

106 Life sentence not fixed by law: minimum term

(1) In section 323 of the Sentencing Code (minimum term order for life sentence not fixed by law)—

(a) after subsection (1) insert— “(1A) The starting point, in determining the minimum term, is the relevant portion of the notional determinate sentence. (1B) The “notional determinate sentence”, in relation to a life sentence, is the custodial sentence that the court would have imposed if the court had not imposed the life sentence.

(1C) The “relevant portion” of the notional determinate sentence is— (a) where that sentence is within section 247A(2A) of the Criminal Justice Act 2003 (terrorist prisoners not entitled to early release), the term that the court would have determined as the appropriate custodial term (within the meaning given by subsection (8) of that section); (b) where that sentence is a sentence under section 252A, 254, 265, 266, 278 or 279 (and is not within paragraph (a)), two-thirds of the term that the court would have determined as the appropriate custodial term under that section; (c) where that sentence is any other custodial sentence, two-thirds of the term of the sentence.”;

(b) in subsection (2)— (i) for the words before paragraph (a), substitute “The minimum term must be the starting point adjusted as the court considers appropriate, taking into account—”; (ii) omit paragraph (b) (but not the final “and”)

1.1 The explanatory notes for this clause state the following:

Clause 106 amends section 323 of the Code. That section sets out the approach the court must take to determine a minimum term when it is required to make a minimum term order (rather than a whole life order) for those persons given a discretionary life sentence. A discretionary life sentence is a life sentence for offences other than murder where the judge has a discretion to impose a life sentence if the seriousness of the offence or the previous criminal record of an offender warrants it. The minimum term order must specify a minimum term, commonly referred to as a tariff, which the person is required to serve in custody before being considered for release by the Parole Board. The amendments change the starting point for the determination of the minimum term to at least two-thirds of the equivalent determinate sentence or custodial term of such sentence. The changes will apply to any sentence that is imposed after the provision comes into force, including in respect of offences committed before the provision comes into force.

New subsections (1A) and (1B) set out that the starting point in determining the minimum term is the relevant portion of the notional determinate sentence. The notional determinate

sentence is the custodial sentence that the court would have imposed if the court had not imposed a discretionary life sentence.

New subsection (1C) defines the relevant portion depending on the notional determinate sentence. Paragraph (a) provides that if the notional determinate sentence would be a determinate sentence that attracts no early release before the end of the appropriate custodial term, then the relevant portion is the whole of the appropriate custodial term that the court would have determined for such a sentence. Determinate sentences that attract no early release in this regard are extended determinate sentences (imposed under sections 254, 266 or 279 of the Code) and serious terrorism sentences (imposed under sections 268A or 282A of the Code) where, in accordance with section 247A(2) of the CJA 2003, the early release provisions of that section do not apply. Paragraph (b) provides that if the notional determinate sentence would be any other extended determinate sentence that is not within paragraph (a) or a sentence of particular concern (imposed under sections 252A, 265, or 278 of the Code) then the relevant portion is two-thirds of the appropriate custodial term that the court would have determined for that sentence. Paragraph (c) provides that if the notional determinate sentence is any other custodial sentence, then the relevant portion is two-thirds of the term that the court would have determined for that sentence.

Clause 106(1)(b) amends subsection (2) of section 323 of the Code. It provides that the minimum term must be the starting point (as determined in accordance with new subsections (1A)-(1C)) adjusted as the court considers appropriate, which retains judicial discretion to adjust the starting point for the minimum term where the court considers appropriate. Once the appropriate starting point is determined, the court then takes into account the matters set out in existing paragraphs (a) and (c). Paragraph (a) concerns the seriousness of the offence or the combination of the offence and one or more offences associated with it. Paragraph (c) concerns the crediting of periods on remand or similar. The Clause omits paragraph (b), which was the previous provision by which the court considered the release provisions that applied to determinate sentences against release for those subject to a discretionary life sentence.