



Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

PART 3

SENTENCING AND PUNISHMENT OF OFFENDERS

CHAPTER 5

DANGEROUS OFFENDERS

122 Life sentence for second listed offence

- (1) In Chapter 5 of Part 12 of the Criminal Justice Act 2003 (sentencing: dangerous offenders), after section 224 insert—

“224A Life sentence for second listed offence

- (1) This section applies where—
- a person aged 18 or over is convicted of an offence listed in Part 1 of Schedule 15B,
 - the offence was committed after this section comes into force, and
 - the sentence condition and the previous offence condition are met.
- (2) The court must impose a sentence of imprisonment for life unless the court is of the opinion that there are particular circumstances which—
- relate to the offence, to the previous offence referred to in subsection (4) or to the offender, and
 - would make it unjust to do so in all the circumstances.
- (3) The sentence condition is that, but for this section, the court would, in compliance with sections 152(2) and 153(2), impose a sentence of

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imprisonment for 10 years or more, disregarding any extension period imposed under section 226A.

- (4) The previous offence condition is that —
- (a) at the time the offence was committed, the offender had been convicted of an offence listed in Schedule 15B (“the previous offence”), and
 - (b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.
- (5) A life sentence is relevant for the purposes of subsection (4)(b) if—
- (a) the offender was not eligible for release during the first 5 years of the sentence, or
 - (b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.
- (6) An extended sentence imposed under this Act (including one imposed as a result of the Armed Forces Act 2006) is relevant for the purposes of subsection (4)(b) if the appropriate custodial term imposed was 10 years or more.
- (7) Any other extended sentence is relevant for the purposes of subsection (4)(b) if the custodial term imposed was 10 years or more.
- (8) Any other sentence of imprisonment or detention for a determinate period is relevant for the purposes of subsection (4)(b) if it was for a period of 10 years or more.
- (9) An extended sentence or other sentence of imprisonment or detention is also relevant if it would have been relevant under subsection (7) or (8) but for the reduction of the sentence, or any part of the sentence, to take account of a relevant pre-sentence period.
- (10) For the purposes of subsections (4) to (9)—
- “extended sentence” means—
- (a) a sentence imposed under section 85 of the Sentencing Act or under section 226A, 226B, 227 or 228 of this Act (including one imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006), or
 - (b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);
- “life sentence” means—
- (a) a life sentence as defined in section 34 of the Crime (Sentences) Act 1997, or
 - (b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);
- “relevant pre-sentence period”, in relation to the previous offence referred to in subsection (4), means any period which the offender

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spent in custody or on bail before the sentence for that offence was imposed;

“sentence of imprisonment or detention” includes any sentence of a period in custody (however expressed).

- (11) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.”
- (2) Schedule 18 (new Schedule 15B to the Criminal Justice Act 2003) has effect.
- (3) Schedule 19 (life sentence for second listed offence: consequential and transitory provision) has effect.

123 Abolition of certain sentences for dangerous offenders

In Chapter 5 of Part 12 of the Criminal Justice Act 2003 (sentencing: dangerous offenders) omit—

- (a) section 225(3) to (4) (imprisonment for public protection for serious offences),
- (b) section 226(3) to (4) (detention for public protection for serious offences),
- (c) section 227 (extended sentence for certain violent or sexual offences: persons 18 or over), and
- (d) section 228 (extended sentence for certain violent or sexual offences: persons under 18).

124 New extended sentences

In Chapter 5 of Part 12 of the Criminal Justice Act 2003 (sentencing: dangerous offenders), after section 226 and the italic heading “Extended sentences” insert—

“226A Extended sentence for certain violent or sexual offences: persons 18 or over

- (1) This section applies where—
- (a) a person aged 18 or over is convicted of a specified offence (whether the offence was committed before or after this section comes into force),
 - (b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences,
 - (c) the court is not required by section 224A or 225(2) to impose a sentence of imprisonment for life, and
 - (d) condition A or B is met.
- (2) Condition A is that, at the time the offence was committed, the offender had been convicted of an offence listed in Schedule 15B.
- (3) Condition B is that, if the court were to impose an extended sentence of imprisonment, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (4) The court may impose an extended sentence of imprisonment on the offender.

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- (5) An extended sentence of imprisonment is a sentence of imprisonment the term of which is equal to the aggregate of—
 - (a) the appropriate custodial term, and
 - (b) a further period (the “extension period”) for which the offender is to be subject to a licence.
- (6) The appropriate custodial term is the term of imprisonment that would (apart from this section) be imposed in compliance with section 153(2).
- (7) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences, subject to subsections (8) and (9).
- (8) The extension period must not exceed—
 - (a) 5 years in the case of a specified violent offence, and
 - (b) 8 years in the case of a specified sexual offence.
- (9) The term of an extended sentence of imprisonment imposed under this section in respect of an offence must not exceed the term that, at the time the offence was committed, was the maximum term permitted for the offence.
- (10) In subsections (1)(a) and (8), references to a specified offence, a specified violent offence and a specified sexual offence include an offence that—
 - (a) was abolished before 4 April 2005, and
 - (b) would have constituted such an offence if committed on the day on which the offender was convicted of the offence.
- (11) Where the offence mentioned in subsection (1)(a) was committed before 4 April 2005—
 - (a) subsection (1)(c) has effect as if the words “by section 224A or 225(2)” were omitted, and
 - (b) subsection (6) has effect as if the words “in compliance with section 153(2)” were omitted.

226B Extended sentence for certain violent or sexual offences: persons under 18

- (1) This section applies where—
 - (a) a person aged under 18 is convicted of a specified offence (whether the offence was committed before or after this section comes into force),
 - (b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences,
 - (c) the court is not required by section 226(2) to impose a sentence of detention for life under section 91 of the Sentencing Act, and
 - (d) if the court were to impose an extended sentence of detention, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (2) The court may impose an extended sentence of detention on the offender.
- (3) An extended sentence of detention is a sentence of detention the term of which is equal to the aggregate of—

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- (a) the appropriate custodial term, and
 - (b) a further period (the “extension period”) for which the offender is to be subject to a licence.
- (4) The appropriate custodial term is the term of detention that would (apart from this section) be imposed in compliance with section 153(2).
- (5) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences, subject to subsections (6) and (7).
- (6) The extension period must not exceed—
- (a) 5 years in the case of a specified violent offence, and
 - (b) 8 years in the case of a specified sexual offence.
- (7) The term of an extended sentence of detention imposed under this section in respect of an offence may not exceed the term that, at the time the offence was committed, was the maximum term of imprisonment permitted for the offence in the case of a person aged 18 or over.
- (8) In subsections (1)(a) and (6), references to a specified offence, a specified violent offence and a specified sexual offence include an offence that—
- (a) was abolished before 4 April 2005, and
 - (b) would have constituted such an offence if committed on the day on which the offender was convicted of the offence.
- (9) Where the offence mentioned in subsection (1)(a) was committed before 4 April 2005—
- (a) subsection (1) has effect as if paragraph (c) were omitted, and
 - (b) subsection (4) has effect as if the words “in compliance with section 153(2)” were omitted.”

125 New extended sentences: release on licence etc

- (1) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (sentencing: release and recall) is amended as follows.
- (2) In section 244(1) (duty to release prisoners on licence) (as amended by Schedule 14 to this Act) after “243A” insert “, 246A”.
- (3) After section 246 insert—

“246A Release on licence of prisoners serving extended sentence under section 226A or 226B

- (1) This section applies to a prisoner (“P”) who is serving an extended sentence imposed under section 226A or 226B.
- (2) It is the duty of the Secretary of State to release P on licence under this section as soon as P has served the requisite custodial period for the purposes of this section unless either or both of the following conditions are met—
 - (a) the appropriate custodial term is 10 years or more;

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- (b) the sentence was imposed in respect of an offence listed in Parts 1 to 3 of Schedule 15B or in respect of offences that include one or more offences listed in those Parts of that Schedule.
- (3) If either or both of those conditions are met, it is the duty of the Secretary of State to release P on licence in accordance with subsections (4) to (7).
- (4) The Secretary of State must refer P’s case to the Board—
 - (a) as soon as P has served the requisite custodial period, and
 - (b) where there has been a previous reference of P’s case to the Board under this subsection and the Board did not direct P’s release, not later than the second anniversary of the disposal of that reference.
- (5) It is the duty of the Secretary of State to release P on licence under this section as soon as—
 - (a) P has served the requisite custodial period, and
 - (b) the Board has directed P’s release under this section.
- (6) The Board must not give a direction under subsection (5) unless—
 - (a) the Secretary of State has referred P’s case to the Board, and
 - (b) the Board is satisfied that it is no longer necessary for the protection of the public that P should be confined.
- (7) It is the duty of the Secretary of State to release P on licence under this section as soon as P has served the appropriate custodial term, unless P has previously been released on licence under this section and recalled under section 254 (provision for the release of such persons being made by section 255C).
- (8) For the purposes of this section—
 - “appropriate custodial term” means the term determined as such by the court under section 226A or 226B (as appropriate);
 - “the requisite custodial period” means—
 - (a) in relation to a person serving one sentence, two-thirds of the appropriate custodial term, and
 - (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).”
- (4) Schedule 20 (release of new extended sentence prisoners: consequential amendments of Chapter 6 of Part 12 of the Criminal Justice Act 2003) has effect.

126 Sections 123 to 125: consequential and transitory provision

Schedule 21 (abolition of certain sentences for dangerous offenders and new extended sentences: consequential and transitory provision) has effect.

127 Dangerous offenders subject to service law etc

Schedule 22 (dangerous offenders subject to service law etc) has effect.

128 Power to change test for release on licence of certain prisoners

- (1) The Secretary of State may by order provide that, following a referral by the Secretary of State of the case of a discretionary release prisoner, the Parole Board—
 - (a) must direct the prisoner’s release if it is satisfied that conditions specified in the order are met, or
 - (b) must do so unless it is satisfied that conditions specified in the order are met.
- (2) “Discretionary release prisoner” means—
 - (a) an IPP prisoner,
 - (b) an extended sentence prisoner, or
 - (c) a person to whom paragraph 4, 15, 24 or 27 of Schedule 20B to the Criminal Justice Act 2003 (determinate sentence prisoners subject to transitional provisions) applies.
- (3) An order under this section may—
 - (a) amend section 28 of the Crime (Sentences) Act 1997 (duty to release IPP prisoners and others),
 - (b) amend section 246A of the Criminal Justice Act 2003 (release on licence of extended sentence prisoners),
 - (c) amend paragraph 6, 15, 25 or 28 of Schedule 20B to the Criminal Justice Act 2003 (release on licence of determinate sentence prisoners subject to transitional provisions),
 - (d) make provision in relation to any person whose case is disposed of by the Parole Board on or after the day on which the regulations come into force (even if the Secretary of State referred that person’s case to the Board before that day),
 - (e) make different provision in relation to each of the categories of discretionary release prisoner mentioned in subsection (2), and
 - (f) include consequential provision.
- (4) An order under this section is to be made by statutory instrument.
- (5) A statutory instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) In this section—

“extended sentence prisoner” means a prisoner who is serving a sentence under section 226A or 226B of the Criminal Justice Act 2003 (including one imposed as a result of section 219A or 221A of the Armed Forces Act 2006);

“IPP prisoner” means a prisoner who is serving one or more of the following sentences and is not serving any other life sentence—

 - (a) a sentence of imprisonment for public protection or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one imposed as a result of section 219 of the Armed Forces Act 2006);
 - (b) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 (including one imposed as a result of section 221 of the Armed Forces Act 2006);

“life sentence” has the same meaning as in section 34 of the Crime (Sentences) Act 1997.