

*Status: Point in time view as at 13/04/2015.*

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## SCHEDULES

### SCHEDULE 21

Section 269(5)

#### DETERMINATION OF MINIMUM TERM IN RELATION TO MANDATORY LIFE SENTENCE

##### *Interpretation*

- 1 In this Schedule—
- “child” means a person under 18 years;
  - “mandatory life sentence” means a life sentence passed in circumstances where the sentence is fixed by law;
  - “minimum term”, in relation to a mandatory life sentence, means the part of the sentence to be specified in an order under section 269(2);
  - “whole life order” means an order under subsection (4) of section 269.
- 2 Section 28 of the Crime and Disorder Act 1998 (c. 37) (meaning of “racially or religiously aggravated”) applies for the purposes of this Schedule as it applies for the purposes of sections 29 to 32 of that Act.
- [<sup>F1</sup>3 For the purposes of this Schedule—
- (a) an offence is aggravated by sexual orientation if it is committed in circumstances mentioned in section 146(2)(a)(i) or (b)(i);
  - (b) an offence is aggravated by disability if it is committed in circumstances mentioned in section 146(2)(a)(ii) or (b)(ii);
  - (c) an offence is aggravated by transgender identity if it is committed in circumstances mentioned in section 146(2)(a)(iii) or (b)(iii).]

##### **Textual Amendments**

- F1** Sch. 21 para. 3 substituted (3.12.2012) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), **ss. 65(8), 151(1)**; [S.I. 2012/2906](#), art. 2(a) (with art. 3)

##### *Starting points*

- 4 (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 he committed the offence,
- 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,

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- (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,
- [<sup>F2</sup>(ba) the murder of a police officer or prison officer in the course of his or her duty,]
- (c) a murder done for the purpose of advancing a political, religious [<sup>F3</sup>, racial] or ideological cause, or
- (d) a murder by an offender previously convicted of murder.

**Textual Amendments**

- F2** Sch. 21 para. 4(2)(ba) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), ss. 27(2), 95(1) (with s. 27(4)); S.I. 2015/778, art. 3, Sch. 1 para. 23
- F3** Words in Sch. 21 para. 4(2)(c) inserted (16.2.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 75(1)(2)(c), 91, 100 (with s. 101(2)); S.I. 2009/58, art. 2(c)

- 5 (1) If—
  - (a) the case does not fall within paragraph 4(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 he committed the offence, the appropriate starting point, in determining the minimum term, is 30 years.
- (2) Cases that (if not falling within paragraph 4(1)) would normally fall within sub-paragraph (1)(a) include—
  - <sup>F4</sup>(a) .....
  - (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 racially or religiously aggravated or aggravated by sexual orientation [<sup>F5</sup>, disability or transgender identity], or
  - (h) a murder falling within paragraph 4(2) committed by an offender who was aged under 21 when he committed the offence.

**Textual Amendments**

- F4** Sch. 21 para. 5(2)(a) omitted (13.4.2015) by virtue of Criminal Justice and Courts Act 2015 (c. 2), ss. 27(3), 95(1) (with s. 27(4)); S.I. 2015/778, art. 3, Sch. 1 para. 23
- F5** Words in Sch. 21 para. 5(2)(g) inserted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), ss. 65(9), 151(1); S.I. 2012/2906, art. 2(a) (with art. 3)

- [<sup>F6</sup>5A (1) If—
  - (a) the case does not fall within paragraph 4(1) or 5(1),
  - (b) the offence falls within sub-paragraph (2), and

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- (c) the offender was aged 18 or over when the offender committed the offence, 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.]

#### Textual Amendments

**F6** Sch. 21 para. 5A inserted (2.3.2010) by [The Criminal Justice Act 2003 \(Mandatory Life Sentence: Determination of Minimum Term\) Order 2010 \(S.I. 2010/197\)](#), **art. 2(2)** (with art. 3)

- 6 If the offender was aged 18 or over when he committed the offence and the case does not fall [<sup>F7</sup>within paragraph 4(1), 5(1) or 5A(1)], the appropriate starting point, in determining the minimum term, is 15 years.

#### Textual Amendments

**F7** Words in Sch. 21 para. 6 substituted (2.3.2010) by [The Criminal Justice Act 2003 \(Mandatory Life Sentence: Determination of Minimum Term\) Order 2010 \(S.I. 2010/197\)](#), **art. 2(3)** (with art. 3)

- 7 If the offender was aged under 18 when he committed the offence, the appropriate starting point, in determining the minimum term, is 12 years.

#### *Aggravating and mitigating factors*

- 8 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.
- 9 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.
- 10 Aggravating factors (additional to those mentioned in paragraph 4(2) [<sup>F8</sup>, 5(2) and 5A(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 the victim was providing a public service or performing a public duty, and
  - (g) concealment, destruction or dismemberment of the body.

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#### Textual Amendments

**F8** Words in Sch. 21 para. 10 substituted (2.3.2010) by [The Criminal Justice Act 2003 \(Mandatory Life Sentence: Determination of Minimum Term\) Order 2010 \(S.I. 2010/197\)](#), [art. 2\(4\)](#) (with art. 3)

- 11 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 (c. 11)), lowered his degree of culpability,
  - (d) the fact that the offender was provoked (for example, by prolonged stress)  
<sup>F9</sup> . . . . ,
  - (e) the fact that the offender acted to any extent in self-defence [<sup>F10</sup>or 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.

#### Textual Amendments

**F9** Words in Sch. 21 para. 11(d) repealed (4.10.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), ss. 177, 178, 182, [Sch. 21 para. 52\(a\)](#), [Sch. 23 Pt. 2](#) (with s. 180, Sch. 22); S.I. 2010/816, [art. 5\(e\)\(f\)\(g\)\(ii\)](#) (with art. 7(4))

**F10** Words in Sch. 21 para. 11(e) inserted (4.10.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), ss. 177, 182, [Sch. 21 para. 52\(b\)](#) (with s. 180, Sch. 22); S.I. 2010/816, [art. 5\(d\)\(f\)](#) (with art. 7(4))

- 12 Nothing in this Schedule restricts the application of—
- (a) section 143(2) (previous convictions),
  - (b) section 143(3) (bail), or
  - (c) section 144 (guilty plea).
- [<sup>F11</sup>or of section 238(1)(b) or (c) or 239 of the Armed Forces Act 2006.]

#### Textual Amendments

**F11** Words in Sch. 21 para. 12 inserted (28.3.2009 for certain purposes, otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(1), 383, [Sch. 16 para. 236](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)

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