of State did not intend that the prisoner should ever be released on licence.