

EXPLANATORY MEMORANDUM TO
THE CRIMINAL JUSTICE ACT 2003 (MANDATORY LIFE SENTENCE:
DETERMINATION OF MINIMUM TERM) ORDER 2010

2010 No. 197

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

2. Purpose of the instrument

2.1 The Order introduces a new starting point of 25 years for determining the minimum term for murder by an adult using a knife or other weapon where the weapon is taken to the scene with the intention of committing an offence or having it available for use as a weapon, and is then used to kill.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Order is being made under section 269(5) of the Criminal Justice Act 2003, which provides an order making power to amend Schedule 21 to that Act. This is the first use of that power. Schedule 21 to the 2003 Act sets out the principles which a sentencing court must have regard to when assessing the seriousness of all cases of murder in order to determine the appropriate minimum term to be imposed. It sets out the starting points that a court should normally adopt when determining the minimum term. For adults, there are currently three starting points: for the small number of exceptionally serious cases the court should normally consider a whole life term; for murders which do not fall into the exceptionally serious category but are nevertheless particularly serious, the starting point is normally 30 years; for all other murders the starting point is normally 15 years.

4.2 The Schedule provides non-exhaustive lists of the types of case which might attract the higher starting points. Once a starting point has been chosen, the court will then go on to consider any aggravating or mitigating factors in the individual case to make the necessary adjustments to arrive at the final minimum term. There is no limitation on the degree of adjustment that a court can make in consideration of aggravating and mitigating factors. Paragraph 8 of the Schedule makes it clear that aggravating and mitigating factors cannot be double counted.

4.3 The instrument is being made following a review of Schedule 21 in relation to the starting point for murder using a knife (announced in Parliament on 16 June 2009), which was prompted by public concerns that the current starting point of 15 years should be higher, particularly as the starting point for murder using a firearm is 30 years.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State, Claire Ward, has made the following statement regarding Human Rights:

In my view the provisions of the Criminal Justice Act 2003 (Mandatory Life Sentence: Determination of Minimum Term) Order 2010 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 This Order amends the provisions of Schedule 21 to the Criminal Justice Act 2003. Schedule 21 governs how courts assess the seriousness of cases of murder when determining the appropriate minimum term to be served in prison under a life sentence. Schedule 21 sets out the starting points that the court should normally adopt for different types of cases when determining the minimum term. The Order introduces a new starting point of 25 years for adults who murder using a knife or other weapon taken to the scene with the intention to commit an offence or of having it available for use as a weapon.

7.2 The change has been prompted by considerable concern that the starting point for this type of murder should be higher than the current 15 years, particularly as the starting point for murder using a firearm is 30 years. In response to these concerns, on 16 June 2009 the Justice Secretary announced a review of Schedule 21 for murder using a knife. This review was conducted over the Summer. The Sentencing Guidelines Council was consulted, as required under the terms of the relevant order making power in the Criminal Justice Act 2003. The senior judiciary were also consulted.

7.3 In the light of that review, the Government has decided, subject to parliamentary approval, to raise the starting point for murder using a knife or other weapon where there are the aggravating circumstances of taking the weapon to the scene with the intention of use and then using it to commit murder. It believes that this marks the seriousness with which the Government, and the public, view this type of murder and the proposed change in the law should provide for greater consistency in sentencing and greater public confidence in the criminal justice system.

8. Consultation outcome

8.1 On 16 June, the Justice Secretary announced a review of Schedule 21 in relation to murder using a knife to be conducted over the Summer and inviting representations. The Sentencing Guidelines Council was formally consulted, as required under section 269(5) of the Criminal Justice Act 2003. The senior judiciary was also consulted.

8.2 The Sentencing Guidelines Council highlighted various issues which it considered should be taken into account in when making any decision as to whether or not there should be a change in the starting point for murder using a knife:

- with the exception of murder using a firearm or explosive, the factors listed in Schedule 21 relate to the circumstances in which the killing took place rather than the method used;
- in reality, murder using a firearm or explosive involves premeditated fatal violence and cases are infrequent;
- the use of a sharp instrument accounts for one half to one third of murder cases;
- public concerns about the carrying and use of knives to cause death and serious injury and the need to increase sentencing severity has been recognised by Council guidelines for possession of knives and violence, and by the Court of Appeal;
- Council guidelines assess relative seriousness through the degree of planning rather than the use of a weapon;
- any increase in the starting point for adults would not address any concern over the use carrying and use of knives by juveniles; and
- there are different definitions of a “knife” in various statutory provisions.

It concluded that care would need to be taken to define clearly the circumstances in which an increase in the starting point should arise and which sharp or bladed instrument should fall with any new provision. The Council also made its own assessment of the possible impact on the prison population of a change in the starting point.

8.3 The Lord Chief Justice responded on behalf of the senior judiciary and representations were also received from the Judges of the Central Criminal Court.

8.4 The Government took account of the views received and has specified the circumstances in which the higher starting point should apply and included both knives and other weapons (based on ordinary common English usage) within the ambit of the provisions.

9. Guidance

9.1 An oral Ministerial statement has been made to announce the proposed change in the law and received widespread media coverage. The instrument is not complex and will not apply retrospectively and therefore no specific guidance is necessary.

10. Impact

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

10.2 The instrument is changing the starting point for determining the minimum term in certain murder cases. These cases would, of course, already come to court and attract legal aid. It is possible that the change in the law may attract a slight increase in appeals but the impact of these is expected to be de minimis. There will be a long term impact on the prison population as a result of the court imposing longer minimum terms in some cases. The effect will not start to show for at least 15 years and it will take at least 50 years to reach its maximum impact.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 All sentencing is kept under review and we will analyse both the sentencing statistics, the homicide index, and other measures of public confidence in the criminal justice system to monitor the impact of this proposal in so far as that is possible.

13. Contact

Alison Foulds at the Ministry of Justice Tel: 020 3334 5029 or email:
alison.foulds@justice.gsi.gov.uk can answer any queries regarding the instrument.