

**EXPLANATORY MEMORANDUM TO  
THE CRIMINAL JUSTICE ACT 2003 (MANDATORY LIFE SENTENCES:  
APPEALS IN TRANSITIONAL CASES) ORDER 2005**

**2005 No. 2798**

**1.** This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The Order sets out the powers of the Court of Appeal in appeals under paragraph 14(1) of Schedule 22 (mandatory life sentences: transitional cases) of the Criminal Justice Act 2003.

2.2 It makes supplementary procedural provisions to the Criminal Justice Act 2003 that enables the Court of Appeal Criminal Division to deal effectively with these cases.

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

3.1 None

**4. Legislative Background**

4.1 Paragraph 14(1) of Schedule 22 to the Criminal Justice Act 2003 provides a right of appeal to the Court of Appeal and the House of Lords, if appropriate, to prisoners who have either had their minimum term of their mandatory life sentence for murder reviewed or determined by the High Court under the transitional provisions in Schedule 22.

4.2 Paragraph 14(5) of Schedule 22 of the Criminal Justice Act 2003 gives the Secretary of State the power to make an order containing provisions corresponding to any provision in the Criminal Appeal Act 1968 with modifications for the purpose of appeals made under paragraph 14(1).

4.3 The instrument is being made in order to establish the vires of the Court of Appeal in respect of these cases. This is the first order to be made using the power.

**5. Extent**

5.1 This instrument applies to England and Wales

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The mandatory life tariff provisions (Chapter 7 of Part 12 and Schedules 21 and 22) in the Criminal Justice Act 2003 were commenced on 18 December 2003, and transferred from the Home Secretary to the courts, the power to set minimum terms in mandatory life sentences. However, the old system of setting tariffs was suspended in November 2002 following the Anderson judgment, resulting in a number of transitional cases where the offender was sentenced to life imprisonment but did not receive an authoritative minimum term at his trial.

7.2 Schedule 22 to the Act provides for these transitional cases, where no tariff has been set to have tariffs set by the High Court. Additionally, existing prisoners whose life sentence tariffs were set by the Secretary of State may apply to the High Court to have their current tariffs reconsidered. In both cases, offenders will then be able to appeal the High Court's decisions to the Court of Appeal Criminal Division.

7.3 The Order establishes the powers of the Court of Appeal in respect of these cases; it provides that the Court of Appeal may quash a minimum term determination made by the High Court and replace it with a different term. The Order also sets out the powers of the Court of Appeal which are exercisable by a single judge and the Registrar and, allows the Registrar to refer groundless applications for leave to appeal for summary determination. The Order also provides when an appellant has a right to be present at the hearing of his appeal, and provides that an appeal to the House of Lords only lies with the leave of the Court of Appeal or the House of Lords.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

8.2 The impact of these appeals falls mainly upon the Court of Appeal Criminal Division; the Order will assist the Court of Appeal in dealing cost effectively with applications. The Home Office have already transferred funds to the DCA for costs associated with implementation of the murder provisions in the Criminal Justice Act 2003.

## **9. Contact**

9.1 **Kathryn Lynch** at the Home Office Tel: 020 7035 8379 or e-mail: kathryn.lynych2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.