

# SENTENCING EXPLAINED

## MANDATORY MINIMUM SENTENCES

This explainer will discuss mandatory minimum sentences, which are fixed by law.<sup>1</sup> These apply to certain types of offending, categorised either solely by its type or by a combination of that and the offender's previous record.

In most cases, the court can depart from the mandatory minimum if a certain test is met. Until recently, the most common test for this was whether imposing the mandatory minimum would be unjust. However, this is now being overtaken by consideration of whether the court identifies exceptional circumstances.

When conducting these sentencing exercises, judges and magistrates should not take the mandatory minimum as a starting point. Instead, they must navigate the process in the standard way, following any applicable Sentencing Council guideline. Afterwards, they should cross-check to ensure that the resulting sentence is not less than the minimum sentence. Subsequently, they must explain how their sentence accords with the guidelines.<sup>2</sup>

For the majority of cases involving mandatory minimum sentences, it is proper to make a reduction in sentence to acknowledge an offender's guilty plea, if applicable. However, this must not have the effect of reducing the sentence to less than 80% of the minimum sentence.<sup>3</sup> There are three key exceptions to this. Firstly, in cases of murder, the reduction will not exceed one-sixth of the minimum term and will never amount to more than five years.<sup>4</sup> Secondly, for firearms cases, there is no reduction for a guilty plea if that reduction would take the sentence below the required minimum sentence.<sup>5</sup> Thirdly, there is no reduction in the length of driving disqualifications for a guilty plea, due to their status as an ancillary order.<sup>6</sup>

Deferral of sentence, where the court gives an offender a set time to address problems perceived as influencing their offending before sentence is carried out,<sup>7</sup> will not be appropriate where a mandatory minimum sentence is imposed.<sup>8</sup>

---

<sup>1</sup> See Section 399 of the Sentencing Act 2020.

<sup>2</sup> *R v Andrews (Michael)* [2012] EWCA Crim 2332, *R v Silvera* [2013] EWCA Crim 1764, and *R v Thomas (Murray)* [2023] EWCA Crim 543. See *R v O'Neil Pendley* [2023] EWCA Crim 293 for an example of when the court failed to do this in relation to class A drug trafficking.

<sup>3</sup> *R v Kewley (Jonathan Franklyn)* [2016] EWCA Crim 282 and *R v Giff (Derek)* [2023] EWCA Crim 594. See also Section 73(2A)-(5) of the Sentencing Act 2020.

<sup>4</sup> Overarching guideline on reduction in sentence for guilty plea, page 8.

<sup>5</sup> Overarching guideline on reduction in sentence for guilty plea, page 7.

<sup>6</sup> Overarching guideline on reduction in sentence for guilty plea, page 4.

<sup>7</sup> Sections 3-13 of the Sentencing Act 2020, first introduced through Section 1 of the Power of Criminal Courts Act 1973. The maximum time that a sentence may be deferred for is six months.

<sup>8</sup> *R v Okezie (Ikenna Precious)* [2016] EWCA Crim 677.

## Circumstances in which a mandatory minimum sentence is applicable:

### Single offences

#### Murder

The current sentencing regime for murder was introduced in 2003 and is now contained in Schedule 21 to the Sentencing Act 2020. Along with disqualifications for driving with excess alcohol, it is a rare example of when there is no scope for departure from the mandatory sentence.

There are subtle differences in the mandatory sentence for this, depending on the offender's age. For an adult aged over 21, it is life imprisonment. For those aged between 18 and 20, it is custody for life. The practical implications of this are identical to life imprisonment. The equivalent sentence for a juvenile, however, is 'detention during His Majesty's pleasure'.<sup>9</sup> The life sentence is mandatory but judges have discretion to set the appropriate minimum term by having regard to the statutory sentencing framework set out in Schedule 21 to the Sentencing Act 2020. This minimum term must be served before release is considered by the Parole Board. If the offender is released by the Parole Board, they will remain on licence for the remainder of their lives, subject to potential recall to custody. It is this aspect of the sentence for murder that is mandatory.

#### Disqualification from driving

Some traffic offences require a mandatory driving disqualification, regardless of the offender's previous driving record. Like murder, there is no method of departing from the minimum. However, it only applies to the ancillary orders of disqualification rather than the substantive sentences of, for instance, custody, community orders, or fines.

Three common examples of when this minimum applies can be given. The majority apply to single offences without necessitating previous convictions. Firstly, for driving with excess alcohol, there is a mandatory disqualification of 12 months.<sup>10</sup> Secondly, for dangerous driving, there is a mandatory disqualification of two years after which the offender must complete an extended test.<sup>11</sup> Thirdly, one of three or six years applies if the offender has been convicted of a similar offence in the 10 years prior.<sup>12</sup> These disqualifications take effect immediately and cannot be made consecutive to each other.<sup>13</sup>

#### Manslaughter of an emergency worker

Mandatory life sentences for those who are convicted of the unlawful act manslaughter of an emergency worker who was exercising their functions as such a worker came into force on 28 June 2022.<sup>14</sup> It applies to anyone aged 16 or over at the time of the offence.

This is only applicable to cases of unlawful act manslaughter and it does not extend to the other

---

<sup>9</sup> Sections 324, 259, and 275 of the Sentencing Act 2020.

<sup>10</sup> Section 34(1) of the Road Traffic Offenders Act 1988.

<sup>11</sup> Sections 34(1) and 36(2) of the Road Traffic Offenders Act 1988.

<sup>12</sup> Section 34(3) and (3A) of the Road Traffic Offenders Act 1988.

<sup>13</sup> *R v Meese (Kelvin Thomas)* [1973] 1 W.L.R. 675.

<sup>14</sup> Inserted into the Sentencing Act 2020 by section 3 of the Police, Crime, Sentencing and Courts Act 2022.

variations of manslaughter: gross negligence or partial defences to murder, such as diminished responsibility and loss of control. Unlawful act manslaughter has been described as occurring when an offender ‘intends an unlawful act and one likely to do harm to the person and death results which was neither foreseen nor intended’.<sup>15</sup>

The mandatory sentence is also only applicable if the offence was ‘committed against an emergency worker acting in the exercise of functions as such a worker’.<sup>16</sup> ‘Emergency worker’ is broadly defined, borrowing from the provisions previously created for assaults on emergency workers,<sup>17</sup> and includes both paid and unpaid employment or engagement. The legislation gives the following exhaustive list of examples:

- A constable;
- A person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes;
- A National Crime Agency officer;
- A prison officer;
- A person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of a corresponding kind to those carried out by a prison officer;
- A prison custody officer, so far as relating to the exercise of escort functions;
- A custody officer, so far as relating to the exercise of escort functions;
- A person employed for the purposes of providing, or engaged to provide, fire services or fire and rescue services;
- A person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both); and
- A person employed for the purposes of providing, or engaged to provide – (i) NHS health services, or (ii) services in the support of the provision of NHS health services, and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public.<sup>18</sup>

There is no statutory definition of when a potential victim would exercise their functions as an emergency worker. However, the Act is clear that this includes ‘circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker’.<sup>19</sup> Additionally, the High Court has held that, for the offence of assaulting an emergency worker to be made out, there is no requirement that emergency worker to have been acting lawfully at the time.<sup>20</sup> This may also be applicable to manslaughter of an emergency worker but, at present, this has not been clarified by either the courts or Parliament.

---

<sup>15</sup> *R v Creamer (George Walter)* [1966] 1 QB 72.

<sup>16</sup> Section 285(1)(c) of the Sentencing Act 2020.

<sup>17</sup> This mirrors Section 67 of the Sentencing Act 2020 and Section 3 of the Assaults on Emergency Workers (Offences) Act 2018.

<sup>18</sup> Section 68(1) and (2) of the Sentencing Act 2020, Section 285A(5) of the Sentencing Act 2020. Section 68(3) further defines key terms.

<sup>19</sup> Section 285(3) of the Sentencing Act 2020.

<sup>20</sup> *Campbell v CPS* [2020] EWHC 3868 (Admin).

There is scope here for departing from a life sentence. The court must impose the mandatory sentence unless it is ‘of the opinion that there are exceptional circumstances which relate to the offence or the offender and justify not doing so’.<sup>21</sup>

There is not, at the time of writing, any case law relevant to this particular provision. Therefore, there is no specific guidance as to what merits exceptional circumstances. Although the sentencing guideline for unlawful act manslaughter gives some assistance in the form of principles. Circumstances are said to be exceptional if imposing a life sentence ‘would result in an arbitrary and disproportionate sentence’. It also says that ‘a single striking factor may amount to exceptional circumstances, or it may be the collective impact of all the relevant circumstances’. If such exceptional circumstances are found then the court should undertake its sentencing exercise by applying the guideline in the normal way.<sup>22</sup>

### Serious terrorism offences

The court is required to impose a serious terrorism sentence of imprisonment, or detention in a young offender’s institution, if a number of criteria are satisfied:<sup>23</sup>

1. The offender must have been aged 18 or over when the offence was committed.<sup>24</sup>
2. The court must be dealing with an offender for a serious terrorism offence,<sup>25</sup> which was committed on or after 29<sup>th</sup> June 2021.
3. The court has not imposed a sentence of imprisonment or custody for life.
4. The court must be of the opinion that there is ‘a significant risk to members of the public of serious harm occasioned by the commission by the offender of further terrorism offences or other specified offences’.
5. The risk of multiple deaths condition is met.<sup>26</sup> This is that ‘the court is of the opinion that either the serious terrorism offence, or the combination of the offence and one or more offences associated with it, was very likely to result in or contribute to (whether directly or indirectly) the deaths of at least two people as a result of an act of terrorism, and the offender was, or ought to have been aware of that likelihood’. It is irrelevant whether or not any death actually occurred.<sup>27</sup>

---

<sup>21</sup> Section 285A(2) of the Sentencing Act 2020.

<sup>22</sup> <https://www.sentencingcouncil.org.uk/offences/crown-court/item/unlawful-act-manslaughter/> Step 3 – Required sentence and exceptional circumstances, 11-13.

<sup>23</sup> Section 282A and B of the Sentencing Act 2020 (if the offender is aged over 21 when convicted) and Section 268B of the Sentencing Act 2020 (if the offender is aged over 18 but under 21 when convicted).

<sup>24</sup> Section 268B(1)(b) of the Sentencing Act 2020.

<sup>25</sup> As defined in Sections 282B(2), 268B(2), and Section 306(2), with reference to Schedule 17A and Section 69 of the Sentencing Act 2020.

<sup>26</sup> Sections 282B(1) and 268B(1) of the Sentencing Act 2020.

<sup>27</sup> Sections 282B(3) and (4) and 268B(3) and (4) of the Sentencing Act 2020. Terrorism is defined within Section 1 of the Terrorism Act 2000.

The appropriate custodial term for a serious terrorism sentence is 14 years and an extension period to be served on licence of at least seven and no more than 25 years.<sup>28</sup> The test for departing from the minimum sentence is whether the court finds that there are exceptional circumstances.<sup>29</sup>

### Firearms

A mandatory minimum sentence is applicable to a number of offences involving firearms, including possession, purchase, and acquisition of them.<sup>30</sup> The offences are contained in Schedule 20 to the Sentencing Act 2020. The offender must have been aged 16 or over when the offence was committed.<sup>31</sup> The relevant minimum sentence is five years' imprisonment or detention if the offender is aged 18 or over when convicted or three years' detention if they were under 18.<sup>32</sup> Again, this can be departed from if the court is of the opinion that exceptional circumstances are present.<sup>33</sup>

### Threatening with an offensive weapon or bladed article

A custodial sentence is required for those aged 16 or over who are convicted of threatening a person with an offensive weapon or a bladed article in a public place.<sup>34</sup> The length of the minimum sentence varies depending on the offender's age. In the case of a person who is aged 16 or over but under 18 when convicted, a Detention and Training Order of at least four months applies. If the offender is aged 18 or over but under 21 when convicted, there is a sentence of detention in a young offender institution for a term of at least six months. If the offender is aged at least 21 when convicted, the minimum custodial sentence must be at least six months.<sup>35</sup>

This sentence can be suspended, but this will rarely be appropriate. Additionally, the prescribed minimum sentence for those aged 16 and 17 years is a Detention and Training Order, which cannot be suspended at all.<sup>36</sup>

The test for departure from the minimum sentence varies depending on when the offence was committed. If it was before 28 June 2022, the court must consider whether it would be unjust to impose the minimum sentence. If it is after that date, then the test is whether there are exceptional circumstances.<sup>37</sup>

---

<sup>28</sup> Section 282C(2)-(4) and 268(2) of the Sentencing Act 2020.

<sup>29</sup> Section 282B(2) of the Sentencing Act 2020.

<sup>30</sup> Section 311 and Schedule 20 of the Sentencing Act 2020, formerly Section 51A of the Firearms Act 1968 inserted by Section 287 of the Criminal Justice Act 2003.

<sup>31</sup> Section 311(1)(b) of the Sentencing Act 2020.

<sup>32</sup> Section 311 (3)-(5) of the Sentencing Act 2020.

<sup>33</sup> Section 311(2) of the Sentencing Act 2020.

<sup>34</sup> Section 312(1) of the Sentencing Act 2020: If convicted of an offence under Section 1A of the Prevention of Crime Act 1953 or under Section 139AA of the Criminal Justice Act 1988.

<sup>35</sup> Section 312(3) of the Sentencing Act 2020.

<sup>36</sup> *Uddin* [2022] EWCA Crim 751. Suspended sentence orders are not available for offenders aged under 18 at the time of sentencing.

<sup>37</sup> Section 315(1a) and (3) of the Sentencing Act 2020.

## Repeat Offenders

### Automatic life sentences

These were originally introduced in 1997.<sup>38</sup> The provision was repealed in 2005,<sup>39</sup> but automatic life sentences were reintroduced in 2012 with minor changes.<sup>40</sup> They are applicable to a person aged 18 or over who is convicted of a 'listed offence' and has already been convicted for a previous offence from that list and received a sentence equivalent to at least a 10 year custodial sentence for that offence. The result is that they receive an automatic life sentence.<sup>41</sup> The listed offences are contained in Schedule 15 to the Sentencing Act 2020 and include the most serious violent, sexual and terrorist offences. There is another condition that, but for this mandatory sentence, the court would impose a sentence of imprisonment of 10 years or more, disregarding any extension period.<sup>42</sup>

Departure from a life sentence is available if the court is of the opinion that there are particular circumstances which relate to the second or first offence or the offender themselves, which would make it unjust to impose a life sentence in all the circumstances.<sup>43</sup> This is the only mandatory minimum sentence specifically for repeat offenders that has maintained this test. The others, which are arguably for less serious offences than those affected by automatic life sentences, all have a stricter test for departure since the implementation of the Police, Crime, Sentencing and Courts Act 2022.

### Offensive weapons

A mandatory custodial sentence applies to those convicted of possessing an offensive weapon or having a bladed article in public or on educational premises for a second time. The 'two strikes' rule dictates that an offender should receive a minimum sentence of six months' in custody if they are aged 18 or over upon conviction. If they are aged 16 or 17, the minimum sentence is a Detention and Training Order of at least four months' duration.<sup>44</sup>

The test for departure from the minimum sentence is the same as that for threatening with an offensive weapon or bladed article, with the wording changing depending on the date of the offence's commission.<sup>45</sup> The Court of Appeal has confirmed that consecutive sentences are proper when sentencing for multiple offences in circumstances where a mandatory minimum sentence for this offence is applicable.<sup>46</sup>

---

<sup>38</sup> By Section 2 of the Crime (Sentences) Act 1997.

<sup>39</sup> By the Criminal Justice Act 2003 with effect from 4<sup>th</sup> April 2005.

<sup>40</sup> Section 122 Legal Aid, Sentencing and Punishment of Offenders Act 2012 inserted Section 224 Criminal Justice Act 2003, which is now found in Sections 273 and 283 of the Sentencing Act 2020.

<sup>41</sup> For an illustration of the court considering a life sentence that has been imposed under Section 283 Sentencing Act 2020 see *R. v Dixon (David)* [2023] EWCA Crim 280).

<sup>42</sup> Section 283(4) of the Sentencing Act 2020.

<sup>43</sup> Sections 273(3) and 283(3) of the Sentencing Act 2020.

<sup>44</sup> Through the Criminal Justice and Courts Act 2015 (Commencement No. 2) Order 2015 bringing section 28 of, and Schedule 5 to, the Criminal Justice and Courts Act 2015 into effect.

<sup>45</sup> Through section 315(2A) of the Sentencing Act 2020 inserted by section 124 of the Police, Crime, Sentencing and Courts Act 2022.

<sup>46</sup> *R v Robinson (Dominic Edward Miles)* [2016] EWCA Crim 719.

### Trafficking of Class A drugs

This is a minimum custodial period of seven years<sup>47</sup> that applies on a third conviction for this offence.<sup>48</sup> For this to be applicable, the offender must have been 18 or over at the time of the commission of the third offence.<sup>49</sup> The discretionary test for departing from the mandatory minimum sentence is again, either whether the court finds that imposing the minimum sentence would be unjust or if the court determines that there are exceptional circumstances, depending on the date of the offence.<sup>50</sup>

In 2018, the Court of Appeal examined a case where the sentencing judge had departed from the mandatory minimum sentence and found that he had erred in doing so. The length of time since the offender's last drug trafficking conviction and the fact that he was at a relatively low level in the supply chain were not enough to make the imposition of the minimum sentence unjust.<sup>51</sup> It was pointed out that the provisions were intended to have a deterrent effect and whether the mandatory sentence was markedly more severe than that which would be arrived at on a standard examination of the guidelines had to be measured against it.

Where the minimum sentence applies, there should be a pre-sentence report unless the court is persuaded that it would be unjust to pass such a sentence. However, the failure to obtain a report is not of itself a fatal flaw in the sentencing exercise.<sup>52</sup>

### Domestic burglary

A minimum custodial term of three years is applicable to those convicted of domestic burglary for a third time. The offender must have been 18 or over when they committed the offence. Additionally, the two other domestic burglary offences must have taken place in England and Wales or other parts of the United Kingdom.<sup>53</sup> The discretionary test for departing from this minimum sentence is the same date dependent consideration as for offensive weapon, bladed article, and class A drug trafficking offences.<sup>54</sup>

---

<sup>47</sup> Section 313 of the Sentencing Act 2020, previously Section 110 of the Powers of Criminal Courts (Sentencing) Act 2000.

<sup>48</sup> This refers to any offence specified in paragraphs 1 and 10 of Schedule 2 to the Proceeds of Crime Act 2002. Class A drugs is as defined in the Misuse of Drugs Act 1971.

<sup>49</sup> Section 313(1) of the Sentencing Act 2020.

<sup>50</sup> Section 313(2) and (2A) of the Sentencing Act 2020.

<sup>51</sup> *R v Marland (Edward James)* [2018] EWCA Crim 1770.

<sup>52</sup> *R v Marland (Edward James)* [2018] EWCA Crim 1770 and *R v Wooff* [2019] EWCA Crim 2249. *R v Densham (Neil James)* [2014] EWCA Crim 2552.

<sup>53</sup> Section 314(1)-(3) of the Sentencing Act 2020, previously Section 111 of the Powers of Criminal Courts (Sentencing) Act 2000.

<sup>54</sup> Section 314(2) and (2A) of the Sentencing Act 2020, inserted by Section 124 of the Police, Crime, Sentencing and Courts Act 2022.