

Indeterminate Public Protection Sentences (IPP)

What is an IPP sentence?

Sentences of IPP were introduced in the Criminal Justice Act 2003 (CJA 2003). The primary object of the IPP is clear from the wording of sections 224 and 225 of the CJA 2003. It is to detain in prison people who pose a significant risk to members of the public of causing serious harm by further serious offences until they no longer pose such a risk.

In sentencing the courts will impose a specified part or tariff ('the minimum term') that the prisoner will have to serve before he/she can be considered for release by the Parole Board.

The Criminal Justice and Immigration Act (CJIA) 2008 received royal assent on 8 May 2008 (its provisions are now set out in PSI 27/2008). In respect of the provisions relating to IPP sentencing;

Sections 13 and 14 will restrict the circumstances in which imprisonment for public protection (IPP) can be imposed;

for adults, the offence will either have to warrant a two-year minimum term or be committed by someone with a previous conviction for a specified violent or sexual offence; and

for those under 18, the offence will have to warrant a two-year minimum term.

How is my sentence structured?

Initial categorisation of all newly sentenced male prisoners (not women or young adults) is carried out using an ICA1 initial categorisation form. An initial sentence plan will be completed within the first eight weeks (for those with tariffs of two years or less) or 16 weeks (for those with tariffs of more than two years).

Measures have now been introduced designed to ensure that prisoners with short tariffs are managed more effectively in terms

of sentence planning and the provision of offending behaviour work.

PSI 07/2008 introduced a presumption that IPP prisoners with short tariffs (three years and under) are suitable for category C prisons to avoid them being detained for lengthy periods in category B 'first stage' lifer prisons as a large number of IPP prisoners were previously.

PSI 07/2008 also makes clear that for the purposes of progression to category C conditions that IPP prisoners will be treated as if they were determinate sentenced prisoners in terms of their sentence management. So prisoners assessed as category B will progress to category C through the usual process of categorisation reviews held every 12 months. Prisoners who dispute their categorisation can challenge it.

Since January 2008, IPP sentences have also been subject to new offender management procedures whereby prisoners will have a dedicated 'offender manager' to assess and manage them throughout their sentence. This new offender management model will eventually be introduced for all prisoners (*National Probation Service Briefing* issue 43).

How do I get to an open prison?

The key to decision making throughout the sentence is now deemed to be the sentence planning and review meetings (SPR) which should be held once every 12 months as a minimum or more often in certain circumstances such as where new information comes to light which may affect the risk assessment or sentence plan of a particular prisoner. The SPR meetings will include a number of reports from the offender manager, supervisor and others about progress, the meeting of sentence plan objectives and risk. The OASys should also be revised and updated for the SPR meetings. This is the responsibility of the offender manager.

For a prisoner to get to open conditions he/she will need a recommendation by the Parole Board and this recommendation will then be passed to the Public Protection Unit at the Ministry of Justice who will decide on behalf of the Secretary of State whether to accept or reject this recommendation. If a recommendation is rejected without adequate reasons being given or it is wholly unreasonable to have done so then it may be challengeable in the High Court.

Once a prisoner has reached open conditions then they revert to being treated as life sentence prisoners in terms of the prison programme they go on and for the purposes of Release on Temporary Licence (ROTL) according to PSO 6300.

How do I get released?

Release is solely determined by the Parole Board. The Parole Board in considering release must, as in the case of mandatory and discretionary lifers, assess the level of risk to life and limb presented according to the circumstances of each case. A complete dossier should be prepared and disclosed to the IPP prisoner in line with the relevant timetables.

If released an IPP-sentenced prisoner is subject to life licence but can apply for discharge of a life licence 10 years after release.

Is it unlawful to keep me inside without access to OBCs that I have been told I have to do?

A number of cases were brought in respect of the lack of offending behaviour courses available to IPP prisoners before the expiry of their tariffs. In February 2008 the cases reached the Court of Appeal. In the case of Walker the Secretary of State's appeal was dismissed and the decision of the lower court that the Secretary of State had acted unlawfully by failing to provide measures to allow and encourage IPP prisoners to demonstrate to the Parole Board that they were no longer dangerous, by the time of their tariff expiry, was upheld.

The Secretary of State's appeal in James was allowed in part, but the court said that

detention post-tariff was not unlawful even where there was a failure to provide OBCs or other measures to show that a prisoner was not dangerous. The order for Mr James' release was therefore set aside.

Significantly, however, the case of James said Article 5(4) of the European Convention on Human Rights is applicable to systematic failures to provide measures to reduce dangerousness because prisoners will not be able to make a meaningful challenge to the lawfulness of their detention. It also held that where there continued to be a failure by the Prison Service to provide measures to reduce risk over a prolonged period that this might result in a prisoner's detention becoming unlawful. (Article 5 (4) says 'Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.'))

For individual IPP prisoners the most significant part of these judgements is likely to be the finding that failure to provide measures to allow them to demonstrate at the expiry of their minimum term that they are no longer a significant risk may result in a breach of Article 5(4) and allow them to seek a mandatory order for such measures to be put in place and possibly gain damages via a judicial review.

PRISONERS' ADVICE SERVICE PO BOX 46199 LONDON EC1M 4XA TEL: 020 7253 3323 / 0845 430 8923
