



Where a person has been convicted of a specified sexual or violent offence committed after 4th April 2005, that person risks being dealt with by a sentence of increased severity as a “Dangerous Offender”.

Specified Violent Offences

The specified violent offences include:

- Murder / Solicitation to murder
- Manslaughter
- Kidnapping
- False imprisonment
- S16 Threats to kill
- S18 wounding with intent / GBH with intent
- S20 malicious wounding
- S27 abandoning children
- S38 assault with intent to resist arrest
- S47 assault occasioning actual bodily harm
- S1 cruelty to children
- Aggravated burglary
- Burglary with intent to cause GBH / do unlawful damage
- S4 Harassment causing fear of violence
- Racially or religiously aggravated assaults
- S12A Aggravated TWOC (where a death has occurred)
- S1 causing death by dangerous driving
- Robbery / assault with intent to rob
- Serious firearm offences
- Arson
- S1 riot
- S2 violent disorder
- S3 affray

Specified sexual offences

The specified sexual offences include:

- Rape
- Sexual assaults (including indecent assault, exposure and voyeurism)
- Sexual offences against children (including indecent photographs & “grooming”)
- Sexual offences against the mentally disordered
- Burglary with intent to rape
- Causing / controlling prostitution and sex trafficking

All of these specified violent and sexual offences carry maximum sentences of at least 2 years imprisonment.

Consequences of conviction for a specified offence

Once you have been convicted of a specified offence, then the sentencing Court has to carry out **2 tests**

- 1) Has the Seriousness Threshold been passed, and if so
- 2) Does the Dangerous Offender Provision apply?

The Seriousness Threshold

The Seriousness Threshold is passed where -

- i) the court wishes the offender to serve no less than 2 years in custody
- ii) (or, where the offender is aged 18 or over) the offender has a previous conviction for a serious offence

If the Seriousness Threshold is not passed, then the Court need not trouble itself any further. However if the Seriousness Threshold IS passed, the Court must at least consider whether or not the Dangerous Offenders Provision applies.

The Dangerous Offender Provision

The Dangerous Offenders Provision will apply where -

1. A person (whether adult or youth) is convicted of a specified offence and the Court would wish to impose a sentence of at least 4 years’ imprisonment,
2. **OR** a person (whether adult or youth) is convicted of serious offence
3. **AND** the Court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission of further specified offences

If the Court decides that the Dangerous Offenders Provision does apply, then the Court must consider whether or not to impose:

1. a life sentence, OR
2. a sentence for public protection, OR
3. an extended sentence

Dangerous Offenders Provision and Youth Offenders

If the Court decides that the Dangerous Offenders Provision does apply to a person appearing in the Youth Court, this can result in a youth being sent to the Crown Court to be dealt with.

However there will be few cases in which it will be appropriate for the Court to exercise the power to send a youth for trial. It should only be exercised where:

- there is sufficient information, which will usually include a risk assessment in a recent pre sentence report, about the nature and circumstances of the Offender, the offence and any pattern of behaviour of which the offence forms part for the youth court to allow the court to assess the offender as dangerous; and
- it is in the interests of justice for the youth to be tried on indictment

Assessment of “Significant Risk”

Normally the Court will ask the Probation Service to help with the “assessment of significant risk” when the pre-sentence report is being prepared after a guilty plea or a finding of guilt.

“Significant risk” means more than the “possibility” of similar offences occurring again. The Court takes into account the nature and circumstances of the current offence, the offender’s history of offending, social and economic factors in relation to the offender and the offender’s thinking and attitude towards both the offence and to supervision.

Definition of “Serious Harm”

"Serious harm" means death or serious personal injury, whether physical or psychological.

Where offences are serious specified offences, the fact that they have been deemed to be serious offences for Schedule 15 purposes does not mean that there is automatically a risk of serious harm. For example, an offence of robbery may give rise to serious harm or it may not, depending on the circumstances.

Some risk of serious harm is not enough. The test is the existence of a significant risk, enough to warrant a sentence which may never end.

Repetitive sexual or violent offending at low level without serious harm is not dangerous. However, the definition of serious harm is case specific: minor offences of gradually escalating seriousness might be significant in the assessment of future risk.

Assessment of “Dangerousness”

The court in making the assessment-

- a) **must** take into account all such information as is available to it about the nature and circumstances of the offence,
- b) **may** take into account all such information as is available to it about the nature and circumstances of any other offences of which the offender has been convicted by a court
- c) **may** take into account any information which is before it about any pattern of behaviour
- d) **may** take into account any information about the offender which is before it.

Extended Sentence

An “extended sentence of imprisonment” (or in the case of an offender aged 18 – 20, an extended sentence of detention in a Young Offender Institution), is a sentence of **no less** than 12 months

imprisonment, and an extended licence period of up to 5 years (in the case of a violent offence) or 8 years (in the case of a sexual offence).

Where the “specified offence” carries a maximum penalty of less than 10 years, then the Court is limited to dealing with offenders deemed to be “dangerous” by imposing an extended sentence of imprisonment (or such other sentence as it finds most appropriate in the case). This is a sentence in two halves

- A fixed sentence of imprisonment of at least 12 months with automatic release on licence at the halfway point, and
- Thereafter an extended supervision periods for up to 5 years for violent offenders, and up to 8 years for sexual offenders.
- Whilst you are on licence, you must comply with all its conditions. At any time during your licence the Secretary of State may withdraw it and order your return to custody.

Imprisonment for Public Protection (IPP)

Where the “specified offence” carries a maximum penalty of 10 years or more, then the court may impose a sentence for public protection (or such other sentence as it finds most appropriate in the case, such as an extended sentence of imprisonment).

- A sentencing judge will determine the tariff period to be served before the Parole Board can start to consider your release
- The actual release date thereafter will depend upon the discretion of the Parole Board
- On release you will subject to licence for life (unless the Secretary of State orders that your licence is to end, which it cannot do unless you have been on licence for at least 10 years)
- Whilst you are on licence, you are liable to be recalled to custody at any time if your licence is revoked, either on the recommendation of the Parole Board or, if it is thought expedient in the public interest, by the Secretary of State.

Test for imposition of an IPP

Since 14 July 2008, before the court can sentence an offender to imprisonment for public protection, it must be satisfied:

- the offender has committed a specified offence, (or a serious specified offence); and
- that there is a significant risk of serious harm to members of the public occasioned by the commission of further specified offences by the offender.

Imprisonment under an IPP

Offences with a maximum penalty of life imprisonment

If the offence is one for which the maximum penalty is a discretionary life sentence, and the court considers that seriousness of the offence, or of the offence and one or more offences associated with it, justifies life imprisonment, then the court **must** impose life imprisonment (or a sentence of custody for life, if 18 but under 21).

Mandatory life sentences will continue to be given for murder.

If the “specified offence” is one in respect of which the offender could be liable to imprisonment for life (a discretionary life sentence), and if the Court considers that the seriousness of the offence or the

offence and one or more offences associated with it justify the imposition of a sentence of imprisonment for life, then the Court will impose a sentence of imprisonment for life.

- The Court will fix a minimum period you must serve before being eligible for parole
- The actual release date thereafter will depend upon the discretion of the Parole Board
- When you are released from your life sentence, you will be subject to a licence for the rest of your life and will be liable to be recalled to prison at any time if your licence is revoked, either on the recommendation of the Parole Board, or, if it is thought necessary in the public interest, by the Secretary of State.

However if the court does not consider that the seriousness of the offence justifies life imprisonment, then the court may impose a sentence for public protection, or such other sentence as it finds most appropriate in the case.

Offences with a maximum penalty of 10 years or more

If (a) the offence is not one for which the maximum sentence is life imprisonment or (b) the circumstances of the offence do not justify imprisonment for life, the court must **consider** whether:

- the offence crosses the seriousness threshold
- **OR** (in the case of an adult) the defendant has previously been convicted of a serious offence
- **AND** no other overall sentencing package short of an IPP could be found which would provide the necessary public protection from this offender:

If these conditions are satisfied, the court must then decide whether to impose:

- an indeterminate sentence of imprisonment for public protection (detention in a young offenders institution for public protection if 18 but under 21);
- an extended sentence of imprisonment for public protection (extended sentence of detention in a young offenders institution if 18 but under 21), if the offence is either a specified offence or a serious specified offence; or
- any other sentence that the court considers to be appropriate and has power to impose

In other words, whereas the imposition of a discretionary life sentence is mandatory where the court are satisfied that the criteria for such a sentence are met, the imposition of a sentence of imprisonment for public protection is discretionary, even if the court finds the criteria have been met.

Serious Specified Offences

A serious violent offence would be:

- Murder
- Manslaughter
- S18 wounding with intent / GBH with intent
- Robbery (involving use of a firearm or imitation firearm)
- Serious firearm offences

A serious sexual offence would be:

- Rape

- Serious sexual assaults
- Serious sexual offences against children and the mentally disordered

These offences have a maximum penalty of 10 years or more.

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Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.