

SENTENCING FOR MURDER

SENTENCING EXPLAINED

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. The equivalent sentence for a juvenile convicted of murder – detention during His Majesty’s pleasure – is very similar in effect and is explained below. A sentence of life imprisonment rarely means that a person must spend the rest of their life in prison. This note identifies the factors that are likely to have a particular impact on the length of time the person 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 a person 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. 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’.¹ Unless this tariff was subsequently amended by the Home Secretary, it had 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, 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.

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 regard 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 Act 2020). The normal starting point for sentencing is a minimum term of 15 years. Where one or more factors identified in the Schedule are present, the starting point can be raised to 25 years, 30 years, or life. Whichever starting point is adopted

¹ 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.

by the judge, the minimum term may be increased or decreased 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. This applies to a murder that was committed by a person 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 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 life starting point

There are few 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 child involving a substantial degree of premeditation or planning, where the offence was committed on or after the day on which section 125 of the Police, Crime, Sentencing and Courts Act 2022 came into force;
- 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 committed by a person previously convicted of murder.

How does the age of the convicted person influence the starting point?

The above starting points only apply to adults convicted of murder. Until quite recently, there was only one starting point available for a person convicted of murder when under the age of 18, and

that was a starting point of 12 years. However, changes made by the Police, Crime, Sentencing and Courts Act 2022 introduced a more nuanced approach with a starting point relating to the actual age of the offender at the time of the offence and the applicable starting point had the offender been aged 18 at the time of the offence. The below table is now set out in Schedule 21 for judges to follow when sentencing a person for murder who was under the age of 18 at the time of the offence.

1	2	3	4
<i>Age of offender when offence committed</i>	<i>Starting point supplied by paragraph 3(1) had offender been 18</i>	<i>Starting point supplied by paragraph 4(1) had offender been 18</i>	<i>Starting point supplied by paragraph 5 had offender been 18</i>
17	27 years	23 years	14 years
15 or 16	20 years	17 years	10 years
14 or under	15 years	13 years	8 years

Additionally, the whole life starting point does not apply to those who were aged under 21 at the time of the offence, and thus if a person aged between 18 and 21 commits an offence that would normally attract the whole life order starting point, the 30-year starting point is adopted instead.²

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, a person convicted of murder had to serve an average of around 12 years in prison before they could first be considered for release. 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. 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 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 a person convicted of murder is released from prison, they will remain subject to a life licence for the rest of their lives. This means that they can be returned to prison to continue serving their life sentence, should they fail to comply with their licence conditions or commit any further offences.

² Persons 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.