



Guildhall
CHAMBERS

crime news

SEPTEMBER 2008



Welcome to our new format newsletter, that coincides with the new look of Guildhall Chambers.

We have enclosed a removable copy of the amended Criminal Justice Act dangerous offender provisions, which although now in force have yet to be included in Archbold updates. We hope that you will find it a useful insert to your reference materials until they are updated.

This newsletter can be also be found on Chambers' website with active hyperlinks to the many source materials at www.guildhallchambers.co.uk.

Please tell us what you think, and also if there are subject areas that you want addressed.

So far as Crime Team news, we are very pleased that Rob Davies has been appointed as standing counsel to the Revenue and Customs Prosecution Office for Wales and Chester Circuit.

Brendon Moorhouse.

DANGEROUS MEANS DANGEROUS:

Reigning in IPPs



When the Bill which became the CJA 2003 Act was drafted, civil servants in the Ministry of Justice had predicted "the overall impact of the legislation would be resource neutral". How wrong they were! By October 2007 there were 3,386 IPP prisoners and their number was increasing at the rate of 150 per month. Projections by the chairman of the Parole Board in 2007 revealed that, unless the provisions were checked, we could expect over 12,000 people to be serving IPP sentences by 2012.

The prison service clearly couldn't cope. By the time the Court of Appeal gave their ruling in Walker and James in February 2008, (*"There has been a systemic failure on the part of the Secretary of State to put in place the resources necessary to implement*

the scheme of rehabilitation necessary to enable the relevant provisions of the 2003 Act to function as intended", per Lord Phillips CJ), a review was already underway. One of the obvious problems with the system was that many offenders had received IPP

sentences with very short minimum terms, imposed for relatively minor offences. Some had apparently received IPPs with minimum terms as short as 18 weeks.

The result is a series of amendments to the dangerous offender provisions set out in sections 224-229 of the CJA 2003, giving Judges much more discretion. They have immediate effect – applying to all those sentenced after 14 July 2007.

- 1 Probably the single most important amendment is that the statutory presumption of dangerousness which used to be in section 229(3) and (4) has gone. The assessment of dangerousness must still be made by a Judge if a defendant has committed a specified offence or a serious specified offence. But it is now a wholly discretionary assessment to be made by the sentencing Judge, based on the all the information available and the circumstances of the offence and any previous offences committed by the defendant.
- 2 As we know, when dealing with an adult defendant, convicted of a serious offence, when the risk and harm criteria are both satisfied, but a life sentence is not available or not justified, the court previously had to impose an IPP. That has been amended to read, in section 225 (3), “the court may impose a sentence of imprisonment for public protection”, subject to a further requirement in subsections 225 (3A), (3B) and (3C) being met.
- 3 That further additional requirement is that when an IPP is imposed, the minimum term must be for at least 2 years, unless the defendant has a previous conviction for an offence listed in schedule 15A of the 2003 Act, in which case there is no minimum. The minimum term has been defined (by a specific amendment) as the part of the sentence that the court would specify if it was required to disregard credit for periods of remand. This is designed to have the effect, of course, of ensuring that in the majority of cases only those offences which would justify a determinate sentence of at least 4 years, *before* any reduction for time spent on remand, will receive a sentence of IPP.
- 4 Judges have also been given more freedom in relation to extended sentences. If Judges are not compelled to impose an IPP for serious specified offences (those with a maximum 10 years or more, but less than life), then they now have the choice to impose an extended sentence for those offences instead, (of course only in cases where the risk and harm criteria are satisfied). And when sentencing for specified offences that aren't serious, again the statute has been amended to permit Judges to impose an extended sentence, rather than to compel them to do so, again assuming the risk and harm criteria are satisfied.
- 5 But Parliament's intention is that even extended sentences should not be imposed for minor offences in the vast majority of cases. There is a further amendment to section 227 to the effect that if an extended sentence is imposed (either for a serious or a specified offence), the appropriate custodial term (that is the total sentence before the extended licence period) must be at least 4 years unless the defendant has a previous conviction for an offence listed in schedule 15A in which case there is no minimum. (For cases that fall into this latter category remember

the provision remains which states that if the court finds that the appropriate custodial term should be less than 12 months, the actual term must be fixed at 12 months). A prisoner will be released after serving one half of the custodial term, so this mirrors the timescales set out above. This additional requirement should mark the end of extended sentences for affrays, or racially or religiously aggravated offences under section 4 or 4A of Public Order Act, in all cases bar those in which the defendant has a previous conviction for a schedule 15A offence.

- 6 In relation to young defendants, the amendments follow the same pattern. Therefore if the criteria are met and the young defendant is assessed to be dangerous, and a life sentence is not available or not justified, then a DPP (Detention for Public Protection) may be imposed for a serious offence. If it is then the minimum term must be for at least 2 years. If an extended sentence is imposed, which again is discretionary, the appropriate custodial term must be at least 4 years. The minimum 12 month custodial term for an extended sentence, in relation to youths only has been deleted.
- 7 The exceptions to these amendments relating to minimum terms or minimum custodial terms are those cases in which the defendant already has a conviction for an offence included in the new Schedule 15A. So what is included? Schedule 15A contains a list of over 20 of the most serious violent or sexual offences you can imagine (nearly all of which carry a maximum sentence of life). The schedule 15A offences are: Murder, conspiracy to or soliciting Murder, Manslaughter, Wounding/GBH with intent, Sections 1 and 5 Sexual Offences Act 1956, Sections 16, 17(1) and 18 of the Firearms Act 1968, Robbery with a firearm or imitation firearm and Sections 1, 2, 4, 5, 6, 8, 30, 31, 34, 35, 47 and 62 of the Sexual Offences Act 2003.
- 8 It bears repeating that the effect of these amendments is that a Judge may assess a defendant as dangerous, but even when he does so, if a life sentence is not available or not justified, he is not compelled to impose either an IPP or an extended sentence.

It seems that, for a while at least, judicial discretion is back in vogue. If the amendments have the desired effect we should notice a drop in the numbers receiving IPPs and extended sentences almost immediately.

Jenny Tallentire

USEFUL LINKS ON THIS SUBJECT

Updated SGC Guide to dangerous offenders -
<http://www.sentencing-guidelines.gov.uk/>

<http://www.prisonreformtrust.org.uk/>

Hyperlink to the CA decision in Walker & James -
<http://www.prisonreformtrust.org.uk/subsection.asp?id=1248>

<http://www.paroleboard.gov.uk/>

The Ministry of Justice commissioned the Lockyer review of IPPs in 2007 -
<http://www.justice.gov.uk/foi-indeterminate-sentence-prisoners.htm>

Amended ss224-229 Criminal Justice Act 2003

As an attachment to Guildhall Chambers' Crime September 2008 newsletter please find below the amended Criminal Justice Act dangerous offender provisions that although in force have not been included in Archbold updates as of September 2008.

224 Meaning of "specified offence" etc.

- (1) An offence is a "specified offence" for the purposes of this Chapter if it is a specified violent offence or a specified sexual offence.
- (2) An offence is a "serious offence" for the purposes of this Chapter if and only if:
- (a) it is a specified offence, and
 - (b) it is, apart from section 225, punishable in the case of a person aged 18 or over by:
 - (i) imprisonment for life, or
 - (ii) imprisonment for a determinate period of ten years or more.
- (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.

required to disregard the matter mentioned in section 82(3)(b) of that Act (crediting periods on remand).

- (4) A sentence of imprisonment for public protection is a sentence of imprisonment 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.

(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**

- (3) In this Chapter:
"relevant offence" has the meaning given by section 229(4);
"serious harm" means death or serious personal injury, whether physical or psychological;
"specified violent offence" means an offence specified in Part 1 of Schedule 15;
"specified sexual offence" means an offence specified in Part 2 of that Schedule.
- (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 in any part of the United Kingdom 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**

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

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

(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.

- (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

227 Extended sentences 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, that is to say, **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 previously been convicted in any part of the United Kingdom of an offence specified in Schedule 15A.

- (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 (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 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.

228 Extended sentences 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

- (2) The court **may** impose on the offender an extended sentence of detention, that is to say, **if the condition in subsection 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 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 in any part of the United Kingdom and**

- (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.