



Sentencing Guidelines Council

Dangerous Offenders

Guide for Sentencers and Practitioners

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Version 2: This guide is intended to summarise the law as at 14 July 2008

UPDATING THIS GUIDE

When this supplement to the Sentencing Guidelines Council's Compendium was published in September 2007, it was anticipated that it would require updating to incorporate future judgments. This update has become necessary not so much because of new judgments but because of the significant changes in the law introduced by the Criminal Justice and Immigration Act 2008 which apply to everyone sentenced under these provisions on or after 14 July 2008. It seeks to describe the law as it currently stands and to apply the judgments to those provisions as appropriate.

For ease of reference, Annex F contains the key statutory provisions as amended or inserted by the 2008 Act.

The following summary is designed to provide a quick outline of the new provisions – it is no more than a summary, the details are set out more fully in the pages that follow.

1) Where an adult offender is convicted of a **serious offence** and the risk and harm criteria are both met but a life sentence is either not available or not justified, the court may impose:

- **Imprisonment for Public Protection**
- An **extended sentence**
- Any other lawful sentence

If IPP is imposed, the **minimum term** must be for at least 2 years unless the offender has a previous conviction for an offence listed in schedule 15A to the 2003 Act¹ in which case there is no minimum.

If an **extended sentence** is imposed, the appropriate **custodial term** (that is the total sentence before the extended licence period) must be at least 4 years unless the offender has a previous conviction for an offence listed in schedule 15A in which case there is no minimum (but, if the court finds that the appropriate **custodial term** should be less than 12 months, the actual term must be fixed at 12 months). The offender will be entitled to automatic release after serving half the **custodial term**.

2) Where an adult offender is convicted of a **specified offence** that is not a **serious offence** and the risk and harm criteria are both met, the court may impose:

- An **extended sentence**
- Any other lawful sentence

If an **extended sentence** is imposed, the appropriate **custodial term** (that is the total sentence before the extended licence period) must be at least 4 years unless the offender has a previous conviction for an offence listed in schedule 15A in which case there is no minimum (but, if the court finds that the appropriate **custodial term** should be less than 12 months, the actual term must be fixed at 12 months). The offender will be entitled to automatic release after serving half the **custodial term**.

¹ Inserted by schedule 5 to the Criminal Justice and Immigration Act 2008; see Annex F below

3) If a youth is convicted of a **specified offence** and the risk and harm criteria are met, the court may impose:

- **Detention for Public Protection (serious offence only)**
- An **extended sentence**
- Any other lawful sentence

If DPP is imposed, the **minimum term** must be for at least 2 years.

If an **extended sentence** is imposed, the appropriate **custodial term** (that is the total sentence before the extended licence period) must be at least 4 years. The offender will be entitled to automatic release after serving half the **custodial term**.

This is not a Council guideline; it is intended to be a helpful source of information designed to assist a consistent application of the law in accordance with both the statutory provisions and case law.

When necessary, updated versions of this guide will be released which are likely to consist of new pages rather than a complete reissue. All updated versions of this guide will be available to download at www.sentencing-guidelines.gov.uk and a complete copy of the guide, incorporating all updates, will be available on the website.

The complete copy on the website will provide a means of checking that all updates have been filed correctly.

DANGEROUS OFFENDERS

Criminal Justice Act 2003, ss. 224 to 236

PART ONE – INTRODUCTION

1.1 The Criminal Justice Act 2003 introduced new sentences for offenders who commit certain offences and are deemed to be dangerous. These provisions were the subject of a significant number of appeals; they have been substantially amended by the Criminal Justice and Immigration Act 2008. This guide is designed to set out clearly the statutory requirements that determine whether one (or more) of the sentences is available. It summarises the Court of Appeal guidance arising from cases under the unamended provisions insofar as they appear to continue to be applicable. This is not a guideline within the meaning of section 172 of the Criminal Justice Act 2003.

1.2 As well as setting out the criteria in text form, there are decision flow charts on pages 40 (adults) and 41 (youths) and a glossary of key terms in Part Twelve. Phrases that are defined in the glossary appear **red** in the text. Unless otherwise stated, all statutory references are references to the Criminal Justice Act 2003 (as amended).

1.3 The **dangerous offender provisions** apply to offenders convicted of one or more **specified offences** committed on or after **4 April 2005**. These provisions do not apply to an offence which is charged as being committed between a date before and a date on or after 4 April 2005, unless the court is satisfied that the offence was committed after that date.²

1.4 Under the previous sentencing framework, there were several protective sentences designed to deal with offenders who posed a danger to the public. These were repealed on commencement of the **dangerous offender provisions** in the Criminal Justice Act 2003; this guide does not apply to them. However, these protective sentences will remain in use for offences committed before 4 April 2005. These sentences are:

- Custodial sentences imposed where the offence otherwise would not warrant such sentences (Powers of Criminal Courts (Sentencing) Act 2000, s. 79 (formerly Criminal Justice Act 1991, s. 1(2)(b))).
- Longer than commensurate custodial sentences (Powers of Criminal Courts (Sentencing) Act 2000, s. 80 (formerly Criminal Justice Act 1991, s. 2(2)(b))).
- Automatic life sentences for offenders who committed a second ‘serious offence’ (Powers of Criminal Courts (Sentencing) Act 2000, s. 109 (formerly Crime (Sentences) Act 1997, s. 2)).
- ‘Extended sentences’ (Powers of Criminal Courts (Sentencing) Act 2000, s. 85).

² *Harries* [2007] EWCA Crim 1622 at [11] to [12]; the Criminal Justice Act 2003, s. 234 has no application to the question of whether the sentencing powers under the **dangerous offender provisions** are available, it is relevant solely to the assessment of dangerousness (see Part Six below).

PART TWO – CRITERIA FOR IMPOSING SENTENCES UNDER THE DANGEROUS OFFENDER PROVISIONS (ADULTS)

2.0 General

Even where the criteria set out below have been met, the court is not required to impose one of the available sentences. Where an offender meets the criteria for imprisonment for public protection, a court may impose such a sentence, an extended sentence or any other lawful sentence. Where an offender meets the criteria for an extended sentence (but not for IPP), the court may impose an extended sentence or any other lawful sentence.

Unless the offender has a previous conviction for an offence listed in schedule 15A (see further paragraphs 2.3 and 2.4 and Annex F below), the current offence must always justify a notional minimum term of at least 2 years or an appropriate custodial term of at least 4 years in order for imprisonment for public protection or an extended sentence to be imposed.

2.1 The relevant age

2.1.1 A person is aged 18 or over for the purposes of the **dangerous offender provisions** if he or she was aged 18 or over on the **date of conviction**.³

2.2 Imprisonment (or custody)⁴ for life

2.2.1 Where the following four criteria are met, an offender aged 18 or over **must** be sentenced to **imprisonment (or custody) for life** under section 225:

- he or she is convicted of a **serious offence** (s. 225(1)(a)),
- the court is of the opinion that he or she is a **dangerous offender** (s. 225(1)(b)) (see further Part Six below),
- the maximum penalty for the offence is imprisonment (or custody) for life (s. 225(2)(a)), and
- the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of **imprisonment (or custody) for life** (s. 225(2)(b)) (see further Part Seven below).

³ *Robson* [2007] 1 Cr App R (S) 301 at [13]

⁴ Until section 61 of the Criminal Justice and Court Services Act 2000 comes into force, offenders aged 18 or over but under 21 are sentenced to custody for life or detention in a young offender institution; once that section is in force such offenders will be sentenced to imprisonment: Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005.

2.3 Imprisonment (or detention) for public protection

2.3.1 An offender aged 18 or over **may** be sentenced to imprisonment (or detention) for public protection where:

- the offender is convicted of a serious offence (s. 225(1)(a)),
- the court is of the opinion that he or she is a dangerous offender (s. 225(1)(b)) (see further Part Six below),
- a sentence of imprisonment (or custody) for life is either not available or not justified (s. 225(3)) (see further Part Seven below) and
- either the offender has a previous conviction for an offence specified in schedule 15A⁵ or the current offence justifies a notional minimum term of at least 2 years.⁶

2.4 Extended sentence

2.4.1 Where the following criteria are met, the court **may** impose an extended sentence on an offender aged 18 or over:

- the offender is convicted of a specified offence (including a specified offence that is a serious offence) (s. 227(1)(a)),
- a sentence of imprisonment (or custody) for life is either not available or not justified, (s. 227(1)(c)) (see further Part Seven below),
- the court considers that he or she is a dangerous offender (s. 227(1)(b)) (see further Part Six below) and
- either the offender has a previous conviction for an offence specified in schedule 15A⁷ or the current offence justifies an appropriate custodial term of at least 4 years.⁸

2.5 Mental health disposals

2.5.1 If the conditions for a hospital order are satisfied, the court may make such an order, even if the criteria for passing a sentence of imprisonment (or custody) for life, imprisonment (or detention) for public protection or an extended sentence are met (Mental Health Act 1983, s. 37 (as amended)).

⁵ Section 225(3A) and schedule 15A as inserted by schedule 5 to the Criminal Justice and Immigration Act 2008; see Annex F

⁶ Section 225(3B)

⁷ Section 227(2A); schedule inserted by schedule 5 to the Criminal Justice and Immigration Act 2008; see Annex F

⁸ Section 227(2B)

PART THREE – CRITERIA FOR IMPOSING SENTENCES UNDER THE DANGEROUS OFFENDER PROVISIONS (YOUTHS)

3.0 General

Even where the criteria set out below have been met, the court is not required to impose one of the available sentences. The most significant difference from the provisions for adult offenders is that the sentence must always have a notional minimum term of 2 years or an appropriate custodial term of 4 years – schedule 15A does not apply.

3.1 The relevant age

3.1.1 A person is under 18 for the purposes of the **dangerous offender provisions** if he or she was aged 17 or under on the **date of conviction**.⁹

3.2 Detention for life under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000

3.2.1 Where the following four criteria are met, an offender aged under 18 **must** be sentenced to **detention for life** by virtue of section 226:

- he or she is convicted of a **serious offence** (s. 226(1)(a)),
- the court is of the opinion that he or she is a **dangerous offender** (s. 226(1)(b)) (see further Part Six below),
- but for section 226, the offender would be liable to a sentence of detention for life under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (s. 226(2)(a)), and
- the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of **detention for life** (see further Part Seven below).

3.3 Detention for public protection

3.3.1 An offender aged under 18 **may** be sentenced to **detention for public protection** where:

- the offender is convicted of a **serious offence** (s. 226(1)(a)),
- the court is of the opinion that he or she is a **dangerous offender** (s. 226(1)(b)) (see further Part Six below),
- a sentence of detention for life is either not available or not justified, and
- the **notional minimum term** would be at least 2 years (s. 226(3)) (see further Part Eight below).

⁹ *Robson*, at [13]

3.4 Extended sentence

3.4.1 The court **may** impose an **extended sentence** on an offender aged under 18 where:

- the offender is convicted of a **specified offence (including a serious offence)** (s. 228(1)(a)),
- the court is of the opinion that he or she is a **dangerous offender** (s. 228(1)(b)) (see further Part Six below),
- a sentence of **detention for life** is either not available or not justified, (s. 228(1)(b)),
- the appropriate **custodial term** is at least 4 years.¹⁰

3.5 Mental health disposals

3.5.1 If the conditions for a **hospital order** are satisfied, the court **may** make such an order, even if the criteria for passing a sentence of **detention for life**, **detention for public protection** or an **extended sentence** are met (Mental Health Act 1983, s. 37 (as amended)).

¹⁰ Section 228(2A) as inserted by the Criminal Justice and Immigration Act 2008

PART FOUR – VENUE FOR TRIAL (YOUTHS)

4.1 The statutory provisions concerning when a defendant under the age of 18 should be tried in a Youth Court or the Crown Court are not aligned fully at present. When paragraph 9 of Schedule 3 to the Criminal Justice Act 2003 is brought into force, section 24(1) of the Magistrates' Courts Act 1980 will be amended so that its provisions are subject to those in section 51A of the Crime and Disorder Act 1998.

4.2 Section 24(1) of the Magistrates' Courts Act 1980, as currently enacted, provides:

'Where a person under the age of 18 years appears or is brought before a magistrates' court on an information charging him with an indictable offence other than [an offence of homicide or an offence attracting a minimum sentence under section 51A of the Firearms Act 1968 or section 29(3) of the Violent Crime Reduction Act 2006], he shall be tried summarily unless –

- (a) ... the offence is such as is mentioned in subsection (1) or (2) of section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 ... and the court considers that if he is found guilty of the offence it ought to be possible to sentence him in pursuance of subsection (3) of that section; or*
- (b) he is charged jointly with a person who has attained the age of 18 years and the court considers it necessary in the interests of justice to commit both for trial;*

and accordingly in a case falling within paragraph (a) or (b) of this subsection the court shall commit the accused for trial if either it is of the opinion that there is sufficient evidence to put him on trial or it has power ... so to commit him without consideration of the evidence.'

4.3 Section 51A of the Crime and Disorder Act 1998 (so far as is material), as currently enacted,¹¹ provides:

'(2) Where a child or young person appears or is brought before a magistrates' court ("the court") charged with an offence and any of the conditions mentioned in subsection(3) below is satisfied, the court shall send him forthwith to the Crown Court for trial for the offence.

*(3) Those conditions are –
[(a) – (c) are not in force]*

(d) that the offence is a specified offence (within the meaning of section 224 of the Criminal Justice Act 2003) and it appears to the court that if he is found guilty of the offence the criteria for the imposition of a sentence under section 226(3) [detention for public protection] or 228(2) [extended sentence] would be met.'

¹¹ Section 51A(3)(a)-(c) will be introduced by the Criminal Justice Act 2003, Sch. 3, para. 18

4.4 In deciding the appropriate venue for trial, the court should bear in mind:

- Parliament's intention is that, wherever possible, defendants under the age of 18 should be tried in a Youth Court,
- in most cases where a **specified offence other than a serious offence** is charged, it will not be appropriate to assess whether a youth is a **dangerous offender** until after conviction when, if the youth is a **dangerous offender** and a sentence of at least the minimum length¹² is likely to be justified, he or she can be committed to the Crown Court for sentence,
- the need to be particularly rigorous before concluding that a youth is a **dangerous offender**; usually such a conclusion is not appropriate unless the court has obtained a pre-sentence report (see paragraph 6.1.3 below), and
- the guidance given by the Court of Appeal on the assessment of whether an offender is a **dangerous offender** (see Part Six below).¹³

¹² A notional minimum term of 2 years or an appropriate custodial term of 4 years

¹³ *Crown Prosecution Service v South East Surrey Youth Court* [2006] 2 Cr App R (S) 26 at [17]

PART FIVE – INDICATION OF SENTENCE

5.1 It is not inappropriate to seek or to give an indication of sentence (a *Goodyear* indication)¹⁴ merely because a defendant is charged with a **specified offence**. As an indication of sentence will be sought before plea, the sentencing judge often will not have sufficient information to assess whether or not the defendant is a **dangerous offender**. However, there will be some very clear cases where it will be apparent at that stage that the defendant is a **dangerous offender**, based on his or her criminal record and the nature of the offence before the court; such cases will be in a minority. In all cases, it will be for the court to decide whether to give an indication of sentence.¹⁵

5.2 If the court decides to give an indication of sentence, the following matters should be made clear:¹⁶

- The offence (or one or more offences) is a **specified offence**, thus engaging the **dangerous offender provisions**.
- The information and materials necessary to assess whether the defendant is a **dangerous offender** are not available and that assessment remains to be conducted.
- If the defendant is assessed later as a **dangerous offender**, the sentence(s) available under the **dangerous offender provisions** may be imposed.
- If the defendant is assessed later not to be a **dangerous offender**, the indication relates to the maximum determinate sentence which will be imposed.
- If the offender is assessed later as a **dangerous offender**, the indication can relate only to the **notional minimum term** or appropriate **custodial term** (see paragraphs 9.1.2, 9.2.2 and 9.3.1 below).
- If a life sentence or imprisonment for public protection is imposed, the actual amount of time the offender will spend in custody is not within the control of the sentencing court; only the minimum time is determined by the court.

5.3 Even if an indication of sentence has been given, it is for the sentencing court to assess whether an offender is a **dangerous offender**¹⁷ and whether it is necessary to impose imprisonment for public protection or an extended sentence.

¹⁴ *Goodyear* [2006] 1 Cr App R (S) 23

¹⁵ *Kulah* [2007] EWCA Crim 1701 at [23] and [26]-[28]

¹⁶ *Kulah*, at [30]

¹⁷ *Kulah*, at [40]

PART SIX – THE ASSESSMENT OF DANGEROUSNESS

6.1 Dangerousness

6.1.1 When considering whether it may be able to impose a sentence under the **dangerous offender provisions**, the court must first decide whether there is a **significant risk to members of the public of serious harm** caused by the offender committing further **specified offences** (s. 229(1)(b)).

6.1.2 There are **two parts** to this test:

- there must be a **significant risk** of the offender committing further **specified offences** (whether **serious** or not), **and**
- there must be a **significant risk** of **serious harm to members of the public** being caused by such offences.¹⁸

6.1.3 The court **must** obtain a pre-sentence report before deciding that the offender is a **dangerous offender unless**, in the circumstances of the case, the court considers that such a report is unnecessary (s. 156(3) and (4)).¹⁹ Where the offender is under 18, the court **cannot** conclude that a pre-sentence report is unnecessary **unless** there are one or more previous pre-sentence reports, the most recent of which is in writing and is before the court (s. 156(5)).

6.1.4 The court is **guided**, but **not bound**, by the assessment of dangerousness in a pre-sentence report. Both counsel should be given the opportunity of addressing the court on the issue of dangerousness, especially if it contemplates differing from the conclusion in such a report.²⁰

6.2 Relevant factors: general

6.2.1 In assessing whether an offender is a **dangerous offender**, the court:

- **must** take into account all available information about the nature and circumstances of the offence (s. 229(2)(a)),
- **may** take into account all available information about the nature and circumstances of any other offence(s) of which the offender has been convicted by a court anywhere in the world (s. 229(2)(aa)),
- **may** take into account any information about any pattern of behaviour of which the offence is part (s. 229(2)(b)), **and**
- **may** take into account any information about the offender (s. 229(2)(c)).

6.2.2 Any information that may have been put before the court to prove that the offender was guilty of the offence for which he or she is to be sentenced²¹ may be relevant to the assessment of dangerousness, regardless of whether the information actually was before the court prior to conviction, unless that information would have been excluded from a trial.²²

¹⁸ *Lang* [2006] 2 Cr App R (S) 3 at [7]

¹⁹ Further, in any case in which the offender is or appears to be mentally disturbed the court **must** obtain a medical report **unless**, in the circumstances of the case, the court considers that such a report is unnecessary (s. 157(1) and (2)).

²⁰ *Lang*, at [17(ii)]

²¹ Including information that may have been admissible as evidence of similar conduct or under the bad character provisions of the Criminal Justice Act 2003: see paragraph 6.4.3.4 below.

²² *Considine and Davis* [2007] 3 All E.R. 621 at [36]

6.2.3 The court should not rely on a disputed fact in finding that the offender is a **dangerous offender** unless the dispute can be resolved fairly.²³

6.3 Relevant factors: significant risk of further specified offences

6.3.1 There are three groups of factors that are relevant in the assessment of whether there is a **significant risk** of the offender committing further **specified offences**:

- the nature and circumstances of the current offence and the offender's 'offending' history (see further paragraph 6.4.3 below), including whether the offending demonstrates any pattern,
- the offender's social and economic circumstances including accommodation, employability, education, associations, relationships and drug or alcohol abuse, and
- the offender's thinking, emotional state and attitude towards offending and supervision (see further paragraph 6.4.4 below).²⁴

6.3.2 Usually the pre-sentence report will contain information regarding these factors, as well as an assessment of the risk of the offender committing further offences.²⁵ Where possible, this assessment should cover the risk of the offender committing further **specified offences**.

6.3.3 The offender's 'offending history'

6.3.3.1 The existence (or non-existence) of previous convictions does not determine whether an offender is a **dangerous offender**; an offender with no previous convictions may be a **dangerous offender**, whilst an offender with previous convictions may not.²⁶

6.3.3.2 Any previous conviction may be relevant in the assessment of whether an offender is a **dangerous offender**; offences may be considered whether or not they are **specified offences**.²⁷ For these purposes, a conviction could have occurred anywhere in the world (s. 229(2)(aa)). Also included are findings of guilt in service disciplinary proceedings or conviction of a service offence (s. 229(2A)).

6.3.3.3 The offender's offending history includes the facts of any previous offence and the sentence passed, as well as the type of offence.²⁸ The prosecution should have these details available in court.²⁹ If the prosecution fails to do so the court may adjourn, although such an adjournment is not obligatory. Alternatively, the defence should be able to explain the facts of the previous offences on the basis of instructions from the offender. If the prosecution is not in a position to challenge those instructions, the court may proceed on the basis of the available information.³⁰

²³ *Johnson* [2007] 1 Cr App R (S) 674 at [10(vi)]

²⁴ *Lang*, at [17(ii)]

²⁵ National Offender Management Service, OASys Manual v2 with Revised Chapter 8, July 2006, Chapter 6: Risk of reconviction and offending-related factors; Youth Justice Board, *Asset – Young Offender Assessment Profile*, 2006, Chapter 2: Core Profile – Guidance

²⁶ *Johnson*, at [10(i)]

²⁷ *Johnson*, at [10(ii)]

²⁸ *Lang*, at [17(ii)]

²⁹ *Lang*, at [17(ii)]; *Johnson*, at [10(v)]

³⁰ *Johnson*, at [10(v)]

6.3.3.4 In assessing whether the offender is a **dangerous offender**, the court is not prohibited from considering evidence of previous misconduct which would amount to a discrete criminal offence of which he or she has not been convicted,³¹ provided any dispute can be resolved fairly (see paragraph 6.3.4 above). However, a Newton hearing should not be used to circumvent the offender's right to trial for a criminal offence.³²

6.3.3.5 Any information which formed the basis for the imposition of an Anti-Social Behaviour Order may be considered in assessing whether the offender is a **dangerous offender**.³³

6.3.4 The offender's emotional state

6.3.4.1 An offender's inadequacy, suggestibility or vulnerability may mitigate his or her culpability. However, such features may also produce or reinforce a conclusion that he or she is a **dangerous offender**.³⁴

6.4 Relevant factors: significant risk of serious harm

6.4.1 The court should not assume automatically that there is a **significant risk of serious harm** because the foreseen³⁵ **specified offence** is a **serious offence**; many **serious offences** can be committed in ways which do not give rise to a **significant risk of serious harm**.³⁶

6.4.2 If the foreseen offence is a **specified offence other than a serious offence**, it is unlikely that there will be a **significant risk of serious harm**. Repetitive offending at a relatively low level without **serious harm** does not give rise of itself to a **significant risk of serious harm** in future.³⁷

6.4.3 The absence of actual harm caused by the offender in the instant offence or any offence previously committed by the offender does not lead automatically to a conclusion that there is a negligible risk that he or she will cause **serious harm** in future. In some cases it may be entirely by chance that no harm actually was caused by the offender; in such cases the court should consider the offender's likely response if the circumstances had been different, such as if the victim attempted to defend himself or herself.³⁸

6.4.4 The pre-sentence report will contain an assessment of the level of risk of **serious harm** posed by the offender. **Serious harm** is defined, for the purposes of a pre-sentence report, as 'an event which is life-threatening and/or traumatic and from which recovery, whether physical or psychological, can be expected to be difficult or impossible'.³⁹ This differs from the definition of **serious harm** in s. 224(3) (death or serious physical or psychological injury). However, the two definitions are compatible.⁴⁰

³¹ *Considine and Davis*, at [36]

³² *Considine and Davis*, at [34]

³³ *Hillman* [2006] 2 Cr App R (S) 85

³⁴ *Johnson*, at [10(iv)]

³⁵ the offence(s) which the court believes there is a **significant risk** of the offender committing in future.

³⁶ *Lang*, at [17(iii)]

³⁷ *Lang*, at [17(iv)]

³⁸ *Johnson*, at [10(iii)]

³⁹ National Offender Management Service, *OASys Manual v2 with Revised Chapter 8*, July 2006, Chapter 8: Risk of serious harm, risks to the individual, and other risks; Youth Justice Board, *Criminal Justice Act 2003, 'Dangerousness' and the New Sentences for Public Protection – Guidance for youth offending teams*, 2006, p. 7

⁴⁰ National Probation Service, *Criminal Justice Act 2003 Implementation – National Guide for the new Criminal Justice Act 2003 sentences for public protection*, ed. 1, v. 1, June 2005; endorsed in *Lang*, at [17(ii)]

6.4.5 The pre-sentence report will assess the risk of **serious harm** as being low, medium, high or very high. The principles which determine the level of risk are whether the foreseen behaviour meets the pre-sentence report definition of serious harm, the likelihood of the behaviour occurring and the impact of such behaviour.⁴¹ The levels of risk are defined as follows:

- **Low:** current evidence does not indicate any likelihood of causing serious harm.
- **Medium:** some risk has been identified but the offender is unlikely to cause serious harm unless circumstances change.
- **High:** a risk of harm has been identified. The potential event could occur at any time and the impact would be serious.
- **Very high:** there is an imminent risk of serious harm. The potential event is more likely than not to happen imminently and the impact would be serious.⁴²

6.4.6 However, a pre-sentence report may assess only the risk of the offender causing **serious harm**, not whether such harm will be caused by the commission of further specified offences.

6.5 Special considerations for youths

6.5.1 The court should be particularly rigorous before concluding that a youth is a **dangerous offender**.⁴³ When assessing likely future conduct and whether it may give rise to a **significant risk** of **serious harm**, the court should consider the offender's level of maturity and that he or she may change and develop in a shorter period of time than an adult.⁴⁴

6.5.2 When assessing the risk of the offender committing further **specified offences**, a young person is less likely than an adult to have an extensive criminal record. Accordingly, when preparing a pre-sentence report, the Youth Offending Team looks not only at the offender's previous convictions but also at any evidence of violence or sexual aggression at home, at school or amongst the offender's peer group that may not have resulted in a conviction.⁴⁵ Subject to paragraphs 6.2.3 and 6.3.3.4 above, the court may have regard to this information.

6.5.3 The Youth Justice Board anticipates that normally the court would find a youth to be a **dangerous offender** only if he or she was assessed in a pre-sentence report to pose a very high risk of serious harm or, in a small number of cases and due to specific circumstances, a high risk of serious harm (see paragraph 6.4.5 above).⁴⁶ However, as noted at paragraph 6.1.4 above, the court is not bound by the assessment of risk in the pre-sentence report; it does not follow automatically that, because an offender has been assessed as posing a high risk or very high risk of serious harm, he or she is a **dangerous offender** (see, for instance, paragraph 6.5.6 above).⁴⁷

⁴¹ Youth Justice Board, *Criminal Justice Act 2003, 'Dangerousness' and the New Sentences for Public Protection – Guidance for youth offending teams*, 2006, p. 10

⁴² National Offender Management Service, *OASys Manual v2 with Revised Chapter 8*, July 2006, Chapter 8: Risk of serious harm, risks to the individual, and other risks; Youth Justice Board, *Asset – Young Offender Assessment Profile*, 2006, Chapter 4: Risk of Serious Harm – Guidance

⁴³ *CPS v South East Surrey Youth Court*, at [17(iii)]

⁴⁴ *Lang*, at [17(vi)]

⁴⁵ Youth Justice Board, *Criminal Justice Act 2003, 'Dangerousness' and the New Sentences for Public Protection – Guidance for youth offending teams*, 2006, p. 9

⁴⁶ *ibid.*, p. 10

⁴⁷ *ibid.*, p. 11

6.6 Reasons

6.6.1 The court should give reasons for finding that an offender is a **dangerous offender**.

6.7 Appeals

6.7.1 The Court of Appeal normally will not allow an appeal against the conclusions reached by a court which has identified the relevant principles accurately and considered the relevant facts; the question is whether the sentence was manifestly excessive or wrong in principle. The same applies to a Reference by the Attorney General, where the question is whether the sentence is unduly lenient.⁴⁸

6.7.2 The Court of Appeal normally is not assisted by reference to individual cases where there appears to be some similarity with the instant case.⁴⁹

⁴⁸ *Johnson*, at [11]

⁴⁹ *Johnson*, at [11(ii)]

PART SEVEN – IMPOSING A SENTENCE OF IMPRISONMENT (OR CUSTODY OR DETENTION) FOR LIFE

7.1 When sentencing a **dangerous offender** convicted of a **serious offence** where the maximum penalty (in the case of an adult offender) is imprisonment (or custody) for life, the court **must** consider whether the seriousness of the offence and any associated offences is such as to justify the imposition of a sentence of **imprisonment (or custody or detention) for life** (ss. 225(2)(b) and 226(2)(b)). If so, the court **must** impose a sentence of **imprisonment (or custody or detention) for life** (ss. 225(2) and 226(2)); if not, on an adult the court **may** impose a sentence of **imprisonment for public protection** or an **extended sentence** (s. 225(3)) or any other lawful sentence or, on a youth, may impose a sentence of **detention for public protection** or an **extended sentence** (s. 226(3)) (see further Part Eight below) or any other lawful sentence.

7.2 In deciding whether the seriousness of the offence and any associated offences is such as to justify a sentence of **imprisonment (or custody or detention) for life**, the court should **NOT** apply the pre-Criminal Justice Act 2003 case law on discretionary life sentences. A life sentence should be reserved for those cases where the culpability of the offender is particularly high or the offence itself particularly serious.⁵⁰

7.3 The distinction between a sentence of **imprisonment (or custody or detention) for life** and one of **imprisonment (or detention) for public protection** (see Part Nine below) may be important particularly when sentencing a youth or young adult. Therefore, when sentencing such an offender, the court should not pass a sentence of **imprisonment (or custody or detention) for life** unless it is essential to do so.⁵¹

7.4 The court should give reasons for imposing a sentence of **imprisonment (or custody or detention) for life**.

⁵⁰ *Kehoe* [2008] EWCA Crim 819 at [17]

⁵¹ *Costello* [2007] 1 Cr App R (S) 286 at [19]

PART EIGHT – IMPOSING A SENTENCE FOR PUBLIC PROTECTION (YOUTHS)

8.1 When sentencing a **youth** who is a **dangerous offender** for a **serious offence** (and, where a sentence of **detention for life** is available, the court has decided not to impose it (see Part Seven above)), the court **may** impose a sentence of detention for public protection or an extended sentence. Such a sentence is only available if (in the case of the indeterminate detention for public protection) a **notional minimum term** of at least 2 years would be imposed or (in the case of an extended sentence) an appropriate **custodial term** of at least 4 years would be imposed.

8.2 In relation to a particularly young offender, a sentence under these provisions **may not be appropriate** even where the offender has committed a **serious offence** and is found to be a **dangerous offender**.⁵² The court should consider whether, during a finite **custodial term**, the offender will mature and change sufficiently so as to present a manageable risk on licence.⁵³ Relevant factors include: the offender's age, his or her criminal record, whether he or she has previously received a custodial sentence, the number of **specified offences** committed, whether any **serious harm** has been caused and his or her attitude to the offences.⁵⁴ Where a sentence is required under these provisions, it is more likely to be an extended sentence.

8.3 The court **should give reasons** for imposing a sentence under these provisions on a youth.

⁵² *Lang*, at [17(vii)]

⁵³ *Ings* [2007] 2 Cr App R (S) 4

⁵⁴ *D* [2006] 1 Cr App R 616

PART NINE – IMPOSITION AND EFFECT OF SENTENCES UNDER THE DANGEROUS OFFENDER PROVISIONS

9.1 Imprisonment (or custody or detention) for life

9.1.1 Unless the court declines to do so because the offence is so serious that incarceration for life is justified by the seriousness of the offence alone, irrespective of the risk to the public, it **must** set a **minimum term**, which the offender will serve in custody before the Parole Board can consider whether to release him or her, under section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (as amended by s. 19 Criminal Justice and Immigration Act 2008 (when in force)).⁵⁵

9.1.2 When setting a **minimum term**, the court should identify the **notional determinate sentence**, taking into account the seriousness of the offence and associated offences and any appropriate reduction for a plea of guilty.⁵⁶ Normally **one half** of that term should be taken (but see paragraph 9.1.3 below), from which the court usually should deduct the time spent in custody on remand (if any) (Powers of Criminal Courts (Sentencing) Act 2000, s. 82A(3)).⁵⁷ Care should be taken when identifying the **notional determinate sentence** not to incorporate an element for risk, which is already covered by the indeterminate nature of the sentence.⁵⁸

9.1.3 An amount greater than one half of the **notional determinate sentence** should not be taken when calculating the **minimum term** unless either the seriousness of the offence(s) is exceptional and halving the notional determinate sentence would not adequately reflect that seriousness (s. 82A(3A)) or setting the term at half of the notional determinate sentence would have little or no effect on the time in custody (s. 82A(3B)). Where those circumstances apply, the amount of reduction can be less than half. In relation to s. 82A(3B), the reduction must still be at least one third (s. 82A(3C)).⁵⁹ The court should give reasons if it specifies a proportion higher than one half.⁶⁰

9.1.4 Once the offender has served the **minimum term**, he or she will not be released on licence unless the Parole Board is satisfied that it is no longer necessary for the protection of the public that he or she should be confined (Crime (Sentences) Act 1997, s. 28).

9.1.5 Once the offender has been released, he or she remains on licence for the rest of his or her life (Crime (Sentences) Act 1997, s. 31).

9.2 Imprisonment (or detention) for public protection

9.2.1 Under section 82A of the Powers of Criminal Courts (Sentencing) Act 2000, the court **must** set a **minimum term**, which the offender will serve in custody before the Parole Board can consider whether to release him or her. This sentence may not be imposed unless the minimum term would be at least 2 years before any reduction for time spent on remand unless, in the case of an adult, the offender has a previous conviction for an offence listed in Schedule 15A (see Annex F).

⁵⁵ Consolidated Criminal Practice Direction, para. 47.3

⁵⁶ See Sentencing Guidelines Council Guideline, Reduction in Sentence for a Guilty Plea, Revised 2007, paras. 7.1 to 7.3

⁵⁷ As amended by s. 19(2) Criminal Justice and Immigration Act 2008 when in force; note the additional power to give credit where an offender has been remanded on bail subject to a curfew in certain circumstances; new s.240A Criminal Justice Act 2003 inserted by s.21 Criminal Justice and Immigration Act 2008 when in force

⁵⁸ *Lang*, at [10]

⁵⁹ Section 82A (3A)-(3C) are inserted by s.19 Criminal Justice and Immigration Act 2008 when in force

⁶⁰ *Szczerba* [2002] 2 Cr App R (S) 387 at [32]-[35]

9.2.2 When setting a **minimum term**, the court should identify the **notional determinate sentence**, taking into account the seriousness of the offence and associated offences and any appropriate reduction for a plea of guilty.⁶¹ The **notional determinate sentence should not be greater than the maximum penalty** for the offence. Normally one half of that term should be taken (but see paragraph 9.1.3 above), from which the court usually should deduct the time spent in custody on remand (if any) (Powers of Criminal Courts (Sentencing) Act 2000, s. 82A(3)). Care should be taken when identifying the **notional determinate sentence** not to incorporate an element for risk, which is already covered by the indeterminate nature of the sentence.⁶²

9.2.3 Once the offender has served the **minimum term**, he or she will not be released on licence unless the Parole Board is satisfied that it is no longer necessary for the protection of the public that he or she should be confined (Crime (Sentences) Act 1997, s. 28).

9.2.4 The offender will remain on licence for the rest of his or her life unless the licence ceases to have effect. The offender may apply for the licence to cease to have effect ten years after his or her release from custody. The licence will not cease to have effect unless the Parole Board is satisfied that the licence is no longer necessary for the protection of the public (Crime (Sentences) Act 1997, s. 31A).

9.3 Extended sentence

9.3.1 When passing an **extended sentence**, the court **must** fix the **custodial term** for the offence. This must be for the shortest term commensurate with the seriousness of the offence(s).⁶³

9.3.2 The appropriate **custodial term** must be at least 4 years unless the offender has a previous conviction for an offence listed in schedule 15A (see Annex F). Where a court exercises its discretion to impose an extended sentence where there is such a previous conviction and the appropriate custodial term would have been less than 12 months, the court is nonetheless required to set that term at 12 months.⁶⁴

9.3.3 Usually the court should declare that the time spent in custody on remand (if any) should count towards the **custodial term** (s. 240).

9.3.4 An offender will be entitled to automatic release after serving one half of the custodial term (s. 247 as amended by s. 25 of the Criminal Justice and Immigration Act 2008).

9.3.5 When passing an **extended sentence**, in addition to fixing the **custodial term**, the court **must** fix the **extension period**. The length of the **extension period** is such as the court considers necessary for the purpose of protecting **members of the public** from **serious harm** caused by the offender committing further **specified offences** (ss. 227(2)(b) and 228(2)(b)). The **extension period must not** exceed five years for a specified violent offence or eight years for a specified sexual offence (ss. 227(4) and 228(4)). Further, the aggregate of the **custodial term** and the **extension period must not** exceed the maximum penalty for the offence (ss. 227(5) and 228(5)).

⁶¹ See Sentencing Guidelines Council Definitive Guideline, Reduction in Sentence for a Guilty Plea, Revised 2007, paras. 7.1 to 7.3

⁶² *Lang*, at [10]

⁶³ Sections 153(2) and 227(3) Criminal Justice Act 2003

⁶⁴ Section 227(2), (3)(b)

9.3.6 The length of the **extension period** is not intended to reflect the seriousness of the offence; it is designed to provide greater protection for the public from the commission of further offences. Therefore, proportionality with the seriousness of the offence is not a primary factor in determining the length of the **extension period**. Rather, the objective should be to fix the length of the **extension period** by reference to what realistically can be achieved within it to secure the offender's rehabilitation and prevent re-offending. In some cases, the court may be able to tailor the **extension period** to the availability and length of treatment or other programmes. In all cases the court should consider whether the length of the **extension period** can be justified by the evidence available.⁶⁵

9.3.7 The **extension period** commences at the end of the **custodial term**, not the point at which the offender has been released on licence during the **custodial term**.⁶⁶

9.4 Failure by the Parole Board to consider release on licence

9.4.1 Where the Parole Board fails to assess properly the risk posed by the offender prior to the end of the **minimum term** in a sentence of **imprisonment** (or **custody** or **detention**) **for life** or **imprisonment** (or **detention**) **for public protection**, the Court of Appeal cannot provide a remedy unless the sentence, when imposed, was wrong in principle or manifestly excessive; there may, however, be a remedy in the Administrative Court.⁶⁷

⁶⁵ *Nelson* [2002] 1 Cr App R (S) 134 at [19] and [21]-[22]

⁶⁶ *S* [2006] 2 Cr App R (S) 35 at [18]

⁶⁷ *Johnson*, at [12]

PART TEN – SENTENCING FOR MORE THAN ONE OFFENCE

10.1 Imprisonment (or custody or detention) for life

10.1.1 A sentence of imprisonment (whether determinate or not) may not be imposed consecutively to a sentence of imprisonment (or custody or detention) for life, nor may a sentence of imprisonment be imposed to commence at the end of an existing sentence of imprisonment (or custody or detention) for life.⁶⁸

10.1.2 The court may impose a sentence of imprisonment (or custody or detention) for life consecutive to another sentence of imprisonment (whether determinate or not) but **should not** do so, nor should a sentence of imprisonment (or custody or detention) for life be imposed to commence at the end of an existing sentence of imprisonment (whether determinate or not).⁶⁹

10.1.3 When sentencing an offender to imprisonment (or custody or detention) for life and to imprisonment (whether determinate or not), the court should order the other sentence of imprisonment to be concurrent with the sentence of imprisonment (or custody or detention) for life and increase the notional determinate sentence to take account of the overall criminality.⁷⁰ The same approach should be taken where the court is sentencing an offender, who is already serving a sentence of imprisonment, to imprisonment (or custody or detention) for life.⁷¹

10.1.4 When sentencing a dangerous offender to imprisonment (or custody or detention) for life for a serious offence and at the same time sentencing the offender for a specified offence other than a serious offence, it will no longer be necessary for a court to impose an extended sentence. Accordingly, whenever it is appropriate to impose a determinate sentence, see 10.1.3 above.

10.2 Imprisonment (or detention) for public protection

10.2.1 The court may impose a sentence of imprisonment (or detention) for public protection consecutive to another sentence of imprisonment (whether determinate or not) or vice versa, but normally **should not** do so. Instead, the court should order the other sentence of imprisonment to be concurrent with the sentence of imprisonment (or detention) for public protection and increase the notional determinate sentence to take account of the overall criminality.⁷² There is authority to suggest that, as a result of the increase, the notional determinate sentence may exceed the maximum penalty for the offence for which the sentence of imprisonment (or detention) for public protection is to be imposed.⁷³

10.2.2 When sentencing a dangerous offender to imprisonment (or detention) for public protection for a serious offence and at the same time sentencing the offender for a specified offence other than a serious offence, it will no longer be necessary for a court to impose an extended sentence. Accordingly, whenever it is appropriate to impose a determinate sentence, see 10.1.3 above.

⁶⁸ *Foy* (1962) 46 Cr App R 290

⁶⁹ *Jones* (1961) 46 Cr App R 129

⁷⁰ *Lang*, at [20]; *Haywood* [2000] 2 Cr App R (S) 418

⁷¹ *Haywood*

⁷² *O'Brien* [2007] 1 Cr App R (S) 442 at [58]-[61]

⁷³ *Delucca and Rhoden* [2007] EWCA Crim 1455 at [20]

10.3 Extended sentence

10.3.1 The court may order an **extended sentence** to run consecutively to a determinate sentence of imprisonment or another **extended sentence**, or a determinate sentence to run consecutively to an **extended sentence**, but **wherever possible should not** do so. Instead, if possible, the court should order the sentences to be concurrent and increase the **custodial term** to reflect the overall criminality.⁷⁴

10.3.2 However, as the aggregate of the **custodial term** and the **extension period** must not exceed the maximum penalty for the offence (ss. 227(5) and 228(5)), it may not be possible to increase the **custodial term** sufficiently.

10.3.3 If the court is sentencing a **dangerous offender** for more than one **specified offence other than a serious offence** and it is not possible to increase the **custodial term** sufficiently, consecutive **extended sentences** should be imposed.

10.3.4 If the court is imposing an **extended sentence** and a determinate sentence of imprisonment and it is not possible to increase the **custodial term** sufficiently, the determinate sentence should be imposed first and the **extended sentence** consecutive to it, regardless of the order in which the offences were committed: the court need not impose sentences in the order that the offences occurred.⁷⁵

10.3.5 The effect of consecutive sentences which include one or more **extended sentences** is as follows:

- **Extended sentence** consecutive to a determinate sentence: the offender serves one half of the determinate sentence and then one half of the **custodial term** (see paragraph 9.3.2 above), after which he or she is released on licence for the remainder of the **custodial term**, the remainder of the determinate term and the **extension period**.⁷⁶
- Consecutive **extended sentences**: the **custodial terms** should be aggregated and the release date will be after one half of that period (see paragraph 9.3.2 above). The offender will be released on licence for the remainder of the **custodial terms** and the aggregate of the **extension periods**.⁷⁷
- Determinate sentence consecutive to an **extended sentence**: this combination of sentences should not be passed (see paragraph 10.3.4 above) but, if such sentences are imposed, should be treated in the same way as an **extended sentence** consecutive to a determinate sentence.⁷⁸

⁷⁴ C [2007] Crim LR 581 at [19(a) and (b)]

⁷⁵ C, at [19(c)-(d)]

⁷⁶ C, at [11]

⁷⁷ C, at [15]

⁷⁸ C, at [16]

10.4 Offenders serving existing custodial sentences

10.4.1 Offenders who have not been released on licence

10.4.1.1 The court may order a sentence under the **dangerous offender provisions** to be consecutive to an existing custodial sentence (whether determinate or not) only where the offender has not been released on licence.⁷⁹ Wherever possible the court should not do so; instead, the **notional determinate sentence** should be increased to reflect the period remaining to be served in custody under the existing sentence,⁸⁰ unless this would offend the principle of totality.⁸¹ However, it may not always be possible to do so (see paragraph 10.3.2 above).

10.4.2 Offenders who have been released on licence: ordering return to custody

10.4.2.1 Where a **dangerous offender** was, at the time of committing the **specified offence** for which he or she is to be sentenced, on licence under a determinate sentence of imprisonment of less than 12 months⁸² or imposed for an offence committed prior to 4 April 2005, the court may order that he or she be returned to custody to serve the remainder of that sentence prior to serving the sentence imposed for the **specified offence** (Powers of Criminal Courts (Sentencing) Act 2000, s. 116).⁸³

10.4.2.2 Wherever possible the court **should not** exercise this power; instead, the **notional determinate sentence** should be increased to reflect the remainder of the previous sentence.⁸⁴ However, this may not always be possible (see paragraph 10.3.2 above).

10.4.2.3 The court cannot order the offender to serve the remainder of a previous sentence imposed for an offence committed on or after 4 April 2005, from which he or she has been released on licence, prior to serving a sentence under the **dangerous offender provisions**,⁸⁵ except where the previous sentence is one of imprisonment for less than 12 months.⁸⁶

10.5 Appeals

10.5.1 As it is not unlawful to impose consecutive sentences of **imprisonment** (or **custody** or **detention**) **for life**,⁸⁷ consecutive sentences of **imprisonment** (or **detention**) **for public protection** or consecutive **extended sentences** (see paragraphs 10.1.2, 10.2.1 and 10.3.1 above), an appeal against such sentences will not succeed where one or more sentences under the **dangerous offender provisions** are justified unless the result is manifestly excessive⁸⁸ or there is an insuperable difficulty in giving effect to the sentence.⁸⁹

⁷⁹ The court cannot order a custodial sentence to run consecutively to another such sentence from which the offender has been released on licence: s. 265.

⁸⁰ The period remaining to be served in custody under a determinate sentence is the difference between one half of the total sentence and the period which the offender has served already: *Ashes* [2007] EWCA Crim 1848 at [5]. The Court of Appeal did not determine how a court should approach imposing a sentence of imprisonment (whether determinate or under the **dangerous offender provisions**) on an offender serving an existing sentence under the **dangerous offender provisions**: *Ashes*, at [7] to [9].

⁸¹ *Ashes*, at [5]

⁸² Where the offender was released on licence under Part II of the Criminal Justice Act 1991, the repeal of which is of no effect in relation to such sentences: Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Saving Provisions) Order 2005 (SI 2005/950), Sched. 2, para. 14.

⁸³ The Powers of Criminal Courts (Sentencing) Act 2000, s. 116, was repealed on 4 April 2005 by the Criminal Justice Act 2003. However, that repeal has no effect in relation to sentences of less than 12 months or sentences imposed for offences committed prior to 4 April 2005: Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Saving Provisions) Order 2005 (SI 2005/950), Sched. 2, para. 29.

⁸⁴ *O'Brien*, at [60]-[61]

⁸⁵ s. 265

⁸⁶ s. 265 has no effect in relation to sentences of less than 12 months: Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Saving Provisions) Order 2005 (SI 2005/950), Sched. 2, para. 14.

⁸⁷ but see paragraph 10.1.1 above.

⁸⁸ or, in the case of a Reference by the Attorney General, the result is unduly lenient.

⁸⁹ *C*, at [18]-[19(a)]

PART ELEVEN – CORRECTING MISTAKES

- 11.1 If a mistake is noticed at an early stage, the Crown Court can exercise its power under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000⁹⁰ to vary the sentence within a period of 56 days beginning on the day which the sentence was passed. This power may be used to increase the sentence where the court has imposed an **extended sentence** in circumstances where s. 225 or s. 226 permit a sentence of **imprisonment** (or **custody** or **detention**) **for life** or **imprisonment** (or **detention**) **for public protection**, or where the court, having failed to recognise that the offence is a **specified offence**, has imposed a sentence outside the **dangerous offender provisions**⁹¹ in circumstances where such a sentence should have been imposed.
- 11.2 If a mistake is noticed within the 56 day period but the court either is unable to vary the sentence or considers that sentencing should be delayed beyond that period, the court may exercise its power under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000 to rescind the sentence and then exercise its common law power to adjourn, even if such adjournment is until a date beyond the end of the 56 day period.⁹²
- 11.3 If the Crown Court has not exercised its power under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000, a mistake can be corrected only by the Court of Appeal, whether on an appeal against sentence or a Reference by the Attorney General.⁹³

⁹⁰ as amended by Schedule 8, paragraph 28 to the Criminal Justice and Immigration Act 2008

⁹¹ *Reynolds* [2007] Crim LR 493 at [7]

⁹² *Reynolds*, at [15]

⁹³ the Administrative Court has no jurisdiction to correct an unlawful sentence imposed by the Crown Court: *R (on the application of the Crown Prosecution Service) v The Crown Court at Guildford* [2007] EWHC 1798 (Admin).

PART TWELVE – GLOSSARY

- 12.1 **Custodial term** within an **extended sentence**: the term of imprisonment etc. imposed under an **extended sentence**. The offender will be entitled to automatic release after serving half of this term. See further paragraphs 9.3.1 and 9.3.2 above.
- 12.2 **Custody for life**: a sentence imposed on an offender below the age of 21 under section 225(2) of the Criminal Justice Act 2003.⁹⁴ See paragraph 2.2 for the criteria for imposing such a sentence and paragraph 9.1 for its effect.
- 12.3 **Dangerous offender**: there is a **significant risk** to **members of the public** of **serious harm** caused by the commission of further **specified offences** by the offender (s. 229(1)(b)).
- 12.4 **Dangerous offender provisions**: sections 224 to 236 of the Criminal Justice Act 2003.
- 12.5 **Detention for life**: a sentence of detention for life under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, imposed under section 226(2) of the Criminal Justice Act 2003. See paragraph 3.2 for the criteria for imposing such a sentence and paragraph 9.1 for its effect.
- 12.6 **Detention for public protection**: a sentence imposed on an offender below the age of 21 under section 225(3) of the Criminal Justice Act 2003,⁹⁵ or a sentence imposed on an offender below the age of 18 under section 226(3) of the Criminal Justice Act 2003. See paragraphs 2.3 and 3.3 for the criteria for imposing these sentences and paragraph 9.2 for their effect.
- 12.7 **Extended sentence**: a sentence imposed under section 227 or section 228 of the Criminal Justice Act 2003. See paragraphs 2.4 and 3.4 for the criteria for imposing such a sentence and paragraph 9.3 for its effect.
- 12.8 **Extension period** within an **extended sentence**: the term for which the offender is to be subject to licence, after the conclusion of the **custodial term**. See further paragraphs 9.3.3 to 9.3.5 above.
- 12.9 **Imprisonment for life**: a sentence imposed on an offender aged 21 or over under section 225(2) of the Criminal Justice Act 2003.⁹⁶ See paragraph 2.2 for the criteria for imposing such a sentence and paragraph 9.1 for its effect.
- 12.10 **Imprisonment for public protection**: a sentence imposed on an offender aged 21 or over under section 225(3) of the Criminal Justice Act 2003.⁹⁷ See paragraph 2.3 for the criteria for imposing such a sentence and paragraph 9.2 for its effect.
- 12.11 **Members of the public**: this term is wider than ‘others’, which would exclude the offender, and is not to be construed in a manner that excludes any group of people.⁹⁸
- 12.12 **Minimum term** within a sentence of **imprisonment** (or **custody** or **detention**) **for life** or **imprisonment** (or **detention**) **for public protection**: the minimum period to be served in custody before the Parole Board can consider whether to release the offender.

⁹⁴ Until section 61 of the Criminal Justice and Court Services Act 2000 comes into force, offenders aged 18 or over but under 21 are sentenced to custody for life or detention in a young offender institution; once that section is in force such offenders will be sentenced to imprisonment: Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005.

⁹⁵ *ibid.*

⁹⁶ *ibid.*

⁹⁷ *ibid.*

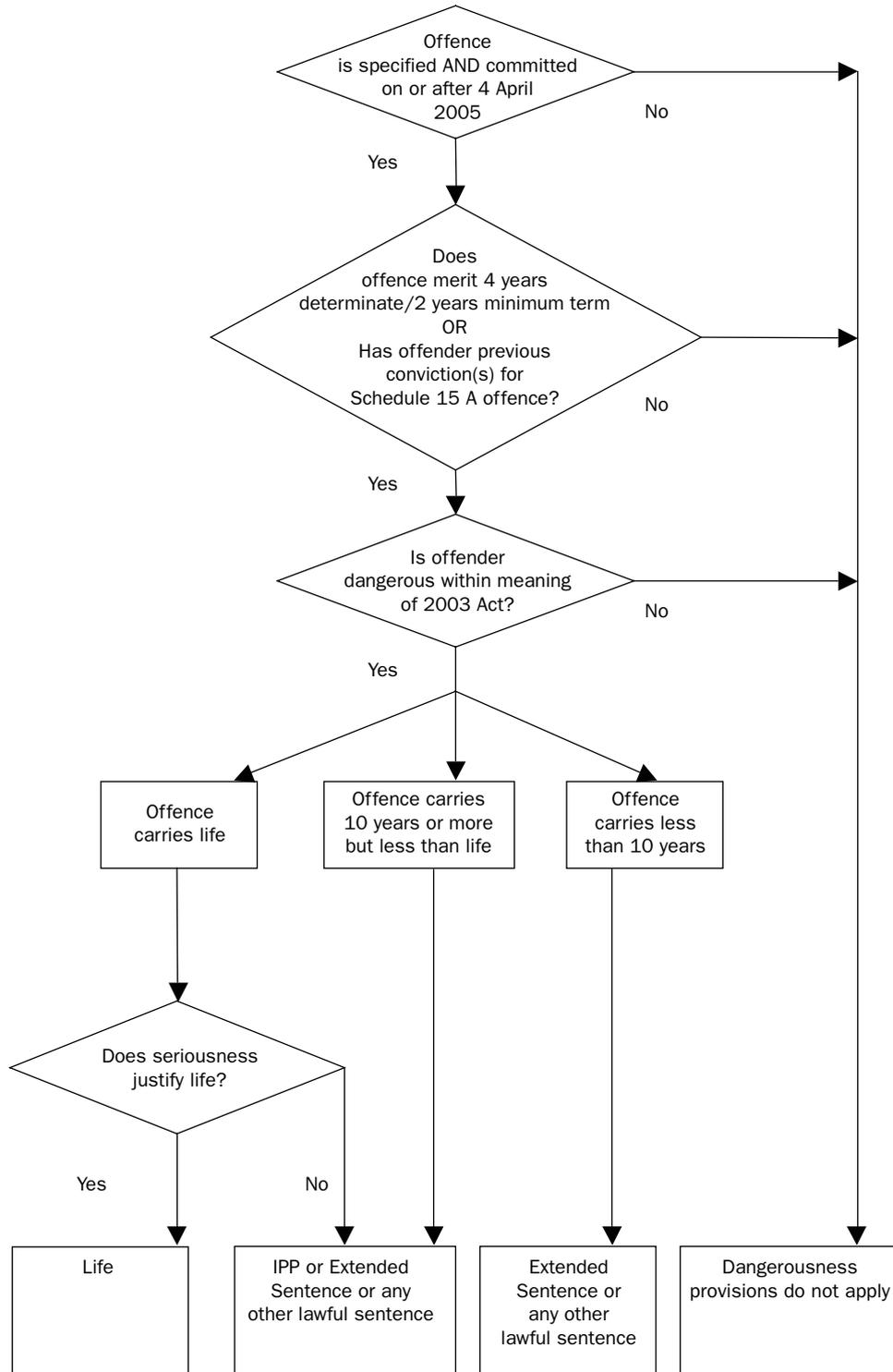
⁹⁸ *Lang*, at [19]

- 12.13 **Notional minimum term** the period that would have been imposed without discounting any periods on remand for which credit would be given
- 12.14 **Notional determinate sentence**: the sentence that would have been imposed if a sentence under the **dangerous offender provisions** (or a discretionary life sentence) had not been imposed.
- 12.15 **Serious harm**: death or serious personal injury. The injury may be physical or psychological: s. 224(3).
- 12.16 **Serious offence**: a **specified offence** that has a maximum sentence (for a person aged 18 or over) of at least ten years imprisonment or detention (including imprisonment (or custody) for life): s. 224(2). Such offences are set out in Annexes B (serious violent offences) and D (serious sexual offences).
- 12.17 **Significant risk**: this is a higher threshold than a mere possibility of occurrence and means 'noteworthy, of considerable amount or importance'.⁹⁹
- 12.18 **Specified offence**: an offence listed in Sch. 15 as a specified violent offence or a specified sexual offence: s. 224(1) and (3). Such offences are set out in Annexes B (serious violent offences), C (specified violent offences which are not serious offences), D (serious sexual offences) and E (specified sexual offences which are not serious offences).
- 12.19 **Specified offence other than a serious offence**: a **specified offence** that has a maximum sentence (for a person aged 18 or over) of less than ten years imprisonment or detention. Such offences are set out in Annexes C (specified violent offences which are not serious offences) and E (specified sexual offences which are not serious offences).
- 12.20 **Term of an extended sentence**: the aggregate of the **custodial term** and the **extension period**. See further paragraph 9.3 above.

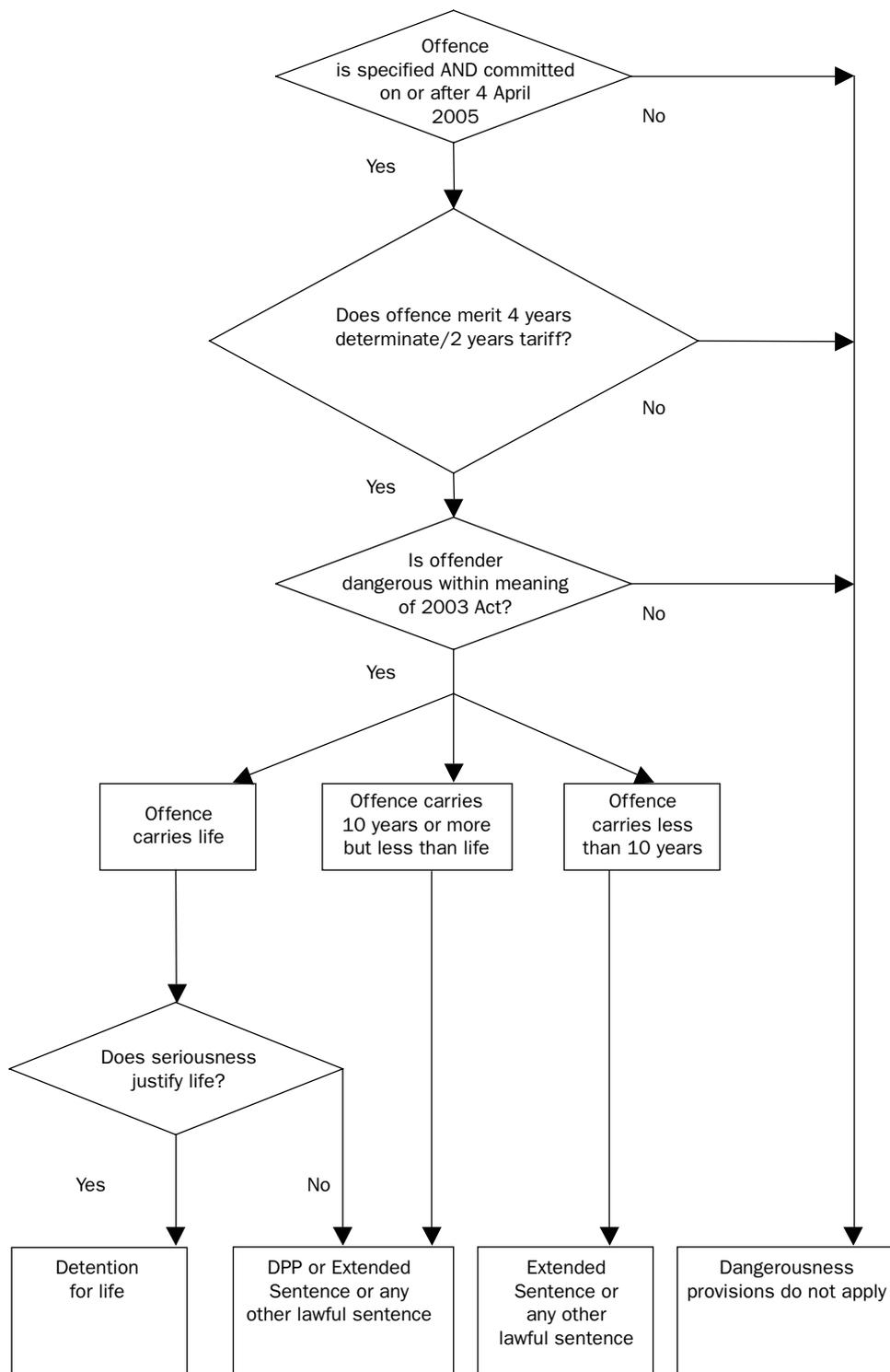
⁹⁹ *Lang*, at [17(i)]

Annex A

DANGEROUS OFFENDER PROVISIONS FLOW CHART – ADULTS



DANGEROUS OFFENDER PROVISIONS FLOW CHART – YOUTHS



Annex B

SERIOUS VIOLENT OFFENCES

OFFENCE	MAXIMUM PENALTY
Manslaughter	Life
Kidnapping	Life
False imprisonment	Life
Soliciting murder (section 4 of the Offences against the Person Act 1861)	Life
Threats to kill (section 16 of the Offences against the Person Act 1861)	10 years
Wounding with intent to cause grievous bodily harm (section 18 of the Offences against the Person Act 1861)	Life
Attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence (section 21 of the Offences Against the Person Act 1861)	Life
Using chloroform etc. to commit or assist in the committing of any indictable offence (section 22 of the Offences Against the Person Act 1861)	Life
Maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm (section 23 of the Offences Against the Person Act 1861)	10 years
Causing bodily injury by explosives (section 28 of the Offences Against the Person Act 1861)	Life
Using explosives etc. with intent to do grievous bodily harm (section 29 of the Offences Against the Person Act 1861)	Life
Placing explosives etc. with intent to do bodily injury (section 30 of the Offences Against the Person Act 1861)	14 years
Endangering the safety of railway passengers (section 32 of the Offences Against the Person Act 1861)	Life
Causing explosion likely to endanger life or property (section 2 of the Explosive Substances Act 1883)	Life
Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property (section 3 of the Explosive Substances Act 1883)	Life
Child destruction (section 1 of the Infant Life (Preservation) Act 1929)	Life
Cruelty to children (section 1 of the Children and Young Persons Act 1933)	10 years
Infanticide (section 1 of the Infanticide Act 1938)	Life
Possession of firearm with intent to endanger life (section 16 of the Firearms Act 1968)	Life
Possession of firearm with intent to cause fear of violence (section 16A of the Firearms Act 1968)	10 years
Use of firearm to resist arrest (section 17(1) of the Firearms Act 1968)	Life

OFFENCE	MAXIMUM PENALTY
Possession of firearm at time of committing or being arrested for offence specified in Schedule 1 to that Act (section 17(2) of the Firearms Act 1968)	Life
Carrying a firearm with criminal intent (section 18 of the Firearms Act 1968)	Life
Robbery or assault with intent to rob (section 8 of the Theft Act 1968)	Life
Burglary with intent to inflict grievous bodily harm on a person or do unlawful damage to a building or anything in it. (section 9 of the Theft Act 1968)	14 years (building which is a dwelling) 10 years otherwise
Aggravated burglary (section 10 of the Theft Act 1968)	Life
Aggravated vehicle-taking involving an accident which caused the death of any person (Section 12A of the Theft Act 1968)	14 years
Arson (section 1 of the Criminal Damage Act 1971)	Life
Destroying or damaging property other than an offence of arson (section 1(2) of the Criminal Damage Act 1971)	Life
Hostage-taking (section 1 of the Taking of Hostages Act 1982)	Life
Hijacking (section 1 of the Aviation Security Act 1982)	Life
Destroying, damaging or endangering safety of aircraft (section 2 of the Aviation Security Act 1982)	Life
Other acts endangering or likely to endanger safety of aircraft (section 3 of the Aviation Security Act 1982)	Life
Riot (section 1 of the Public Order Act 1986)	10 years
Torture (section 134 of the Criminal Justice Act 1988)	Life
Causing death by dangerous driving (section 1 of the Road Traffic Act 1988)	14 years
Causing death by careless driving when under influence of drink or drugs (section 3A of the Road Traffic Act 1988)	14 years
Endangering safety at aerodromes (section 1 of the Aviation and Maritime Security Act 1990)	Life
Hijacking of ships (section 9 of the Aviation and Maritime Security Act 1990)	Life
Seizing or exercising control of fixed platforms (section 10 of the Aviation and Maritime Security Act 1990)	Life
Destroying fixed platforms or endangering their safety (section 11 of the Aviation and Maritime Security Act 1990)	Life
Other acts endangering or likely to endanger safe navigation (section 12 of the Aviation and Maritime Security Act 1990)	Life
Offences involving threats (section 13 of the Aviation and Maritime Security Act 1990)	Life

OFFENCE	MAXIMUM PENALTY
Offences relating to Channel Tunnel trains and the tunnel system (Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570))	Life
Genocide, crimes against humanity, war crimes and related offences), other than one involving murder (section 51 or 52 of the International Criminal Court Act 2001)	30 years
Female genital mutilation (section 1 of the Female Genital Mutilation Act 2003)	14 years
Assisting a girl to mutilate her own genitalia (section 2 of the Female Genital Mutilation Act 2003)	14 years
Assisting a non-UK person to mutilate overseas a girl's genitalia (section 3 of the Female Genital Mutilation Act 2003)	14 years
Causing or allowing the death of a child or vulnerable adult (section 5 of the Domestic Violence, Crime and Victims Act 2004)	14 years
Aiding, abetting, counselling, procuring or inciting the commission of an offence set out in this Annex, conspiring to commit an offence set out in this Annex, or attempting to commit an offence set out in this Annex.	Same as the substantive offence
An attempt to commit murder or a conspiracy to commit murder	Life

Annex C

SPECIFIED VIOLENT OFFENCES WHICH ARE NOT SERIOUS OFFENCES

OFFENCE	MAXIMUM PENALTY
Malicious wounding (section 20 of the Offences against the Person Act 1861)	5 years
Abandoning children (section 27 of the Offences Against the Persons Act 1861)	5 years
Setting spring guns etc. with intent to do grievous bodily harm (section 31 of the Offences Against the Person Act 1861)	5 years
Injuring persons by furious driving (section 35 of the Offences Against the Person Act 1861)	2 years
Assaulting officer preserving wreck (section 37 of the Offences Against the Person Act 1861)	7 years
Assault with intent to resist arrest (section 38 of the Offences Against the Person Act 1861)	2 years
Assault occasioning actual bodily harm (section 47 of the Offences Against the Person Act 1861)	5 years
Offences in relation to certain dangerous articles (section 4 of the Aviation Security Act 1982)	5 years
Ill-treatment of patients (section 127 of the Mental Health Act 1983)	2 years
Female circumcision (section 1 of the Prohibition of Female Circumcision Act 1985)	5 years
Violent disorder (section 2 of the Public Order Act 1986)	5 years
Affray (section 3 of the Public Order Act 1986)	3 years
Putting people in fear of violence (section 4 of the Protection from Harassment Act 1997)	5 years
Racially or religiously aggravated assaults (section 29 of the Crime and Disorder Act 1998)	7 years (GBH or ABH) 2 years (common assault)
Racially or religiously aggravated offences under section 4 or 4A of the Public Order Act 1986 (section 31(1)(a) or (b) of the Crime and Disorder Act 1998)	2 years
Aiding, abetting, counselling, procuring or inciting the commission of an offence set out in this Annex, conspiring to commit an offence set out in this Annex, or attempting to commit an offence set out in this Annex.	Same as the substantive offence

Annex D

SERIOUS SEXUAL OFFENCES

OFFENCE	MAXIMUM PENALTY
Rape (section 1 of the Sexual Offences Act 1956)	Life
Intercourse with girl under thirteen (section 5 of the Sexual Offences Act 1956) <i>AN ATTEMPT TO COMMIT THIS OFFENCE IS NOT A SERIOUS OFFENCE</i>	Life (other than for an attempt to commit this offence)
Intercourse with girl under 16 (section 6 of the Sexual Offences Act 1956)	2 years
Incest by a man (section 10 of the Sexual Offences Act 1956) <i>ONLY A SERIOUS OFFENCE IF THE GIRL/WOMAN IS UNDER 13</i> <i>AN ATTEMPT TO COMMIT THIS OFFENCE IS NOT A SERIOUS OFFENCE</i>	Life (girl/woman under 13, other than an attempt to commit this offence)
Indecent assault on a woman (section 14 of the Sexual Offences Act 1956)	10 years
Indecent assault on a man (section 15 of the Sexual Offences Act 1956)	10 years
Assault with intent to commit buggery (section 16 of the Sexual Offences Act 1956)	10 years
Abduction of woman by force or for the sake of her property (section 17 of the Sexual Offences Act 1956)	14 years
Permitting girl under thirteen to use premises for intercourse (section 25 of the Sexual Offences Act 1956)	Life
Indecent conduct towards young child (under section 1 of the Indecency with Children Act 1960)	10 years
Burglary with intent to commit rape (section 9 of the Theft Act 1968)	14 years (building which is a dwelling) 10 years otherwise
Indecent photographs of children (section 1 of the Protection of Children Act 1978)	10 years
Rape (section 1 of the Sexual Offences Act 2003)	Life
Assault by penetration (section 2 of the Sexual Offences Act 2003)	Life
Sexual assault (section 3 of the Sexual Offences Act 2003)	10 years
Causing a person to engage in sexual activity without consent (section 4 of the Sexual Offences Act 2003)	10 years
Rape of a child under 13 (section 5 of the Sexual Offences Act 2003)	Life
Assault of a child under 13 by penetration (section 6 of the Sexual Offences Act 2003)	Life
Sexual assault of a child under 13 (section 7 of the Sexual Offences Act 2003)	14 years
Causing or inciting a child under 13 to engage in sexual activity (section 8 of the Sexual Offences Act 2003)	14 years
Sexual activity with a child (section 9 of the Sexual Offences Act 2003)	14 years

OFFENCE	MAXIMUM PENALTY
Causing or inciting a child to engage in sexual activity (section 10 of the Sexual Offences Act 2003)	14 years
Engaging in sexual activity in the presence of a child (section 11 of the Sexual Offences Act 2003)	10 years
Causing a child to watch a sexual act (section 12 of the Sexual Offences Act 2003)	10 years
Arranging or facilitating commission of a child sex offence (section 14 of the Sexual Offences Act 2003)	14 years
Meeting a child following sexual grooming etc. (section 15 of the Sexual Offences Act 2003)	10 years
Sexual activity with a child family member (section 25 of the Sexual Offences Act 2003)	14 years (offender aged 18 or over) 5 years (offender under 18)
Inciting a child family member to engage in sexual activity (section 26 of the Sexual Offences Act 2003)	14 years (offender aged 18 or over) 5 years (offender under 18)
Sexual activity with a person with a mental disorder impeding choice (section 30 of the Sexual Offences Act 2003)	14 years
Causing or inciting a person with a mental disorder impeding choice to engage in sexual activity (section 31 of the Sexual Offences Act 2003)	14 years
Engaging in sexual activity in the presence of a person with a mental disorder impeding choice (section 32 of the Sexual Offences Act 2003)	10 years
Causing a person with a mental disorder impeding choice to watch a sexual act (section 33 of the Sexual Offences Act 2003)	10 years
Inducement, threat or deception to procure sexual activity with a person with a mental disorder (section 34 of the Sexual Offences Act 2003)	14 years
Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception (section 35 of the Sexual Offences Act 2003)	14 years
Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder (section 36 of the Sexual Offences Act 2003)	10 years
Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception (section 37 of the Sexual Offences Act 2003)	10 years
Care workers: sexual activity with a person with a mental disorder (section 38 of the Sexual Offences Act 2003)	10 years
Care workers: causing or inciting sexual activity (section 39 of the Sexual Offences Act 2003)	10 years

OFFENCE	MAXIMUM PENALTY
Paying for sexual services of a child (section 47 of the Sexual Offences Act 2003) <i>ONLY A SERIOUS OFFENCE IF THE CHILD IS UNDER 16</i>	Life (child under 13 and the offence involves penetration) 14 years (child under 16)
Causing or inciting child prostitution or pornography (section 48 of the Sexual Offences Act 2003)	14 years
Controlling a child prostitute or a child involved in pornography (section 49 of the Sexual Offences Act 2003)	14 years
Arranging or facilitating child prostitution or pornography (section 50 of the Sexual Offences Act 2003)	14 years
Trafficking into the UK for sexual exploitation (section 57 of the Sexual Offences Act 2003)	14 years
Trafficking within the UK for sexual exploitation (section 58 of the Sexual Offences Act 2003)	14 years
Trafficking out of the UK for sexual exploitation (section 59 of the Sexual Offences Act 2003)	14 years
Administering a substance with intent (section 61 of the Sexual Offences Act 2003)	10 years
Committing an offence with intent to commit a sexual offence (section 62 of the Sexual Offences Act 2003)	10 years
Trespass with intent to commit a sexual offence (section 63 of the Sexual Offences Act 2003)	10 years
<i>UNLESS OTHERWISE STATED:</i> aiding, abetting, counselling, procuring or inciting the commission of an offence set out in this Annex, conspiring to commit an offence set out in this Annex, or attempting to commit an offence set out in this Annex.	Same as the substantive offence unless otherwise stated

Annex E

SPECIFIED SEXUAL OFFENCES WHICH ARE NOT SERIOUS OFFENCES

OFFENCE	MAXIMUM PENALTY
Procurement of woman by threats (section 2 of the Sexual Offences Act 1956)	2 years
Procurement of woman by false pretences (section 3 of the Sexual Offences Act 1956)	2 years
Administering drugs to obtain or facilitate intercourse (section 4 of the Sexual Offences Act 1956)	2 years
An attempt to commit the offence in section 5 of the Sexual Offences Act 1956 (sexual intercourse with a girl under 13) <i>THE SUBSTANTIVE OFFENCE IS A SERIOUS OFFENCE</i>	7 years
Intercourse with girl under 16 (section 6 of the Sexual Offences Act 1956)	2 years
Intercourse with a defective (section 7 of the Sexual Offences Act 1956)	2 years
Procurement of a defective (section 9 of the Sexual Offences Act 1956)	2 years
Incest by a man (section 10 of the Sexual Offences Act 1956) <i>ONLY NOT A SERIOUS OFFENCE IF THE GIRL/WOMAN IS AGED 13 OR OVER</i>	7 years (girl/woman aged 13 or over, other than an attempt to commit this offence)
An attempt to commit the offence in section 10 of the Sexual Offences Act 1956 (incest by a man) <i>THE SUBSTANTIVE OFFENCE IS A SERIOUS OFFENCE IF THE GIRL IS AGED UNDER 13</i>	7 years (girl under 13) 2 years (girl/woman aged 13 or over)
Incest by a woman (section 11 of the Sexual Offences Act 1956)	7 years 2 years (attempting to commit this offence)
Abduction of unmarried girl under eighteen from parent or guardian (section 19 of the Sexual Offences Act 1956)	2 years
Abduction of unmarried girl under sixteen from parent or guardian (section 20 of the Sexual Offences Act 1956)	2 years
Abduction of defective from parent or guardian (section 21 of the Sexual Offences Act 1956)	2 years
Causing prostitution of women (section 22 of the Sexual Offences Act 1956)	2 years
Procuration of girl under twenty-one (section 23 of the Sexual Offences Act 1956)	2 years
Detention of woman in brothel (section 24 of the Sexual Offences Act 1956)	2 years
Permitting girl under sixteen to use premises for intercourse (section 26 of the Sexual Offences Act 1956)	2 years
Permitting defective to use premises for intercourse (section 27 of the Sexual Offences Act 1956)	2 years

OFFENCE	MAXIMUM PENALTY
Causing or encouraging the prostitution of, intercourse with or indecent assault on girl under sixteen (section 28 of the Sexual Offences Act 1956)	2 years
Causing or encouraging prostitution of defective (section 29 of the Sexual Offences Act 1956)	2 years
Soliciting by men (section 32 of the Sexual Offences Act 1956)	2 years
Keeping a brothel (section 33 of the Sexual Offences Act 1956)	6 months
Sexual intercourse with patients (section 128 of the Mental Health Act 1959)	2 years
Procuring others to commit homosexual acts (section 4 of the Sexual Offences Act 1967)	2 years
Living on earnings of male prostitution (section 5 of the Sexual Offences Act 1967)	7 years
Inciting girl under sixteen to have incestuous sexual intercourse (section 54 of the Criminal Law Act 1977)	2 years
Fraudulent evasion of the prohibition on importing indecent or obscene articles (section 170 of the Customs and Excise Management Act 1979 (in relation to the prohibition in section 42 of the Customs Consolidation Act 1876))	7 years
Possession of indecent photograph of a child (section 160 of the Criminal Justice Act 1988)	5 years
Child sex offences committed by children or young persons (section 13 of the Sexual Offences Act 2003)	5 years
Abuse of position of trust: sexual activity with a child (section 16 of the Sexual Offences Act 2003)	5 years
Abuse of position of trust: causing or inciting a child to engage in sexual activity (section 17 of the Sexual Offences Act 2003)	5 years
Abuse of position of trust: sexual activity in the presence of a child (section 18 of the Sexual Offences Act 2003)	5 years
Abuse of position of trust: causing a child to watch a sexual act (section 19 of the Sexual Offences Act 2003)	5 years
Care workers: sexual activity in the presence of a person with a mental disorder (section 40 of the Sexual Offences Act 2003)	7 years
Care workers: causing a person with a mental disorder to watch a sexual act (section 41 of the Sexual Offences Act 2003)	7 years
Paying for sexual services of a child (section 47 of the Sexual Offences Act 2003) <i>ONLY NOT A SERIOUS OFFENCE IF THE CHILD IS AGED 16 OR 17</i>	7 years (child aged 16 or 17)
Causing or inciting prostitution for gain (section 52 of the Sexual Offences Act 2003)	7 years
Controlling prostitution for gain (section 53 of the Sexual Offences Act 2003)	7 years

Annex E – Specified sexual offences that are not serious offences

OFFENCE	MAXIMUM PENALTY
Sex with an adult relative: penetration (section 64 of the Sexual Offences Act 2003)	2 years
Sex with an adult relative: consenting to penetration (section 65 of the Sexual Offences Act 2003)	2 years
Exposure (section 66 of the Sexual Offences Act 2003)	2 years
Voyeurism (section 67 of the Sexual Offences Act 2003)	2 years
Intercourse with an animal (section 69 of the Sexual Offences Act 2003)	2 years
Sexual penetration of a corpse (section 70 of the Sexual Offences Act 2003)	2 years
Aiding, abetting, counselling, procuring or inciting the commission of an offence set out in this Annex, conspiring to commit an offence set out in this Annex, or attempting to commit an offence set out in this Annex.	Same as the substantive offence unless otherwise stated

ANNEX F

**SECTIONS 225-229 AND SCHEDULE 15A CRIMINAL JUSTICE ACT 2003
AS AMENDED OR INSERTED BY THE CRIMINAL JUSTICE AND
IMMIGRATION ACT 2008**

225 Life sentence or imprisonment for public protection for serious offences

- (1) This section applies where—
 - (a) a person aged 18 or over is convicted of a serious offence committed after the commencement of this section, and
 - (b) 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.
- (2) If—
 - (a) the offence is one in respect of which the offender would apart from this section be liable to imprisonment for life, and
 - (b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life, the court must impose a sentence of imprisonment for life [or in the case of a person aged at least 18 but under 21, a sentence of custody for life].
- (3) In a case not falling within subsection (2), the court may impose a sentence of imprisonment for public protection if the condition in subsection (3A) or the condition in subsection (3B) is met.
- (3A) The condition in this subsection is that, at the time when the offence was committed, the offender had been convicted of an offence specified in Schedule 15A.
- (3B) The condition in this subsection is that the notional minimum term is at least two years.
- (3C) The notional minimum term is the part of the sentence that the court would specify under section 82A(2) of the Sentencing Act (determination of tariff) if it imposed a sentence of imprisonment for public protection but was required to disregard the matter mentioned in section 82A(3)(b) of that Act (crediting periods of remand).
- (4) A sentence of imprisonment for public protection [or a sentence of detention in a young offender institution for public protection] is a sentence of [imprisonment or detention for an indeterminate period], subject to the provisions of Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c 43) as to the release of prisoners and duration of licences.
- (5) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

[Note: The wording in square brackets is inserted or substituted by SI 2005/643 until the coming into force of section 61 of the Criminal Justice and Court Services Act 2000.]

226 Detention for life or detention for public protection for serious offences committed by those under 18

- (1) This section applies where—
 - (a) a person aged under 18 is convicted of a serious offence committed after the commencement of this section, and
 - (b) 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.
- (2) If—
 - (a) the offence is one in respect of which the offender would apart from this section be liable to a sentence of detention for life under section 91 of the Sentencing Act, and
 - (b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of detention for life,the court must impose a sentence of detention for life under that section.
- (3) In a case not falling within subsection (2), the court may impose a sentence of detention for public protection if the notional minimum term is at least two years.
- (3A) The notional minimum term is the part of the sentence that the court would specify under section 82A(2) of the Sentencing Act (determination of tariff) if it imposed a sentence of detention for public protection but was required to disregard the matter mentioned in section 82A(3)(b) of that Act (crediting periods of remand).
- (4) A sentence of detention for public protection is a sentence of detention for an indeterminate period, subject to the provisions of Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c 43) as to the release of prisoners and duration of licences.
- (5) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

227 Extended sentence for certain violent or sexual offences: persons 18 or over

- (1) This section applies where—
 - (a) a person aged 18 or over is convicted of a specified offence committed after the commencement of this section, and
 - (b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, but
 - (c) the court is not required by section 225(2) to impose a sentence of imprisonment for life.
- (2) The court may impose on the offender an extended sentence of imprisonment [or, in the case of a person aged at least 18 but under 21, an extended sentence of detention in a young offender institution], if the condition in subsection (2A) or the condition in subsection (2B) is met.
- (2A) The condition in this subsection is that, at the time the offence was committed, the offender had been convicted of an offence specified in Schedule 15A.

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- (2B) The condition in this subsection is that, if the court were to impose an extended sentence of imprisonment, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (2C) An extended sentence of imprisonment is a sentence of imprisonment the term of which is equal to the aggregate of—
- (a) the appropriate custodial term, and
 - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences.
- (3) In subsections (2B) and (2C) “the appropriate custodial term” means a term of imprisonment [or detention in a young offender institution] (not exceeding the maximum term permitted for the offence) which—
- (a) is the term that would (apart from this section) be imposed in compliance with section 153(2), or
 - (b) where the term that would be so imposed is a term of less than 12 months, is a term of 12 months.
- (4) The extension period must not exceed—
- (a) five years in the case of a specified violent offence, and
 - (b) eight years in the case of a specified sexual offence.
- (5) The term of an extended sentence of imprisonment [or detention in a young offender institution] passed under this section in respect of an offence must not exceed the maximum term permitted for the offence.
- (6) The Secretary of State may by order amend subsection (2B) so as to substitute a different period for the period for the time being specified in that subsection.

[**Note:** The wording in square brackets is inserted or substituted by SI 2005/643 until the coming into force of section 61 of the Criminal Justice and Court Services Act 2000.]

228 Extended sentence for certain violent or sexual offences: persons under 18

- (1) This section applies where—
- (a) a person aged under 18 is convicted of a specified offence committed after the commencement of this section, and
 - (b) the court considers—
 - (i) that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, and
 - (ii) where the specified offence is a serious offence, that the case is not one in which the court is required by section 226(2) to impose a sentence of detention for life under section 91 of the Sentencing Act.
- (2) The court may impose on the offender an extended sentence of detention if the condition in subsection (2A) is met.

- (2A) The condition in this subsection is that, if the court were to impose an extended sentence of detention, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (2B) An extended sentence of detention is a sentence of detention the term of which is equal to the aggregate of—
 - (a) the appropriate custodial term, and
 - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences.
- (3) In subsections (2A) and (2B) “the appropriate custodial term” means such term as the court considers appropriate, which—
 - (a) [Omitted]
 - (b) must not exceed the maximum term of imprisonment permitted for the offence.
- (4) The extension period must not exceed—
 - (a) five years in the case of a specified violent offence, and
 - (b) eight years in the case of a specified sexual offence.
- (5) The term of an extended sentence of detention passed under this section in respect of an offence must not exceed the maximum term of imprisonment permitted for the offence.
- (6) Any reference in this section to the maximum term of imprisonment permitted for an offence is a reference to the maximum term of imprisonment that is, apart from section 225, permitted for the offence in the case of a person aged 18 or over.
- (7) The Secretary of State may by order amend subsection (2A) so as to substitute a different period for the period for the time being specified in that subsection.

229 The assessment of dangerousness

- (1) This section applies where—
 - (a) a person has been convicted of a specified offence, and
 - (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences.
- (2) the court in making the assessment referred to in subsection (1)(b)—
 - (a) must take into account all such information as is available to it about the nature and circumstances of the offence,
 - (aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the offender has been convicted by a court anywhere in the world,
 - (b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and
 - (c) may take into account any information about the offender which is before it.

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- (2A) The reference in subsection (2)(aa) to a conviction by a court includes a reference to –
- (a) a finding of guilt in service disciplinary proceedings, and
 - (b) a conviction of a service offence within the meaning of the Armed Forces Act 2006 (“conviction” here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction).
- (3) [Omitted]
- (4) [Omitted]

SCHEDULE 15A Offences specified for the purposes of sections 225(3A) and 227(2A)

Part 1 Offences under the law of England and Wales

- 1 Murder.
- 2 Manslaughter.
- 3 An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).
- 4 An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).
- 5 An offence under section 1 of the Sexual Offences Act 1956 (c. 69) (rape).
- 6 An offence under section 5 of that Act (intercourse with a girl under 13).
- 7 An offence under section 16 of the Firearms Act 1968 (c. 27) (possession of firearm with intent to endanger life).
- 8 An offence under section 17(1) of that Act (use of a firearm to resist arrest).
- 9 An offence under section 18 of that Act (carrying a firearm with criminal intent).
- 10 An offence of robbery under section 8 of the Theft Act 1968 (c. 60) where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968.
- 11 An offence under section 1 of the Sexual Offences Act 2003 (c. 42) (rape).
- 12 An offence under section 2 of that Act (assault by penetration).
- 13 An offence under section 4 of that Act (causing a person to engage in sexual activity without consent) if the offender was liable on conviction on indictment to imprisonment for life.
- 14 An offence under section 5 of that Act (rape of a child under 13).
- 15 An offence under section 6 of that Act (assault of a child under 13 by penetration).
- 16 An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity) if the offender was liable on conviction on indictment to imprisonment for life.
- 17 An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice) if the offender was liable on conviction on indictment to imprisonment for life.

- 18 An offence under section 31 of that Act (causing or inciting a person with a mental disorder to engage in sexual activity) if the offender was liable on conviction on indictment to imprisonment for life.
- 19 An offence under section 34 of that Act (inducement, threat or deception to procure sexual activity with a person with a mental disorder) if the offender was liable on conviction on indictment to imprisonment for life.
- 20 An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc.) if the offender was liable on conviction on indictment to imprisonment for life.
- 21 An offence under section 47 of that Act (paying for sexual services of a child) if the offender was liable on conviction on indictment to imprisonment for life.
- 22 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence) if the offender was liable on conviction on indictment to imprisonment for life.
- 23(1) An attempt to commit an offence specified in the preceding paragraphs of this Part of this Schedule (“a listed offence”).
 - (2) Conspiracy to commit a listed offence.
 - (3) Incitement to commit a listed offence.
 - (4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which a listed offence is the offence (or one of the offences) which the person intended or believed would be committed.
 - (5) Aiding, abetting, counselling or procuring the commission of a listed offence.

Part 2 Offences under the law of Scotland

- 24 Murder.
- 25 Culpable homicide.
- 26 Rape.
- 27 Assault where the assault—
 - (a) is aggravated because it caused severe injury or endangered the victim’s life, or
 - (b) was carried out with intent to rape or ravish the victim.
- 28 Sodomy where the person against whom the offence was committed did not consent.
- 29 Lewd, indecent or libidinous behaviour or practices.
- 30 Robbery, where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968 (c. 27).
- 31 An offence under section 16 of the Firearms Act 1968 (possession of firearm with intent to endanger life).
- 32 An offence under section 17(1) of that Act (use of a firearm to resist arrest).
- 33 An offence under section 18 of that Act (carrying a firearm with criminal intent).
- 34 An offence under section 5(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (unlawful intercourse with a girl under 13).

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- 35(1) An attempt to commit an offence specified in the preceding paragraphs of this Part of this Schedule (“a listed offence”).
- (2) Conspiracy to commit a listed offence.
 - (3) Incitement to commit a listed offence.
 - (4) Aiding, abetting, counselling or procuring the commission of a listed offence.

Part 3 Offences under the law of Northern Ireland

- 36 Murder.
- 37 Manslaughter.
- 38 Rape.
- 39 An offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder).
- 40 An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).
- 41 An offence under section 4 of the Criminal Law Amendment Act 1885 (c. 69) (intercourse with a girl under 14).
- 42 An offence of robbery under section 8 of the Theft Act (Northern Ireland) 1969 (c. 16) where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I.3)).
- 43 An offence under Article 17 of the Firearms (Northern Ireland) Order 1981 (S.I. 1981/155 (N.I.2)) (possession of firearm with intent to endanger life).
- 44 An offence under Article 18(1) of that Order (use of a firearm to resist arrest).
- 45 An offence under Article 19 of that Order (carrying a firearm with criminal intent).
- 46 An offence under Article 58 of the Firearms (Northern Ireland) Order 2004 (possession of firearm with intent to endanger life).
- 47 An offence under Article 59 of that Order (use of a firearm to resist arrest).
- 48 An offence under Article 60 of that Order (carrying a firearm with criminal intent).
- 49 An offence under section 47 of the Sexual Offences Act 2003 (paying for sexual services of a child) if the offender was liable on conviction on indictment to imprisonment for life.
- 50(1) An attempt to commit an offence specified in the preceding paragraphs of this Part of this Schedule (“a listed offence”).
- (2) Conspiracy to commit a listed offence.
 - (3) Incitement to commit a listed offence.
 - (4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which a listed offence is the offence (or one of the offences) which the person intended or believed would be committed.
 - (5) Aiding, abetting, counselling or procuring the commission of a listed offence.

Part 4 Offences under service law

- 51 An offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 as respects which the corresponding civil offence (within the meaning of the Act in question) is an offence specified in Part 1 of this Schedule.
- 52(1) An offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence specified in Part 1 of this Schedule.
- (2) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy etc.) applies for the purposes of this paragraph as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to this paragraph.

Part 5 Interpretation

- 53 In this Schedule, “imprisonment for life” includes custody for life and detention for life.”

