

SENTENCING EXPLAINED

IMPRISONMENT FOR PUBLIC PROTECTION (IPP) SENTENCES

What is an Imprisonment for Public Protection (IPP) sentence? Why were they introduced and what problems did they give rise to? Why did these problems eventually lead to its abolition?

This note explains IPP sentences, which were introduced in England and Wales by the Criminal Justice Act 2003 and came into force in April 2005, before being abolished in December 2012.¹ The sentence proved controversial because it was imposed in a wider range of cases than Parliament had perhaps anticipated and there was inadequate provision of offending behaviour courses for prisoners who received an IPP sentence which meant many of them found it difficult to demonstrate to the Parole Board that they were safe to be released after they had served their minimum term. The abolition of the IPP sentence did not have retroactive effect, so a large number of prisoners continued to serve an IPP sentence many years after the sentence's abolition.

Why were IPP sentences introduced?

IPP sentences were introduced to enable sentencing courts to impose an indeterminate sentence on an offender who was considered to be dangerous but whose offence was not serious enough to meet the requirements for a life sentence to be imposed. An indeterminate sentence is a sentence from which the offender cannot be automatically released from prison at a certain future point in time; they must serve a minimum term as the sentence for the offence for which they have been convicted and, once this minimum term has been served in full, the offender becomes eligible to apply to the Parole Board for release – but release will only be granted where the Parole Board is satisfied that the offender no longer needs to be confined for the protection of the public. A person serving an indeterminate sentence can, therefore, be kept in prison for the remainder of their life should they not be able to satisfy the Parole Board that they are safe to release. If an IPP prisoner is released from prison, they are liable to remain on licence for the rest of their lives (meaning that they can be returned to prison if they breach their licence conditions or commit any further offences) although IPP prisoners subject to life licence can apply to have their licence cancelled 10 years after they have been released from prison. This is the one substantive way in which the IPP sentence differed from a life sentence as life sentence prisoners can never have their

¹ A similar sentence of Detention for Public Protection was also introduced for those aged under 18 or, in certain circumstances, between 18 and 21.

life licence cancelled.

In what circumstances were IPP sentences to be imposed?

When the IPP sentence regime came into force for offences committed on or after 4 April 2005 it quickly became apparent that these new indeterminate sentences were being imposed more frequently than the Government had anticipated – and also for offences that were not in themselves particularly serious. The IPP sentence was available to courts where an offender had been convicted of one of 96 specified ‘serious’ violent or sexual offences (offences which carried a maximum sentence of 10 years or more) and where the court considered that the offender posed a ‘significant risk of serious harm’ in the future. A particularly significant factor that led to the greater than anticipated imposition of IPP sentences was that when the legislation was first enacted, any offender convicted of one of these 96 offences was presumed to pose a significant risk of serious harm if they had ever previously been convicted of either one of the 96 ‘serious’ offences or a further 57 ‘specified’ offences (for which the maximum sentence was between two and seven years). Therefore, unless the court found it unreasonable to do so, where an offender was convicted of one of the serious offences and they had a previous conviction from one of the list of 153 specified offences, they had to consider the offender to be dangerous and impose an IPP sentence. This presumption of dangerousness was abolished by the Criminal Justice and Immigration Act 2008 which reserved IPP sentences for more serious offences by introducing a minimum length of the minimum term of two years (there had not previously been a minimum length and minimum terms could be as short as a few months).

Why were IPP sentences amended in 2008?

The combination of the presumption that an offender was dangerous if they had a previous conviction from the list of 153 specified offences (some of which had a maximum sentence of two years and were therefore not amongst the most serious of offences) with there being no minimum threshold for the length of sentence that should be imposed for the current offence meant that IPP sentences were imposed on a wider pool of offenders than the Government had anticipated. Some people who received an IPP sentence, and could therefore potentially spend the rest of their lives in prison, had not committed particularly serious offences. By the end of June 2008, just over three years after the IPP sentence had been introduced, the sentence had been imposed on almost 4,500 offenders.² Thirty-four per cent of these IPP prisoners had a minimum term of two years or less.³

A consequence of the greater than anticipated use of IPP sentences was that there was insufficient supply of rehabilitative programmes within the prison system which meant that prisoners who received an IPP sentence were not able to access courses that may reduce their risk factors and enable them to secure release by the Parole Board. This was a particular problem in the case of people serving short minimum terms, who often served their whole minimum term before they

² Jacobson, J. and Hough, M. (2010) *Unjust Deserts: imprisonment for public protection*. Prison Reform Trust, p. 12.

³ Jacobson, J. and Hough, M. (2010) *Unjust Deserts: imprisonment for public protection*. Prison Reform Trust, p. 12.

could access any courses – but their failure to complete any courses that may reduce their risk of committing further offences meant that they could not secure release by the Parole Board.

What changes did the Criminal Justice and Immigration Act 2008 introduce?

The amendment introduced in 2008 sought to address the two most significant problems that had arisen from the implementation of the IPP sentence: the presumption of dangerousness where an offender had a previous conviction for a specified offence (even if that offence had been unrelated, relatively minor and a long time ago) and the lack of a minimum duration of a minimum term (which meant that an indeterminate sentence could be imposed for offences that were not particularly serious). The Criminal Justice and Immigration Act 2008 introduced a minimum duration of minimum terms of two years (except in the rare cases where the offender had a previous conviction for one of 23 very serious offences) and removed the presumption in favour of dangerousness where an offender had a previous conviction for a specified offence. IPP sentences also became discretionary: where the conditions were met, an IPP sentence ‘may’ be imposed rather than, as previously, ‘must’ be imposed.

What is the test to determine whether someone is a ‘dangerous’ offender?

Under the provisions of the Criminal Justice Act 2003, an offender is dangerous if ‘the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences’.⁴ When making this assessment, the court must take into account all information available about the nature and circumstances of the offence, and may take into account any previous convictions, whether the offending amounts to a pattern of behaviour, and any other information about the offender which is before the court.

‘Significant risk’ has been interpreted by the courts to mean ‘a higher threshold than mere possibility of occurrence and in our view can be taken to mean (as in the Oxford Dictionary) ‘noteworthy, of considerable amount or importance’.⁵ ‘Serious harm’ is defined by the Criminal Justice Act 2003 as death or serious personal injury, whether physical or psychological.

Did the reforms in 2008 alleviate the problems with IPP sentences?

The reforms in 2008 meant that IPP sentences became better targeted as they were only available where the offender had committed a relatively serious offence (one that merited them spending at least two years in prison) or, less commonly, where they had committed a less serious offence on this occasion but had previously been convicted of a more serious offence (which may indicate that they were at risk of committed further serious offences). As IPP sentences became discretionary, it also meant that judges could reserve the imposition of indeterminate sentences for the most serious offenders. However, the reforms were not retroactive in effect so did nothing to alleviate the controversy surrounding the large number of people who remained in prison after

⁴ A specified offence is any one of the 153 offences listed in Schedule 15 to the Criminal Justice Act 2003.

⁵ *Lang* [2005] EWCA Crim 2864 at [17].

the completion of a relatively short minimum term as they could not convince the Parole Board they were now safe to be released.

Furthermore, according to the Ministry of Justice in 2011, IPP sentences were not working because: ‘They were designed as a way to protect the public from serious offenders but have been used far more widely than intended, with some having been issued to offenders who have committed low level crimes with tariffs as short as two years... IPPs have proved difficult to understand and leave victims and their families uncertain about how and when an offender will be released. IPPs lead to inconsistent sentencing. They have been given to some offenders, while others who have committed similar crimes have served fixed sentences.’⁶

What replaced IPP sentences in 2012?

The IPP sentence was abolished by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and replaced by a new extended sentence (see the separate explainer on Extended Sentences) and an automatic life sentence for an offender convicted of a second very serious violent or sexual offence (see the explainer on Life Sentences). These reforms applied to anyone convicted on or after 3 December 2012.

How many IPP sentences were imposed?

A total of 8,711 IPP sentences were imposed – more than 1,000 IPP sentences for every year the sentence was in existence.⁷ On 31 December 2019, there were 2,134 people in prison serving an IPP sentence who were yet to be released from prison for the first time (the vast majority of which had completed the minimum term imposed in their case; only 144 of these prisoners had yet to reach their tariff expiry date). There were a further 1,260 IPP prisoners who had been released but subsequently recalled to prison.⁸

⁶ Ministry of Justice (2011) *IPP Factsheet*. Available at: <https://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/ipp-factsheet.pdf>.

⁷ HM Inspectorate of Prisons (2016) *Unintended consequences: Finding a way forward for prisoners serving sentences of imprisonment for public protection*, p. 10.

⁸ Ministry of Justice (2019) *Offender Management Statistics quarterly: April to June 2019*, Prison Population: 30 September 2019, Table 1.9a.