

MANDATORY

CUSTODIAL SENTENCES

MURDER

Section 1 Murder (Abolition of Death Penalty) Act 1965 provides for only one possible sentence: life imprisonment. Murder has its own special rules in **Schedule 21 Sentencing Code** as to the minimum term: (1) trial judge fixes minimum term which may be adjusted depending on whether there are any aggravating or mitigating factors (e.g. **MINTO**);

(2) then Parole Board consider whether the offender suitable for release.

Para 2 Sch 21 - 'Exceptionally high' - a 'whole life order' - Includes offences involving 'a substantial degree of premeditation or planning' e.g. **ABEDI** (Manchester Arena attack).

Human Rights implications - **BIEBER** (s.30 Crime (Sentences) Act 1997); **WELLINGTON** (BIEBER approved); **MCLOUGHLIN AND NEWELL** and **HUTCHINSON v UK**.

Para 3 Sch 21 - 'Particularly high' - minimum term of 30 years. Includes the murder of a police officer and murder involving sexual conduct e.g. **DIXIE**. Lists in para 4 and 5 not comprehensive - **MORLEY** (cannibalism).

(1) **ss 313-314 Sentencing Code** provide for, respectively, a minimum of seven years for third class A drug trafficking offence and a minimum of three years for a third domestic burglary. These minimum sentences cannot be handed down if it 'would make it unjust to do so in all the circumstances'.

(2) **S 311** minimum sentence of five years for the illegal possession of prohibited firearms. Proviso that 'exceptional circumstances' will justify the court in not imposing the minimum sentence. **REHMAN**

AND WOOD.

NOTE Custodial sentences chart 2 for mandatory life.

DISCRETIONARY

Offenders serving a determinate sentence of 12 months or more serve their sentence in two halves. The **first half is in prison** and the **second half on licensed supervision** in the community. **NOTE** Prisoner is liable to recall for the unexpired portion of his sentence if he re-offends. The licence period is designed to fulfil one purpose of sentencing: rehabilitation. The probation service supervises the offender and uses the time to work on the factors which underlie criminality. It also provides an opportunity for the effective resettlement of offenders (finding and maintaining employment and housing, and sustaining family ties), which is fundamental to reducing re-offending.

(1) **S.63 Sentencing Code** - 'in considering the seriousness of any offence, the court must consider the offender's **culpability** in committing the offence and any **harm** which the offence caused, was intended to cause or might foreseeably have caused'.

NOTE Court must always look for **sentencing guideline**

(2) **S.230 Sentencing Code** - the offence has to be '**so serious** that neither a fine alone nor a community sentence can be justified for the offence'.

(3) Cases - **COX** - Lord Taylor: 'The kind of offence which...would make all right thinking members of the public, knowing all the facts, feel that justice had not been done by the passing of any sentence other than a custodial one'. **HOWELLS** - Lord Bingham CJ said that in reality, the court was bound to give effect to its own subjective judgment of what justice required in the particular case before it.

SUSPENDED

S. 277 Sentencing Code enables the court to impose suspended prison sentences of between 14 days and 2 years. Are custodial sentences, but they are suspended for a period of time during which, should the offender re-offend, then the sentence will be activated. Must include SSOs, such as doing unpaid work. **NOTE** SSOs are **punishments**. See **LAWES**.

EXTENDED

1. Application - Offender has been convicted of: (1) a **specified offence** and (2) court considers a **significant risk** to members of the public of **serious harm** of the offender committing **further specified offences**, and (3) the court is **not** required to impose a life sentence.

2. Effect - (1) Offender not released until at least the **two-thirds** point of it has been reached.

(2) Sentencer will determine how long **extra** the offender will remain **on licence** beyond the usual period. The extended period is up to 5 years for a violent offence and up to 8 years for a sexual

offence. **KHAN AND ORS** (s.5 Terrorism Act 2006 - extended sentence of five years).