

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 5: Dangerous Offenders

Section 122 and Schedules 18 and 19: Life sentence for second listed offence

637. **Section 122** inserts a new section 224A (life sentence for second listed offence) into the 1991 Act, together with a new Schedule 15B (which is set out in Schedule 18). Schedule 19 contains related consequential and transitory provision.
638. New section 224A provides that a court must impose a life sentence on a person aged 18 or over who is convicted of an offence listed in Part 1 of Schedule 15B of that Act which is serious enough to justify a sentence of imprisonment of 10 years or more, if that person has *previously* been convicted of an offence listed in any Part of Schedule 15B and was sentenced to imprisonment for life or for a period of 10 years or more in respect of that previous offence. Parts 2 to 4 of new Schedule 15B include offences under legislation which is no longer applicable, offences in other UK jurisdictions and those of other member States of the European Union, as well as offences under service law.
639. However, the court is not obliged to impose a life sentence where it is of the opinion that there are particular circumstances which relate to the offence, the previous offence or the offender which would make it unjust to do so in all the circumstances.

New section 224A

640. Subsection (1) of new section 224A sets out the conditions under which the new mandatory life sentence must be imposed. The offender must be an adult when convicted, and the present offence must be listed in Part 1 of Schedule 15B and have been committed after the coming into force of section 224A. The sentence condition and the previous offence condition must also be met (see below).
641. Subsection (2) of new section 224A gives the court a discretion not to impose the life sentence where it is of the opinion that there are particular circumstances which relate to the offence, the previous offence or the offender, which would make it unjust to do so in all the circumstances.
642. Subsection (3) of new section 224A sets out the sentence condition. The present offence must be serious enough to justify the imposition of a sentence of imprisonment of 10 years or more. The court must consider what sentence it would have imposed but for section 224A, and disregarding any extension period it would have imposed under new section 226A (which relates to the new extended sentence). This consideration includes, for example, any guilty plea made by the offender, as well as any aggravating or mitigating factors.

These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012

643. Subsection (4) of new section 224A sets out the previous offence condition. The offender must have been previously convicted of an offence listed in any Part of Schedule 15B, and on conviction must have received a relevant life sentence or a relevant determinate sentence.
644. Subsection (5) of new section 224A sets out what is meant by a relevant life sentence. A relevant life sentence is one where the offender was not eligible for release during the first 5 years of the sentence (not taking into account any period spent on remand or bail). The term 'life sentence' in subsection (5) includes a sentence of imprisonment or detention for public protection (see subsection (10), which refers to the definition of 'life sentence' in section 34 of the Crime (Sentences) Act 1997).
645. Subsections (6) and (7) of new section 224A set out when an extended sentence (defined in subsection (10), see below) is relevant. An extended sentence is relevant if the custodial term was 10 years or more.
646. Subsection (8) of new section 224A provides that any other determinate sentence of imprisonment or detention of 10 years or more is a relevant sentence.
647. Subsection (9) of new section 224A ensures that any reduction of a sentence for the purpose of taking account of time spent on remand, either in custody or on bail, is to be disregarded when considering whether the previous offence condition has been met. It may be that in some jurisdictions where a previous offence might have been committed time spent on remand is, or may be, applied to reduce the length of the sentence, so the provision deals with that possibility.
648. Subsection (10) of new section 224A defines "extended sentence" and "life sentence." The definitions include equivalent sentences imposed under the law of Scotland, Northern Ireland and other member States of the European Union.
649. "Sentence of imprisonment or detention" is defined to include any sentence of a period in custody imposed for an offence.
650. Subsection (11) of new section 224A provides that offences in respect of which the new mandatory life sentence under that section is imposed are not to be regarded as offences for which the sentence is fixed by law. Among other things, this obliges the court to follow any relevant sentencing legislation when determining the sentence, if it decides that to impose the mandatory life sentence would be unjust.

Section 122(2) and (3) and Schedules 18 and 19

651. Subsection (2) of section 122 introduces Schedule 18. Schedule 18 inserts new Schedule 15B into the 1991 Act. New Schedule 15B sets out particularly serious sexual and violent offences which are relevant for the purposes of (a) the new life sentence requirements in new section 224A, (b) the extended sentence provisions under new section 226A (see section 124) and (c) the release arrangements under new section 246A for persons serving extended sentences under new sections 226A and 226B (see section 125).
652. New Schedule 15B contains those offences which are listed in Schedule 15A, which is relevant for the purposes of indeterminate sentences for public protection and extended sentences under section 227 of the 1991 Act and will be repealed. In addition, new Schedule 15B contains certain child sex and terrorism offences as well as the offence of causing or allowing the death of a child or vulnerable adult (under section 5 of the Domestic Violence, Crime and Victims Act 2004). In Part 2, it also includes offences which were abolished before the coming into force of new Schedule 15B, and would, if committed on the relevant day, constitute an offence listed in Part 1 of new Schedule 15B.
653. Subsection (3) of section 122 introduces Schedule 19. Schedule 19 makes consequential and transitory provisions in respect of new section 224A.