

SENTENCING EXPLAINED

LIFE SENTENCES

In what circumstances can life sentences be imposed in England and Wales and what does a life sentence mean in practice? How many prisoners are serving life sentences?

This note explains when a sentence of life imprisonment may be imposed in England and Wales. In addition to the mandatory life sentence for murder, there are three other circumstances in which a court may impose a life sentence for offences other than murder. Unlike standard determinate prison sentences – whereby release is automatic at the halfway stage of the sentence – a life sentence prisoner must serve a minimum term in full before release can be considered by the Parole Board and release will only be granted where the Parole Board determine that the offender does not pose an unacceptable risk to the public. Therefore, a life sentence prisoner never has an automatic entitlement to be released from prison.

The mandatory life sentence for murder

A life sentence is the mandatory penalty for anyone convicted of murder in England and Wales (for offenders under the age of 18 at the time of the offence the sentence is detention during her Majesty's pleasure which is of similar effect). The majority of people given a life sentence in England and Wales have been convicted of murder. Our separate explainer on sentencing for murder gives much more detailed information about mandatory life sentences.

In what circumstances can a life sentence be imposed other than for murder?

A life sentence may be imposed in three circumstances: where someone is convicted of an offence with a maximum sentence of life imprisonment and the dangerousness provisions of the Sentencing Code apply; where the provisions under the Sentencing Code for an automatic life sentence apply (a life sentence for second listed offence); and a discretionary life sentence where a court considers one appropriate for an offence with a maximum sentence of life imprisonment but where one of the two Sentencing Code provisions are not triggered.

Life sentences for dangerous offenders

A court may impose a life sentence if all the following criteria are met: an offender is convicted of a 'Schedule 19 offence' (listed in Schedule 19 to the Sentencing Code); and in the court's opinion the offender poses a significant risk to the public of serious harm by the commission of further specified offences;¹ and the maximum penalty for the offence is life imprisonment; and the court considers that the seriousness of the offence justifies the imposition of imprisonment for life.

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'.² 'Serious harm' is defined by s.306(2) of the Sentencing Code as death or serious personal injury, whether physical or psychological.

The assessment of the seriousness of the offence should consider: the seriousness of the offence itself, on its own or with other offences associated with it; the offender's previous convictions; the level of danger to the public posed by the offender and whether there is a reliable estimate of the length of time they will remain a danger; and the available alternative sentences.³

Life sentence for second listed offence

In 2012, as part of the overhaul of sentencing of dangerous offenders which saw the abolition of the Imprisonment for Public Protection (IPP) sentence, a new form of life sentence was introduced under section 224A of the Criminal Justice Act 2003, which is sometimes referred to as the automatic life sentence. This provision has subsequently been replaced by sections 273 (for those aged 18-20) and 283 (for those aged 21+) of the Sentencing Code. No finding of dangerousness is necessary for this route to the imposition of a life sentence although, in practice, the high threshold test for its imposition suggests that many such situated offenders could be considered to be dangerous. Unless it would be unjust to do so in all the circumstances, the court must impose a life sentence where: the offender is convicted of an offence listed in Part 1 of Schedule 15 of the Sentencing Code (a number of the most serious violent, sexual and terrorist offences); and the court would impose a sentence of imprisonment of 10 years or more for the offence; and the offender has a previous conviction for a listed offence for which he received a life sentence with a minimum term of at least 5 years or a custodial sentence of at least 10 years. The pool of offenders to which this sentence will apply is likely to be small as they must have served a substantial previous sentence for a very serious offence and now fall to be sentenced for another very serious offence for which a substantial sentence is merited.

¹ A specified offence is any of the violent, sexual or terrorism offences listed in Schedule 18 to the Sentencing Code.

² *Lang* [2005] EWCA Crim 2864 at [17].

³ *Burinskas* [2014] EWCA Crim 334.

Discretionary life sentences

Although rarely used in practice, courts have the power to impose a discretionary life sentence on an offender convicted of an offence where the maximum sentence is life imprisonment even where the conditions for dangerous offenders or those convicted of a second listed offence have not been met. The two-stage test for a discretionary life sentence is that: (1) the offender has been convicted of a very serious offence; and (2) there are good grounds for believing that the offender may remain a serious danger to the public for a period which cannot be reliably estimated at the date of sentence. Whilst most of these offenders will also meet the criteria for a life sentence for dangerous offenders under the provisions of the Sentencing Code, it is possible for circumstances to arise where someone has committed a very serious offence and poses a serious danger to the public – but the offence for which they are to be sentenced is not a Schedule 19 offence. An example may be an offender who has been convicted of repeated offences of very serious drug supplying (as drug supplying offences fall outside the scope of Schedule 19 but the most serious of these offences have a maximum sentence of life imprisonment).

Release and life licence

Irrespective of whichever form of life sentence an offender is serving, release from prison can only be attained after the minimum term has been served in full and the Parole Board is satisfied that they are safe to be released. The test for release is that: ‘The Parole Board must not give a direction for release unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined’. When considering whether a prisoner is safe to be released, the Parole Board will take into account factors such as the circumstances of the offence(s), whether the offender has sought to address any problems they may previously have had that might have contributed to committing the offence(s), the plans that have been put in place to manage the offender in the community and the relationship they have with the probation officer who will supervise them after release. As the Parole Board states on its website: ‘If the panel decides that an offender should be released, this is not the same as saying that he or she now poses no risk. However, it may be that their risk has been reduced to a level where it is now small enough to be effectively managed in the community, and the panel will only recommend release if they feel this is the case.’⁴

Once released from prison, a life sentence prisoner will remain on licence for the rest of their life. This means that they can be recalled to prison at any point in the future should they breach their licence conditions or commit any further offences.

How commonly are life sentences imposed?

Compared to many other Western jurisdictions – particularly other European nations – life sentences are more commonly used in England and Wales. On 30 September 2019, there were

⁴ Parole Board, *How we make our decisions*, <https://www.gov.uk/guidance/how-we-make-our-decisions>.

7,597 people in prison serving a sentence of life imprisonment.⁵ This represents approximately 9% of the total prison population.

⁵ Ministry of Justice (2019) *Offender Management Statistics quarterly: April to June 2019*, Prison Population: 30 September 2019, Table 1.9a. There were an additional 3,429 indeterminate sentence prisoners serving the now-abolished Imprisonment for Public Protection (IPP) sentence.