**EXPLANATORY MEMORANDUM TO**

**THE CRIMINAL JUSTICE ACT 2003 (MANDATORY LIFE SENTENCE: DETERMINATION OF MINIMUM TERM) ORDER 2009**

**[Year] No. [XXXX]**

**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 2009 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.

# Summary: Intervention & Options

| Department /Agency: | Title: | |
|---|---|---|
| **Ministry of Justice** | **Impact Assessment of The Criminal Justice Act 2003 (Mandatory Life Sentence: Determination of Minimum Term) Order 2009** | |
| **Stage:** Legislation | **Version:** Final | **Date:** 17 November 2009 |
| **Related Publications:** | | |

**Available to view or download at:**

http://www.justice.gov.uk

**Contact for enquiries:** Alison Foulds **Telephone:** 020 3334 5029

## What is the problem under consideration? Why is government intervention necessary?

There is public concern that the starting point for determining the minimum term for life sentences for murder using a knife, currently 15 years, should be higher, particularly given that the starting point is 30 years for murder using a firearm. The guidance to courts on the starting points for determining the minimum term for murder is contained in primary legislation and it is therefore for the Government to bring forward any change.

## What are the policy objectives and the intended effects?

- Increased public confidence in sentencing and in the wider criminal justice system.

- Greater clarity for judges and practitioners.

- Increased public protection by reducing crime and re-offending through a combination of increased incapacitation and deterrence.

What policy options have been considered? Please justify any preferred option.

The following options have been assessed:

i) *Option 0* – Base Case ("do nothing").

ii) *Option 1* – Increase the starting point for determining the minimum term for life sentences for murder using a knife or other dangerous weapon where it is taken to the scene with the intention of use from 15 years to 25 years.

## When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The measure will be reviewed five years after implementation in line with Government best practice. This evaluation would seek to capture initial behavioural changes, for example whether there have been any increased deterrence effects.

**Ministerial Sign-off** For Final Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (i) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy and, (ii) the benefits justify the costs.***

Signed by the responsible Minister:

.....Date:

# Summary: Analysis & Evidence

| Policy Option: 1 | Description: Increase the minimum prison term for murder using a knife or other dangerous weapon where it is taken to the scene with the intention of use to 25 years. |
|---|---|

**COSTS**

| ANNUAL COSTS | | Description and scale of **key monetised costs** by 'main affected groups' There would be increased prison costs from longer minimum sentences, which would be borne by the Ministry of Justice. These costs would fall over the next 45 years and would arise 15 years after the point of implementation. |
|---|---|---|
| **One-off** (Transition) | **Yrs** | |
| **£ 0** | | |
| **Average Annual Cost** (excluding one-off) | | |
| **£ 11m** | 15-45 | **Total Cost** (PV) **£ 494m** |

Other **key non-monetised costs** by 'main affected groups' Potential other costs to the judicial system. Costs of implementing the change, including initial familiarisation and awareness costs.

**BENEFITS**

| ANNUAL BENEFITS | | Description and scale of **key monetised benefits** by 'main affected groups': Quantified benefits relate to the incapacitation effect associated with offenders receiving longer sentences. We have used the Home Office Cost of Crime Model to estimate this effect. |
|---|---|---|
| **One-off** | **Yrs** | |
| **£ 0** | | |
| **Average Annual Benefit** (excluding one-off) | | |
| **£ 0.1m** | | **Total Benefit** (PV) **£ 3m** |

Other **key non-monetised benefits** by 'main affected groups' A tougher sentence may also be valued by victims' families and friends and also increase public confidence in the criminal justice system. Reduced offending from a higher deterrence effect of increasing sentencing. **These non-monetised benefits are the key benefits of the proposed changes.**

Key Assumptions/Sensitivities/Risks Key risks relate to the strength of the increase in public confidence and the deterrence effect, these will be monitored in due course.

| Price Base Year 2008/9 | Time Period Years 45 | **Net Benefit Range** (NPV) **£ -592m to £ -390m** | **NET BENEFIT** (NPV Best estimate) **£ - 491m** |
|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| What is the geographic coverage of the policy/option? | | | England and Wales | |
| On what date will the policy be implemented? | | | Shortly after approval | |
| Which organisation(s) will enforce the policy? | | | Courts and prisons | |
| What is the total annual cost of enforcement for these organisations? | | | £ None for 15 yrs | |
| Does enforcement comply with Hampton principles? | | | Yes/No | |
| Will implementation go beyond minimum EU requirements? | | | Yes/No | |
| What is the value of the proposed offsetting measure per year? | | | £ N/A | |
| What is the value of changes in greenhouse gas emissions? | | | £ N/A | |
| Will the proposal have a significant impact on competition? | | | No | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro | Small | Medium | Large |
| Are any of these organisations exempt? | Yes/No | Yes/No | N/A | N/A |

**Impact on Admin Burdens Baseline** (2005 Prices) (Increase - Decrease)

Increase of £ Decrease of £ **Net Impact** £ N/A

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

# 1. Scope of the Impact Assessment

1. 1 This impact Assessment (IA) accompanies the Statutory Instrument on setting a new starting point for determining the minimum term for murder using a knife or other dangerous weapon in aggravating circumstance. The Government's proposals follow public concern that the starting point for murder using a knife, currently 15 years, should be higher, particularly given that the starting point is 30 years for murder using a firearm. It assesses the social costs and benefits of implementing the legislation, and follows the procedures and criteria set out in Impact Assessment guidance.

1. 2 It is important to state at the outset that full quantification of costs and benefits has not been possible. Where attempts have been made to present figures, uncertainties remain. Where it has not been possible to quantify the costs and benefits an attempt has been made to provide a qualitative assessment.

## Objectives of Proposals

1. 3 The Government's proposals are intended to achieve the following objectives:

- Increase public confidence in sentencing and the wider criminal justice system.
- Increase public protection by helping reduce crime and re-offending through a combination of the deterrence effect and incapacitation.
- Provide greater clarity for judges and practitioners

## Proposed Changes

1. 4 One option has been proposed to achieve the desired objectives:

- *Option 1* – Increase the starting point for determining the minimum term for life sentences for murder using a knife or other dangerous weapon where it is taken to the scene with the intention of use to 25 years.

## Affected Groups and Sectors

1. 5 The following sectors are likely to be affected by the proposals:

- **Public Authorities:** The Ministry of Justice will be affected through higher costs for the prison service from longer prison sentences.
- **Wider society:** A change in sentencing may have an impact on public confidence in the Criminal Justice System as well as any effects on society of a reduced level of murder and of knife crime more generally.

## 2. Problem under Consideration

2. 1 Murder is the only offence for which a life sentence is mandatory. When a person aged 21 or over is convicted of murder, the only sentence available to the court is one of life imprisonment (or the equivalents for those aged under 21). All bar a very few offenders convicted of murder have a minimum term specified. This time, commonly known as the "tariff", is the minimum that the offender will serve before he is eligible for release on life licence. Until November 2002, the Home Secretary set the minimum term, but this practice ceased following the decision in *Anderson v Secretary of State* [2003] 1 AC 837 that declared the practice unlawful. The judgment in *Anderson* ruled it illegal for the tariff to be set by a politician, rather than a judge, as this failed to meet the requirements for independent determination of penalty under article 6 of the European Convention on Human Rights.

2. 2 The Government responded to the *Anderson* judgment by introducing the provisions contained in Schedule 21 of the Criminal Justice Act 2003, which provide a statutory basis for tariff-setting by the trial judge. The intention was to provide clarity, consistency and confidence in the sentencing of those convicted of murder, and to ensure that there was an element of democratic accountability in the sentencing of this most serious of crimes. The provisions of the Criminal Justice Act 2003 now apply to all cases where the date of offence is on or after 18 December 2003. For offences dated before 18 December 2003, transitional arrangements apply.

2. 3 Schedule 21 provides for three starting points for those over 21 – a whole life term, 30 years and 15 years. A court may adopt a 30 year or 15 year starting point for an offender who is aged 18, 19 or 20 years old. There is a separate starting point of 12 years (for all murders) for offenders aged under 18 at the time the offence was committed. The legislation provides examples of the types of cases which would attract the higher starting points, with all other cases attracting a 15 year starting point. These are starting points used by the court for determining the minimum term for a life sentence for murder.

2. 4 Most of the examples given of cases which would normally attract the higher starting points relate to the motivation, planning, vulnerability of the victim and the conduct of the killing, e.g. sadism, or to the number of victims (more than one). Only one factor relates to the method of killing with a murder involving the use of a firearm or explosive being given as an example of a case that would normally attract a 30 year starting point, on the basis that possession of firearms or explosives are normally themselves offences. The Court of Appeal has since made clear that the 30 year starting point for murder using a firearm is usually merited only where there is also premeditation.

2. 5 The court, having chosen a starting point on its view of the facts, then determines the minimum term taking account of all aggravating and mitigating factors in the case. The Schedule sets out examples of aggravating and mitigating factors but there is nothing to prevent the court from applying any other aggravating or mitigating factors which are not mentioned in the statute. The flexibility of the Schedule is reflected in paragraph 8, which makes it clear that the court may arrive at a tariff of any length, from any starting point, as a result of this process. Schedule 21 is contained reproduced in full at **Annex A**.

2. 6 The Schedule also lists aggravating and mitigating factors not already allowed for in the court's choice of a starting point. The list of factors is by way of example and is not intended to be exhaustive. Paragraph 8 makes it clear that aggravating or mitigating factors should not be double counted. If a murder, for example, fell to be considered for a 30 year starting point because it was the murder of a police officer, the minimum term should not be increased beyond the starting point on the basis that the case was

aggravated by the fact that the victim was providing a public service or performing a public duty.

2. 7 In his speech to Parliament on June 2009 the Secretary of State for Justice announced:

*"The House will be aware that there has been considerable concern about the starting point for the minimum term for murder involving the use of a firearm, which is 30 years, compared with that for murder involving the use of a knife, which is 15 years. In the light of those concerns, I intend to review the provisions in schedule 21 to the Criminal Justice Act 2003, with a view to deciding whether to amend it, as I can do by order. I will of course consult the senior judiciary and the Sentencing Guidelines Council, and I would be very happy to receive wider representations, including from hon. Members on both sides of the House."*

2. 8 Before enacting the appropriate legislation, it is important to establish the likely impact of the proposals. This involves establishing the rationale from moving from the status quo and understanding the potential social and economic impacts on individuals and society at large. These issues are discussed in the next section.

# 3. Cost Benefit Analysis

3.1 This section sets out some potential costs and benefits of increasing the minimum sentence for murder using a knife or other dangerous weapons. It discusses: the approach to Cost Benefit Analysis (CBA) adopted; the costs and benefits associated with each option, and; the associated risks.

## Scope of CBA

**Principles**

3.2 The Impact Assessment (IA) aims to identify, as far as possible, the impacts of these proposals on society. A critical part of the process is to undertake a CBA of the proposal. CBA assesses whether the proposal would deliver a positive impact to society, and whether it takes into account economic, social and distributional considerations. The IA process should not, therefore, be confused with a *financial appraisal.* This is focused purely on assessing how many resources could be saved from certain proposals.

3.3 The CBA underpinning this IA rests on answering three basic questions:

- What is the "economic problem" that the proposed legislation is seeking to address that has led to the existing area not to function properly?
- What options are available to the Government to correct this problem?
- Are the recommended solutions (options) likely to have the desired impact? To establish a case for government action (to introduce the provisions), an assessment of the possible costs and benefits of government involvement must be made to show that benefits are likely to justify the costs.

3.4 CBA places a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot sensibly be monetised. These might be distributional impacts on certain groups (e.g. differential impacts on women) or some social impacts, either positive (e.g. better projection of a lawful society) or negative. Cost benefit analysis in this IA is therefore interpreted broadly, to include both monetised and non-monetised costs and benefits, with due weight given to those that are non-monetised.

3.5 In addressing these questions, the IA has focussed mainly on non-monetised impacts, with the aim of understanding what the net social impact to society might be from the proposed legislation. However, where possible we have provided some indications of the likely quantified costs.

**Issues of Standing**

3.6 An important consideration for any cost benefit analysis is the relevant scope of the assessment. The scope of this IA includes:

- *Impacts that fall within the physical geography of England and Wales*. This means that we have excluded any direct or indirect effects that may occur to people in Scotland or Northern Ireland as the reforms do not apply there.

- *Impacts that fall on lawful members of society*. We have therefore excluded any negative impacts that may fall on those who choose to disobey the law e.g. the costs on individuals who are incarcerated due to committing the crime in question.

- *Impacts that fall on present and future generations*. In line with the HM Treasury Green Book, an assessment has been made of the potential impacts of the Government introducing the provisions, particularly in terms of those who may be affected by it. As the changes would affect future generations, consideration has been given to its impact over a minimum appraisal period of 45 years. The standard discount rate of 3.5% has been used.

## Economic Problem

3.7 From an economic view point, the question is whether increased sentence lengths might be preferable from society's perspective. Increased sentences lengths may increase public confidence in sentencing and the wider criminal justice system. There will also be a direct impact on crime through increased incapacitation as prison terms lengthen.

3.8 However, it will also partly depend on whether the increased sentences have underlying behavioural effects through reducing the incentive to commit murder. In economic terms, the sentence applying to a crime can be viewed as part of the expected cost of that crime to the prospective offender. Ideally this would not fall below the cost to society of the crime i.e. the punishment should fit the crime.

3.9 In applying this framework two considerations are relevant:

- A key factor for the prospective offender is the probability of detection. Knives are relatively easy to conceal and dispose of. Given the detection of gun crime is higher than knife crime the incentive to use a knife rather than a firearm may be significant.

- Similarly, where the costs of acquiring weapons may have a significant impact. The ready availability of knives and other sharp objects means that acquiring these is relatively easy compared to other weapons e.g. guns.

3.10 Therefore the total expected cost of murder using a knife is likely to be significantly lower than that of using a firearm . This suggests that increasing the level of punishment would reduce the incentive to use knives.

3.10 As mentioned above the economic rationale for moving in this direction also depends upon whether any increased costs of moving to a new position are not disproportionate to the benefits.

## Base Case

3.11 IA guidance and the HM Treasury Green Book require that all options are assessed relative to a "base case." The base case for this IA is to do nothing and leave the starting point for sentencing for adults committing premeditated murder as it currently stands. As the base case effectively compares against itself the net present value is therefore **zero.**

3.12 In order to allow for an informed consideration of the proposed options we have considered the effect of making no changes to the minimum term of adults committing premeditated murder with a weapon. Currently for the small number of murders that are deemed exceptionally serious the court should normally consider a whole life term. For those murders not deemed exceptionally serious but are nevertheless

extremely serious, the starting point is 30 years. Similarly, a murder committed using a firearm also has a starting point of 30 years. For all other murders the starting point is normally 15 years.

3.13 The modelling of the base case has assumed that the murder rate will continue at 365 a year, the highest number of murders committed by adults (18+) using a weapon in a recent year (in 2005). It is also assumed that the average time served will continue to increase at the average rate seen in the past decade. It is further assumed that this rate of increase continues for 20 years (until 2029) at which point it is assumed to stabilise.

## Option 1

### Description

3.14 Option 1 would increase the starting point for determining the minimum term for life sentences for murder using a knife or other dangerous weapon where it is taken to the scene with the intention of use from 15 years to 25 years.

#### Costs of Option 1

*Prisons*

3.15 The additional costs of Option 1 compared to the base case relate to the extra costs of incarceration relating to longer sentences. These additional costs will take a considerable length of time to be realised. This analysis looks at the predicted costs associated with the increase in sentences over the next 45 years. This option has no initial cost and will have no cost for 15 years from the point of implementation, but will increase in each subsequent year. The costs have been discounted at 3.5% for the first 30 years and at 3% for years 31-45. The average discounted cost per year over the 45 years is estimated to be between £8.7 million and £13.2 million. This reflects current estimations of the cost per prisoner and assumptions on the distribution of prisoners to different sections of the prison estate which incur different costs.

#### Benefits of Option 1

3.16 The benefits can be separated into 3 main areas:

- The first area relates to the *value of punishment*. An increase in sentence length may increase public confidence by reducing a possible feeling that murder using a knife is treated more leniently than other methods of committing murder. There may also be a value to the friends and families of victims of providing a greater chance of them feeling that "justice has been seen to be done".

- The second area relates to *crime prevention through deterrence*. An increase in sentence length should lead to a stronger incentive not to commit murder if the expected cost to the offender is increased. This should lead to a reduction in the murder rate. This would lead to a potential reduction in costs to society.

- The third area is *crime reduction through the effect of incapacitating* offenders for longer. An increase in sentence length will mean that offenders are removed from the community longer and have less opportunity to commit further murders or other crimes. This would lead to a potential reduction in costs to society.

3.17 To calculate the third area we have used the 2003 Home Office Cost of Crime analysis combined with analysis of the re-offending rate of prisoners released between 2000 and 2007 who had received a sentence longer than 10 years. We have calculated the additional crimes which will not be committed by these offenders from extending their sentence by 10 years. We have taken a 1 year re-offending rate of 9.5%, a decay rate of the re-offending rate of 0.82, an annual real cost per re-offender of re-offending of £1620.15 in 2008 prices. This generates a net present benefit of £3.2m.

# 4. Specific Impact Tests

4.1 The IA Guidance sets out a number of tests which need to be assessed.

## Competition Assessment

4.2 This test helps to identify if the impact of the proposal has an effect on competitiveness in affected markets. This proposal has no effect on competition.

## Small Firms Impact Test

4.3 The IA Guidance states that *"any new proposal that imposes or reduces the cost on business requires a Small Firms Impact Assessment"*. The assessment of the potential impacts has relied on the BIS Small Firms Impact Assessment Guidance. There would be no impact on small firms.

## Legal Aid and Justice Impact Test

4.4 The effects on justice and perception of justice are included in the cost benefit analysis.

## Human Rights

4.5 The proposed Regulation, if adopted, will be compliant with the Human Rights Act.

## Equalities Impact Assessment

4.6 The EIA has been completed and attached at **Annex B.**

## Rural Proofing

4.7 Rural proofing is a commitment by Government to ensure domestic polices take account of rural circumstances and needs. It is a mandatory part of the policy process, which means as policies are developed, policy makers should consider whether their policy is likely to have different impacts in rural areas, because of particular circumstances and if so adjust the policy where appropriate, with solutions to meet rural needs and circumstances. The initial assessment made suggests that there are no specific rural impacts from the proposals.

## Health Impact Assessment

4.8 The Ministry of Justice has concluded that a health impact assessment is not necessary. The proposed changes will not have a significant effect on human health or have an effect on the wider determinants of health. In addition, it will not impact on the lifestyle-related variables provided in the guidance or on health or social care services.

# 5. Enforcement and Implementation

5.1 The implementation of the options presented here would require a Statutory Instrument.

# Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

| Type of testing undertaken | *Results in Evidence Base?* | *Results annexed?* |
|---|---|---|
| Competition Assessment | Yes | No |
| Small Firms Impact Test | Yes | No |
| Legal Aid | Yes | No |
| Sustainable Development | Yes | No |
| Carbon Assessment | Yes | No |
| Other Environment | Yes | No |
| Health Impact Assessment | Yes | No |
| Race Equality | Yes | No |
| Disability Equality | Yes | No |
| Gender Equality | Yes | No |
| Human Rights | Yes | No |
| Rural Proofing | Yes | No |

# Annexes

**ANNEX A**

## SCHEDULE 21

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.

3 For the purposes of this Schedule an offence is aggravated by sexual orientation if it is committed in circumstances falling within subsection (2)(a)(i) or (b)(i) of section 146.

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,

(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) a murder done for the purpose of advancing a political, religious or ideological cause, or

(d) a murder by an offender previously convicted of murder.

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—

(a) the murder of a police officer or prison officer in the course of his 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 racially or religiously aggravated or aggravated by sexual orientation, or

(h) a murder falling within paragraph 4(2) committed by an offender who was aged under 21 when he committed the offence.

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

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) and 5(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.

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) in a way not amounting to a defence of provocation,

(e) the fact that the offender acted to any extent in self-defence,

(f) a belief by the offender that the murder was an act of mercy, and

(g) the age of the offender.

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).

# Equality Impact Assessment Initial Screening – Relevance to Equality Duties

**Before you complete an EIA you must read the guidance notes and unless you have a comprehensive knowledge of the equality legislation and duties, it is strongly recommended that you attend an EIA training course**

The EIA should be used to identify likely impacts on:

- Disability
- Gender (including gender identity)
- Race
- Age
- Caring responsibilities (usually only for HR policies and change management processes such as back offices)
- Religion and belief
- Sexual orientation

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed

Proposed new adult starting point of 25 years for determining the minimum term for murder using a knife or other weapon carried to the scene with the intention of committing any offence, or having it available to use as a weapon, should the need arise, and where the knife or other weapon was used to commit murder.

2. Individual officer(s) & Unit responsible for completing the Equality Impact Assessment:

Sentencing Policy and Penalties Unit – Alison Foulds

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

| **Aims/objectives** | **Outcomes** |
|---|---|
| The proposed change in legislation is a response to considerable public concern the current starting point of 15 years for murder using a knife is too low, particularly in relation to the 30 year starting point for murder using a firearm. The aim is to increase public confidence in the criminal justice system. | The outcome should be more consistent sentencing for this type of murder case and a higher average minimum term as a reflection of the seriousness with which Parliament and the public views this offence. |

4. What existing sources of information will you use to help you identify the likely equality on different groups of people?

*(For example statistics, survey results, complaints analysis, consultation documents, customer feedback, existing briefings submissions or business reports, comparative policies from external sources and other Government Departments)*

| |
|---|
| Annual sentencing statistics and the Homicides, Firearm Offences and Intimate Violence Statistical Bulletin. |

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

*Note this information will help you to identify potential equality stakeholders and specific issues that affect them - essential information if you are planning to consult as you can raise specific issues with particular groups as part of the consultation process. EIAs often pause at this stage while additional information is obtained.*

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|---|
| It is not possible to obtain statistics on how many cases fall into the category attracting the proposed new starting point because this would require detailed reading of individual case files; aggravating factors are not routinely recorded. Also, the sentencing statistics for murder are not broken down by ethnicity. |

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

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|---|
| There should be positive benefits for all families of victims of this type of murder in that they will see the seriousness of the offence reflected in a higher minimum term under the life sentence than was likely to be imposed previously. |

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

No. This policy change is designed to promote more consistent sentencing for a particular type of murder case and it will apply equally to all offenders convicted and sentenced for the offence in the circumstances described.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

The proposal will affect all those who are convicted and sentenced for this type of murder. Currently, this group of offenders is likely to receive a higher minimum starting point than the current 15 years because the court will take into account the aggravating circumstances of taking a weapon to the scene with the intention of use. This proposal will provide for greater consistency in sentencing for this type of case and will be likely to push up the average minimum term imposed in these circumstances.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

There is no widening of the scope of the criminal law; the same group of people who currently commit this type of murder will be caught by the proposed change in the law. The proposal is carefully worded so as to include those cases where a weapon is used in aggravating circumstances, and to include the use of any weapon not just a knife. It might be the case that proportionately more women than men use a weapon to kill but this provision will apply only to those murder cases where the aggravating circumstances are found to be present by the court. The criminal law provides for a defence on the grounds, for example, of self-defence and acting in fear of violence, which will result in a conviction of manslaughter rather than murder.

10. Is a full Equality Impact Assessment Required?

No

NOTE - You will need to complete a full EIA if:

- the proposals are likely to have equality impacts and you will need to provide details about how the impacts will be mitigated or justified
- there are likely to be equality impacts plus negative public opinion or media coverage about the proposed changes
- you have missed an opportunity to promote equality of opportunity and need to provide further details of action that can be taken to remedy this

**If your proposed new or changed legislation, policy, strategy, project or service involves an Information and Communication**

**Technology (ICT) system and you have identified equality impacts of that system, a focused full EIA for ICT specific impacts should be completed. The ICT Specific Impacts template is available from MoJ ICT or can be downloaded from the Intranet and should be referenced here.**

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11. If a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

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|---|
| Sentencing is kept under constant review. The sentencing statistics and the homicide index will be analysed to monitor the impact of the proposed change, to the extent that that is possible. |

12. Name of Senior Manager and date approved

(*Note - sign off at this point should **only** be obtained if:*

- there are no equality impacts
- the changes have promoted equality of opportunity

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|---|
| You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA**, including the review mechanism. The summary will be published on the external MoJ website.<br>The proposed change in the starting point for murder using a weapon in certain aggravating circumstances will apply to the same group of offenders who are currently convicted of this type of case but there will be a positive impact for the families of victims who will see more consistent sentencing which fully reflects the seriousness with which Parliament, and the wider public, views this type of offence. |
| Name (must be grade 5 or above): Keir Hopley |
| Department: Ministry of Justice |
| Date: 11 November 2009 |
| Note: If a full EIA is required hold on to the initial screening and when the full EIA is completed send the initial and full screening together. **If a full EIA is not required send the initial screening by email to the Corporate Equality Division (CED), for publication.**<br>**Where an EIA has also been completed in relation to ICT specific aspects, email this to CED and copy to MoJ ICT** |