
EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies section 36 of the Criminal Justice Act 1988 (“the 1988 Act”) in relation to certain transitional cases arising under the Criminal Justice Act 2003 (“the 2003 Act”). The provision made by the Order is consequential on paragraph 6 of Schedule 22 to the 2003 Act and supplementary to the provision made by paragraph 15 of that Schedule.

Section 269 of the 2003 Act requires a court passing a mandatory life sentence to determine the minimum term to be served by the offender.

Section 36 of the 1988 Act provides for the Attorney General to refer a case concerning certain offences to the Court of Appeal for review if he is of the opinion that the sentence imposed is unduly lenient.

Schedule 22 to the 2003 Act sets out arrangements to deal with minimum terms in transitional cases. It specifically deals with two situations: prisoners serving minimum terms determined by the Secretary of State before section 269 came into force and prisoners already sentenced for murder but awaiting the determination of a minimum term at the time section 269 was commenced.

In the case of prisoners who have had their minimum term determined by the Secretary of State, paragraph 3 of Schedule 22 provides that they may apply to have their minimum term re-set by the High Court.

In the case of prisoners awaiting determination of their minimum term, paragraph 6 of the Schedule 22 requires the Secretary of State to refer these cases to the High Court for the determination of a minimum term under section 269.

Paragraph 15 of Schedule 22 provides that the power of the Attorney General to refer a sentence under section 36 of the 1988 Act applies in relation to an order made under paragraph 3(1)(a) as it applies in relation to an order made by the Crown Court under section 269(2) of the Act.

This Order makes the same provision in relation to an order made by the High Court pursuant to paragraph 6 of Schedule 22.