

CRIMINAL JUSTICE ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 12 - Sentencing

Chapter 5: Dangerous offenders

Section 224: Meaning of “specified offence” etc

554. This Section defines ‘specified offence’ and ‘serious offence’ for the purposes of this Chapter. Specified offences are those sexual or violent offences listed in Schedule 15 (all of which carry a maximum penalty of 2 years or more). A serious offence is defined as a specified sexual or violent offence which carries a maximum penalty of ten years or more (including life). This section also defines various other terms for the purposes of this Chapter.

Section 225: Life sentence or imprisonment for public protection for serious offences

555. *Section 225* provides for a new sentence of imprisonment for public protection, which is an indeterminate sentence. This sentence may only be passed by a court if the offender is convicted of a specified sexual or violent offence (listed in Schedule 15) carrying a maximum sentence of ten years or more and the court considers that the offender poses a significant risk of serious harm as defined in *subsection (1)(b)*. *Subsection (2)* sets out that where the offence carries a maximum sentence of life imprisonment, the court must pass a discretionary life sentence if the seriousness of the offence justifies it. In all other cases to which the section applies, *subsection (3)* requires the court to impose a sentence of imprisonment for public protection. When passing sentence the court must set the relevant part of the sentence that will be served in custody for the purposes of punishment and deterrence. After the offender has served this relevant part then their release will be dependent upon the recommendation of the Parole Board. This sentence therefore provides for the indeterminate detention of those dangerous offenders who continue to pose a significant risk of harm to the public. Release provisions for this sentence are set out in more detail in section 230 and Schedule 18.

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

556. *Section 226* applies the sentence of public protection to those aged under 18 although for juveniles it is a sentence of detention rather than imprisonment. As in the case of adults, the sentence may be passed by a court if the offender is convicted of a specified sexual or violent offence carrying a maximum sentence of ten years or more and the court considers that the offender poses a significant risk of serious harm as defined in *subsection (1)(b)*. *Subsection (2)* sets out that, where the offence carries a maximum sentence of detention for life under section 91 of the Sentencing Act, the court must pass such a sentence, if the seriousness of the offence justifies it. In other cases, *subsection (3)* requires the court to choose between a sentence of detention for

public protection or an extended sentence under section 228. It will impose a sentence of detention for public protection if it thinks that an extended sentence is not adequate to protect the public.

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

557. This section replaces and extends the current provisions for extended supervision for sexual and violent offenders contained in section 85 of the Powers of Criminal Courts (Sentencing) Act 2000. The Section makes provision for the extended sentence for certain violent and sexual offences and sets out the conditions which must be met in order for this sentence to be passed. These conditions require that the offender is over 18, has committed a specified sexual or violent offence (listed in Schedule 15) carrying a maximum penalty of between two and ten years and is judged by the court to pose a significant risk of serious harm to the public as defined in *subsection (1)(b)*. If these conditions are met then *subsection (2)* requires the court to pass an extended sentence. *Subsection (2)* also provides that the extended sentence is made up of the “appropriate custodial term” and an “extension period”. The appropriate custodial term is defined in *subsection (3)* as the period that the court considers to reflect the seriousness of the offence committed (subject to a minimum of 12 months). During the second half of the appropriate custodial term the offender may be released on the recommendation of the Parole Board (see section 247). The court must also specify an extended period of supervision on licence to be added to the sentence for the purpose of public protection. The court may add an extension period of up to five years for violent offenders and eight years for sexual offenders (see *subsection (4)*). The total term of the extended sentence must not be more than the maximum penalty available for the offence in question (*subsection (5)*).

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

558. *Section 228* applies the extended sentence to those aged under 18 whom the court considers to pose a significant risk of serious harm as defined in *subsection (1)(b)*. Where the offender has been convicted of a specified offence the court must impose an extended sentence, unless the offence is a serious offence and the case is one in which a sentence under section 226 is appropriate. The sentence operates in the same way as it does for adults, but is a sentence of detention rather than imprisonment.

Section 229: The assessment of dangerousness

559. This section deals with the assessment of dangerousness required for the court to establish whether the offender poses a ‘significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences’ and therefore whether they are eligible for one of the new sentences for dangerous offenders. The risk criteria are based on the existing provisions at section 161(4) of the Powers of Criminal Courts (Sentencing) Act 2000. When making this assessment the court must take into account all the information available to it about the nature and circumstances of the offence and it may also take into account any information about the pattern of behaviour of which the offence forms a part and any information about the offender. *Subsection (3)* sets out that in cases where an offender is aged 18 or over and has a previous conviction for a relevant offences (as defined by *subsection (4)*) the offender will be assumed to be dangerous, unless the court considers on the basis of the evidence before it this assumption to be unreasonable. For the purposes of the provision in *subsection (3)*, *subsection (4)* provides the definition of a relevant offence. This includes any specified offence in Schedule 15 and equivalent sexual or violent offences committed in Scotland or Northern Ireland, listed in Schedules 16 and 17, which are introduced by this section.

Section 230: Imprisonment or detention for public protection: release on licence

560. This section introduces Schedule 18 which sets out the release provisions for the sentences for public protection.

Section 231: Appeals where previous convictions set aside

561. This section applies to cases where an offender has been sentenced under the provisions relating to the commission of a second relevant offence (contained within [Section 229\(3\)](#)). If subsequently, the first conviction is overturned on appeal, Section 231 enables notice of appeal against the new sentence to be given at any time within 28 days from the date which the previous conviction was set aside.

Section 232: Certificates of convictions for the purposes of section 229

562. This section provides for a court in England and Wales to certify that it has convicted a person of a relevant offence.

Section 233: Offences under service law

563. This section provides for equivalent convictions under service law to be taken into account for the purpose of Section 229, which relates to the assumption of dangerousness.

Section 234: Determination of day when offence committed

564. Where an offence has been committed over several days, this section treats it as having been committed on the last of those days.

Section 235: Detention under Sections 226 and 228

565. This section provides that a juvenile sentenced to a sentence of detention for public protection or an extended sentence may be detained in such place as may be determined by the Secretary of State or by such other person as may be authorised by him.

Section 236: Conversion of sentences of detention into sentences of imprisonment

566. This section amends section 99 of the Powers of Criminal Courts (Sentencing) Act 2000. This enables the Secretary of State to direct that an offender sentenced to a sentence of detention may be treated as if he had been sentenced to a term of imprisonment if he has reached the age of 21 or, if he has reached the age of 18, if he has been reported by the board of visitors as exercising a detrimental influence on the other inmates. This section extends this power to the new sentence of detention for public protection and the new extended sentence.