

# SENTENCING EXPLAINED

## SENTENCING FOR MURDER

How do judges decide how long an offender convicted of murder should spend in prison before they can be considered for release? Are these offenders released automatically at the end of this period and how are the public protected if and when they are released back into society?

This note explains the current sentencing regime for murder that was introduced by the Criminal Justice Act 2003. The mandatory sentence for an adult convicted of murder is life imprisonment and the equivalent sentence for a juvenile convicted of murder – detention during Her Majesty’s pleasure – is very similar in effect and is also explained below. A sentence of life imprisonment rarely means that the offender must spend the rest of their life in prison and this note identifies the factors that are likely to have a particular impact on the length of time the offender will spend in prison before they can be considered for release for the first time.

### *Why was a new sentencing regime for murder introduced in 2003?*

Prior to the Criminal Justice Act 2003, judges had only a limited role in the sentencing process for murder. When an offender was convicted of murder under the previous sentencing regime, the trial judge could make a recommendation as to how long that person should serve before release was considered and this recommendation, along with a separate recommendation from the Lord Chief Justice – which could be the same or different – was sent to the Home Secretary who had the ultimate power to determine what was then known as the ‘tariff’.<sup>1</sup> Unless this tariff was subsequently amended by the Home Secretary, it would have to be served in full before release was considered by the Parole Board.

However, the Home Secretary’s tariff-setting power was removed after the decision by the House of Lords in *R v Secretary of State for the Home Department, ex parte Anderson* [2002] UKHL 46 which declared this power incompatible with the European Convention on Human Rights on the grounds that the Home Secretary – as a politician – should not be determining sentences in individual cases. The Government’s response to this decision was to enact the sentencing regime for murder introduced by the Criminal Justice Act 2003.

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<sup>1</sup> The term ‘tariff’ was replaced by ‘minimum term’ in the early 2000s in order to bring greater clarity to the specified period that must be served before release can be considered.

## *The Statutory Sentencing Regime for Murder*

The Criminal Justice Act 2003 transferred the power to set minimum terms in murder cases from the Home Secretary to judges. However, judges' discretion in determining minimum terms remained constrained by a requirement for them to have regard to a set of sentencing starting points contained in Schedule 21 to the Criminal Justice Act 2003 (these provisions have now been replicated in Schedule 21 to the Sentencing Code). The normal starting point for sentencing is a minimum term of 15 years but where one or more of a number of factors identified in the Schedule are present, the starting point can be raised to 25 years, 30 years or whole life. Whichever starting point is adopted by the judge, the minimum term may be increased or decreased by the judge by reference to any relevant aggravating or mitigating factors that have not been taken into account at the stage of determining the appropriate starting point.

### Offences normally attracting the 25 year starting point

In 2010, Schedule 21 was amended by Parliament to add a new starting point of 25 years for a murder that has been committed by an offender who took a knife or other weapon to the scene of the murder intending either to commit any offence or to have it available for use as a weapon.

### Offences normally attracting the 30 year starting point

A wide range of aggravating factors can – if present in a particular case – raise the starting point from 15 years to 30 years. These are:

- A murder involving the use of a firearm or explosive;
- A murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death);
- A murder intended to obstruct or interfere with the course of justice;
- A murder involving sexual or sadistic conduct;
- The murder of two or more persons;
- A murder that is racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity.

### Offences normally attracting the whole life starting point

There are a smaller pool of aggravating factors that Parliament has determined are so serious that the starting point for sentencing should be a whole life order (i.e. that the offender should never be eligible to be considered for release from prison). These are:

- The murder of two or more persons, where each murder involves any of the following:
  - (i) a substantial degree of premeditation or planning,
  - (ii) the abduction of the victim, or
  - (iii) sexual or sadistic conduct;
- The murder of a child if involving the abduction of the child or sexual or sadistic motivation;
- The murder of a police officer or prison officer in the course of his or her duty

- A murder done for the purpose of advancing a political, religious, racial or ideological cause;
- A murder by an offender previously convicted of murder.

*How does the age of the offender influence the starting point?*

The above starting points only apply to adults convicted of murder. There is only one starting point available for an offender convicted of a murder committed when under the age of 18 and that is a starting point of 12 years. However, 12 years is only the starting point and, particularly where any of the above aggravating factors are present, the minimum term can be greatly in excess of the starting point. It should also be noted that the whole life starting point does not apply to those aged under 21 at the time of the offence and thus if an offender aged between 18 and 21 commits an offence that would normally attract the whole life order starting point, the 30 year starting point is instead adopted.<sup>2</sup>

*How does a sentence of detention during Her Majesty's pleasure differ from life imprisonment?*

There is one key substantive difference between the type of sentence served by a juvenile convicted of murder and those served by adults. From the halfway point in the minimum term for sentences of detention during Her Majesty's pleasure it is possible for a court to review the original minimum term imposed in light of the offender's progress in custody and, if that progress is deemed by the judge to be exceptional, it is possible for the judge to reduce the original minimum term by one or two years. No such provision exists for adults now convicted of murder.

*Has the Criminal Justice Act 2003 increased the length of sentences for murder?*

Yes, the average length of minimum terms has increased significantly as a result of the changes introduced in 2003. Prior to the reforms the average offender convicted of murder had to serve around 12 years in prison before they could first be considered for release and this average has increased to around 21 years today. The reason for this increase is quite straightforward: before the Criminal Justice Act 2003 the higher starting point for murder was 15/16 years and most of these types of offences now attract a starting point of either 30 years or whole life.

*Release from prison and life licence*

Minimum terms in murder cases differ from normal determinate prison sentences in two important respects: firstly, they must be served in full rather than attracting release at the halfway point (therefore a minimum term of 20 years means spending at least 20 years in prison) and, secondly, release from prison at the end of the minimum term is not automatic as they must apply to the Parole Board for release and this will only be granted if the Parole Board is satisfied that it is safe to do so. If an offender convicted of murder is released from prison they will remain subject to life licence for the rest of their lives. This means that they can be returned to prison to continue

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<sup>2</sup> Offenders aged 18, 19 or 20 at the time of the offence are sentenced to 'custody for life' rather than to life imprisonment although the effect of these two types of sentence is identical in practice.

serving their life sentence should they fail to comply with their licence conditions or commit any further offences.