



Circular No. 2012/09

TITLE	Implementation of Sections 122–128, and Schedules 18-22 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 – Sentencing for dangerous offenders
From:	Effective Sentencing Portfolio Ministry of Justice
Distribution date:	4 December 2012
Implementation date:	3 December 2012
For more information contact:	Julia Gerrard - see contact details at end of circular
Broad Subject	Criminal Justice
Sub Category	Legal Aid, Sentencing and Punishment of Offenders Act 2012
This circular is addressed to	Lord Chief Justice, Justices of the Supreme Court, President of the Queen’s Bench Division, Senior Presiding Judge for England and Wales, Lords Justices of Appeal, High Court Judges, Crown Court Judges, District Judges (Magistrates’ Courts), Chairmen of the Justices, Clerks to the Justices, Chief Officers of Police, Director of Public Prosecutions, Chief Crown Prosecutors, Heads of Division Revenue and Customs Prosecution Office
Copies are being sent to	Judicial College, Council of Circuit Judges, Magistrates’ Association, Justices’ Clerks’ Society, Registrar of Criminal Appeals, HMCS Area Directors, Crown Court Managers, HM Chief Inspector of Constabulary, Association of Chief Police Officers, Chief Probation Officers, Chairpersons of Police Authorities, Association of Police Authorities, The Law Society, the Bar Council, the Criminal Bar Association, Legal Services Commission, Bar Council, Law Centres, Citizens Advice Bureaux, Directors of Social Services, Chief Executives of Local Authorities, Local Children Safeguarding Boards

Section 122 – 128 of and Schedules 18 - 22 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 - Sentencing for dangerous offenders

Introduction

This circular is about the commencement of sections 122 – 128 to and Schedules 18 – 22 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the 2012 Act”). It provides a brief explanation of the new provisions which have effect in relation to the sentencing of dangerous offenders. This circular should not be regarded as providing legal advice. Legal advice should be sought if there is any doubt as to the application or interpretation of the legislation.

Further explanation of these provisions can be found in the Explanatory Notes to the Act published around the time that the legislation was passed in May 2012 (see “Useful Links” section at the end of this circular).

These provisions extend to England and Wales (apart from Schedule 22). They will be brought into force by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012 on 3 December 2012 (S.I. 2012/2906).

Transitional arrangements: The new Extended Determinate Sentence (EDS) (sections 226A and 226B of the Criminal Justice Act 2003 as inserted by section 124 of the 2012 Act) will be available for any offender who is convicted after commencement of the new provisions on 3rd December 2012, regardless of the date of the offence.

IPPs/EPPs (sections 225 and 226 (imprisonment for public protection for serious offences) and sections 227 and 228 (extended sentences for certain violent or sexual offences) will **not** be available where an offender is convicted on or after 3rd December 2012, regardless of the date on which the offence was committed.

However, the IPP and EPP sentences will remain available on and after 3rd December 2012 for offenders who were *convicted* before the 3rd December 2012 but have not been sentenced. (The new EDS is not available for such offenders.)

The new mandatory life sentence for a second offence listed in new Schedule 15B to the CJA 2003 applies where the **second** offence is committed on or after 3rd December 2012. (The first offence may have been committed at any time.)

Summary

The 2012 Act, sections 122-128 further amend the “dangerous offender” provisions of the Criminal Justice Act 2003 (as amended by the Criminal Justice & Immigration Act 2008).

Key points:

- The distinction between dangerous and non-dangerous offenders, and the risk threshold to be applied, remains the same as under the previous scheme. Schedule 15 still governs the range of eligible offences. The definition of dangerousness remains the same as under the previous scheme.

- Within that framework, however, the current IPP and EPP sentences are abolished. Dangerous offenders who meet the statutory criteria may be given the new Extended Determinate Sentence, which consists of a custodial term and an extended licence period. (Discretionary life sentences of course remain available in appropriate cases.)
- A new mandatory life sentence is introduced for offenders who are convicted and sentenced for a second particularly serious sexual or violent offence, where a sentence of 10 or more years' imprisonment was imposed for the first offence, and the second offence merits a sentence of 10 or more years' imprisonment (taking account of any guilty plea) New Schedule 15B (inserted by Schedule 18 to the 2012 Act) sets out the relevant particularly serious sexual or violent offences.

The provisions

Section 122: Life sentence for second listed offence.

Section 122 inserts new section 224A into the CJA 2003. This requires the court to impose a life sentence on sexual and violent offenders where the following conditions are met:

- The current offence is an offence listed in Schedule 15B (Part 1).
- The current offence merits a determinate sentence of 10 or more years' imprisonment.
- The offender has previously been convicted of an offence listed in Schedule 15B (or conduct that would constitute an offence listed in Schedule 15B - i.e. an offence under the law of Scotland, Northern Ireland or another member State of the EU – and was sentenced to a sentence of 10 years or more (or a minimum term of 5 years, in the context of an indeterminate sentence).
Reductions for time served on remand are not counted in considering the length of a previous sentence.

There is an exception to this requirement where the court finds that there are particular circumstances that would make it unjust to impose a life sentence.

This section also brings Schedules 18 and 19 to the 2012 Act into effect. Schedule 18 inserts new Schedule 15B to the CJA 2003.

Section 123: Abolition of certain sentences for dangerous offenders

This section abolishes the IPP (sentence of imprisonment for public protection) and EPP (extended sentence for public protection) sentences.

Section 124: New Extended Determinate Sentence (EDS)

This section inserts new sections 226A and 226B into the CJA 2003, which make the EDS available for adults and juveniles.

For **adults**, it can only be imposed where all the following conditions are met:

- The offender has been convicted of a sexual or violent offence (listed in Schedule 15 to the Criminal Justice Act 2003).
- The court considers the offender is dangerous.
- The current offence merits a determinate sentence of at least 4 years (after guilty plea discount is applied) **OR** the offender had previously been convicted of a particularly serious offence (i.e. one set out in new Schedule 15B to the CJA 2003).

For **juveniles**, it can only be imposed where all the following conditions are met:

- The offender has been convicted of a sexual or violent offence (listed in Schedule 15 to the CJA 2003).
- The court considers the offender is dangerous.
- The current offence merits a determinate sentence of at least 4 years (after guilty plea discount is applied).

Format: The EDS consists of a **custodial term**, which reflects the seriousness of the offending; followed by an **extended licence period** which is determined by the court on the basis of what is requisite for risk management (the extended licence period may be for up to 5 years for a violent offence, 8 years for a sexual offence).

Section 125: New extended determinate sentence: release on licence

This section inserts a new section 246A into the 2003 Act, which sets out two forms of release for offenders sentenced to the EDS. The first category is the default release arrangement. The second category applies to particularly serious offenders. The category of an offender is dependent on the offence committed and/or the length of the sentence imposed.

Category 1: the offender will receive automatic release on licence at the two-thirds point of the custodial term, and continue (unless recalled) to remain on licence until both the custodial term and the subsequent extended licence have expired.

Category 2: the offender will be able to apply to the Parole Board for release on licence at the two-thirds point of the custodial term, but will not receive automatic release until the end of the custodial term. Whenever released, the offender will continue (unless recalled) to remain on licence until both the custodial term and the subsequent extended licence have expired.

An offender can enter the second category by two different criteria: either his custodial term for the current offence is 10 years or longer (after guilty plea discount is applied); **OR** his current offence is one of the particularly serious offences set out in new Schedule 15B to the Criminal Justice Act 2003; (or both conditions are met).

This section also gives effect to Schedule 20 which makes consequential provision related to these release provisions.

Section 126 brings Schedule 21 into effect: this Schedule makes consequential and transitory provision in relation to Sections 123 to 125.

Section 127: Dangerous offenders sentenced by the Court Martial

This section brings Schedule 22 into effect: Schedule 22 makes equivalent provision for offenders sentenced by the Court Martial. Schedule 22 has the same extent as the Armed Forces Act 2006.

Section 128: Power to change the test for release on licence for certain prisoners

This section gives the Secretary of State a power to change by order the statutory release test used by the Parole Board for considering IPP prisoners and any determinate sentence prisoners subject to Parole Board release including prisoners serving the new extended sentence. To change the test the Secretary of State would need to lay secondary legislation in Parliament for the approval of both houses.

Useful links

[Act](#)

[Explanatory notes](#)

[Criminal Justice Act 2003](#)

[Criminal Justice and Immigration Act 2008](#)

Contacts

Julia Gerrard

Effective Sentencing Portfolio

Ministry of Justice

020 3334 5060

julia.gerrard@justice.gsi.gov.uk