

THE BAR COUNCIL

GUIDE TO SENTENCES FOR SERIOUS CRIMES

1. Introduction

This guide is intended to explain simply the various types of imprisonment for serious crime, when they apply and how they operate in practice. The sources for these powers are to be found primarily in the *Criminal Justice Act 2003* and the *Crime (Sentences) Act 1997*.

Offenders aged under 18 are sentenced to detention, not imprisonment. For the most serious cases parallel statutory provisions apply, though in these cases the sentences are likely lower than those for an adult. There are separate provisions for mentally disordered offenders who commit serious crime.

2. Types of imprisonment

There are different types of sentences of imprisonment.

- (A) Mandatory life imprisonment, reserved for murder. The Court *must* pass life imprisonment.
- (B) Discretionary life imprisonment, for dangerous offenders. The Court *must* pass life imprisonment if certain criteria are met.
- (C) Imprisonment for Public Protection, similar to life imprisonment which the Court *must* pass if certain criteria are met.
- (D) Extended sentence of imprisonment for a determinate (fixed) term.
- (E) Imprisonment for a determinate (fixed) term. In some case a Court must impose a 'minimum term' of imprisonment.

3. When do they apply?

- (A) Mandatory life imprisonment applies to those convicted of murder. The Court has no choice but to pass a sentence of life imprisonment. However the Court will also impose a minimum term that an offender must serve before he can be released on licence. (See section 4.)
- (B) Discretionary life imprisonment Many offences carry a maximum sentence of life imprisonment. However, once certain criteria are met, the Court must pass a sentence of life imprisonment. There are three criteria.
 - (i) First, the offence must be one which carries a maximum term of life

imprisonment. Such offences include rape, wounding or causing grievous bodily harm with intent to cause causing grievous bodily harm, robbery and aggravated burglary.

- (ii) The second criterion is that the offender represents a *significant risk* to members of the public of *serious harm* by committing further *specified offences* in the future.

Serious harm means death or serious personal physical or psychological injury. This assessment will be based upon the nature and circumstances of the offence, the pattern of offending behaviour and information about the offender himself.

There are 153 categories of *specified offence*. They are divided into violent offences and sexual offences. For violent offences they range from manslaughter, robbery wounding, and causing serious bodily harm to lesser offences such as actual bodily harm and affray. Almost all sexual offences, from rape to sexual touching without consent are specified offences.

- (iii) Finally, the seriousness of the offence itself must justify the imposition of a life sentence.

Some offences which are neither violent or sexual specified offences carry a maximum term of life imprisonment. So it is possible, in theory at least, to receive such a sentence outside the criteria outlined above for example for class A drugs trafficking.

When a life sentence is passed the Court will also impose a minimum term that an offender must serve before he can be released on licence. (See section 4.)

If the offender represents a *significant risk* to members of the public of *serious harm* by committing further specified offences but the offence for which he is to be sentenced does not carry a term of life imprisonment or the seriousness of the offence does not justify such a sentence, the Court may be required to pass a sentence of Imprisonment for Public Protection. As will be seen its effect is almost identical to life imprisonment.

- (C) Imprisonment for Public Protection. Once certain criteria are met, the Court must pass a sentence of Imprisonment for Public Protection. There are three criteria.

- (i) First, the offence for which the offender is to be sentenced is a '*specified offence*'. (See 3B(ii) above.)
- (ii) The second criterion is that the offence must be also be a '*serious offence*', that is to say one which carries a maximum term of 10 years imprisonment or more. Serious offences include wounding or causing serious bodily harm intent and rape and most sexual offences, but not lesser offences such as affray and sexual voyeurism.

- (iii) The third criterion is that the offender represents a *significant risk* to members of the public of *serious harm* by committing further *specified offences* in the future. (See 3B (ii) above).

When a sentence of imprisonment for public protection is passed, the Court will also impose a minimum term that an offender must serve before he can be released on licence. (See section 4.)

If the offender represents a *significant risk* to members of the public of *serious harm* by committing further *specified offences* but the offence is not a *serious offence*, the Court must pass an Extended sentence of imprisonment.

- (D) Extended sentence of imprisonment for a determinate (fixed) term. The Court must pass an extended sentence of imprisonment if two criteria are met.
 - (i) The offence for which the offender is to be sentenced is a '*specified offence*'. (See 3B (ii) above).
 - (ii) The offender represents a *significant risk* to members of the public of *serious harm* by committing further *specified offences* in the future. (See 3B(ii) above).
- (E) Imprisonment for a determinate (fixed) term. These are ordinary terms of imprisonment which apply in the vast majority of criminal cases.

All imprisonable offences have maximum terms, though these are rarely handed down. Some have minimum terms. Most types of offence have been considered by the Court of Appeal. From their judgments it is possible to discern the range of normal sentences for particular offences according to the seriousness of the circumstances. In relation to some offences, further guidance has been issued by the Sentencing Guideline Council and the Sentencing Advisory Board. The process of determining the length of the sentence is considered below. (See 4E)

4. How long will the offender actually serve?

- (A) Mandatory life sentences.
 - (i) When sentencing an offender to life imprisonment for murder a court must impose a *minimum term* or 'tariff'. There are three starting points based upon statutory criteria: whole life, 30 years and 15 years.

At the highest end of the scale are the gravest of cases for which life will mean the remainder of a person's life. That would normally include the murder of two or more people with a substantial degree of premeditation or which

involved abduction or sadistic or sexual conduct, the murder of a child involving abduction or sexual or sadistic motivation, murder for a political or ideological cause and murder by someone previously convicted of murder.

The next starting point is 30 years. Examples include the murder of a police or prison officer, murder involving use of a firearm or explosive, murder for gain such as during a robbery, murder involving sexual or sadistic conduct and murder which is racially aggravated or aggravated by sexual orientation.

For all other cases the starting point is 15 years.

- (ii) Once the starting point has been decided, the Court must consider any aggravating and mitigating features (not already considered in setting the starting point) which may shift the minimum term up or down. Aggravating factors include significant planning or premeditation, a victim particularly vulnerable because of age or disability, mental or physical suffering of the victim before death and concealment or destruction of the body. Mitigating factors include an intention to cause serious harm rather than to kill, lack of premeditation, whether the offender suffered from any mental disability, a belief that the killing was an act of mercy and a plea of guilty.
- (iii) The time served by the offender remanded in custody while before sentence will then be deducted.
- (iv) Whatever the minimum term, release of the offender will not be automatic at its conclusion. On the contrary the offender will only be released if the Parole Board is satisfied, having considered the offender's rehabilitation, that it is no longer necessary for the protection of the public that the prisoner should be confined. In many cases the offender will in fact serve very much longer than the minimum term and in some cases may never be released.
- (v) Once released, the offender will remain 'on licence' for the rest of his life. Conditions will be imposed on his licence, including supervision by the probation service. If the offender presents a risk of harm to others or is in breach of his licence conditions he may be recalled to prison.

(B) Discretionary life imprisonment

- (i) As with mandatory life imprisonment the Court must impose a *minimum term* or 'tariff'. For these cases the calculation of the minimum term is as follows: first the Court assesses the fixed term which it would otherwise have passed for the offence if it had not concluded that the offender was a significant risk to members of the public of serious harm. This will take into account aggravating and mitigating features and any discount for pleading guilty. It then calculates the time he would in fact have to serve in prison. Ordinarily a prisoner serving a fixed term would be entitled to parole after one half of the sentence, and receive a deduction for the time served in prison on remand whilst awaiting trial and before sentence. (see 4E below)
Take for instance an offender sentenced to life imprisonment for an armed

robbery because he was a significant risk to members of the public of serious harm. Ignoring the danger to the public he presents, the appropriate fixed term sentence for the offence might be 12 years imprisonment. From that 2 years might be deducted for his guilty plea, leaving a term of 10 years. For a fixed term sentence he would have to serve one half, 5 years. There may be a further reduction for the period he had served on remand before sentence, say 1 year, leaving a minimum term of 4 years.

- (ii) However, unlike the fixed term sentence and in common with the mandatory life sentence, that is the minimum he must serve before making an application for parole. He will only be released if the Parole Board is satisfied, having considered the offender's rehabilitation, that his detention is no longer necessary for the protection of the public.(See 4A (iv) above.)
- (iii) Once released, the offender will remain 'on licence' for the rest of his life. (See 4A (v) above).

(C) Imprisonment for Public Protection

- (i) The calculation of sentence for an offender who is sentenced to imprisonment for public protection works is the same as that for discretionary life imprisonment. (See 4B (i) to (iii) above).
- (ii) Release on licence also operates in the same way as for a life sentence. (See 4B(iv) & (v) above).
- (iii) The only distinction between imprisonment for public protection and a discretionary life sentence is that on the recommendation of the Parole Board the Secretary of State may remove the licence and its conditions once 10 years have elapsed following the offender's release on licence.

(D) Extended sentence of imprisonment for a determinate (fixed) term.

- (i) The Court will first go through the same sentencing exercise as it would for a standard fixed term sentence to arrive at the appropriate sentence. (See 4E below).
- (ii) An extension period, during which the offender will be on licence, is added.

For example an offence which would normally attract a 6 year term of imprisonment could, under these provisions, attract an extended licence period of 4 years.
- (iii) The offender will become eligible for parole after serving one half of the fixed term. But unlike the ordinary fixed term sentence (see 4E below) release at that point is not automatic. He will only be released if the Parole Board concludes his continued confinement is no longer necessary for the protection

of the public. However he must be released by the end of the term.

Hence in the above example, a person may be released after 3 years if confinement is no longer necessary for the protection of the public, but must be released after 6 years.

- (iv) Once released he will remain on licence until the end of the extension period.

If in the above example the offender was released after 4 years, he would remain on licence for a further 6 years, being the remainder of the fixed term (2 years) and the extension period (4 years).

- (v) Conditions may be imposed on his licence, including supervision by the probation service. If the offender presents a risk of harm to others or is in breach of his licence conditions he may be recalled to prison to serve up to the full extended sentence.

(E) Imprisonment for a determinate (fixed) term.

In summary the Court will go through the following process in deciding the length of sentence:

- (i) Determine whether the offence is one for which there is a minimum sentence. A small number of offences, for example some firearms offences and 'third strike' burglary and Class A drug trafficking offences, carry a minimum term of imprisonment, regardless of any mitigating features or discounts. The minimum term of imprisonment must be imposed unless there are exceptional circumstances.
- (ii) Determine the seriousness of the offence and the harm caused or intended. For example a robbery can be a handbag snatch committed on the spur of the moment with little effect on the victim; by contrast it may also be a raid of a sub-post office with weapons in which the postmaster is attacked and a large amount of money stolen.
- (iii) Consider aggravating factors. These include breach of trust and planning, relevant previous convictions of the offender, whether the offence was committed on bail and whether it was racially or religiously motivated.
- (iv) Consider a discount for a guilty plea. This may depend upon the stage at which the plea is entered with the maximum discount (usually one third) for pleas of guilty at the earliest stage and the minimum for a plea on the day of trial.
- (v) Consider whether a custodial sentence is necessary. Was it so serious that only a custodial sentence and no other form of penalty, for example a community sentence or a suspended sentence, is justified?

The effect of the sentence will be as follows:

- (vi) The period to be served will be one half of the sentence imposed less, where appropriate, the number of days that the offender has already served by virtue of his remand in custody before sentence. He must be released at that point.
- (vii) Once released he will remain on licence until the end of the full term.
- (viii) If the offender presents a risk of harm to others or is in breach of his licence conditions he may be recalled to prison to serve up to the full sentence.

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